

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Motorsport Aftermarket Group, Inc. (“Motorsport Aftermarket”), with Vinocur and Motorsport Aftermarket each individually referred to as a “Party” and, collectively, as the “Parties.” Vinocur is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Motorsport Aftermarket employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Vinocur alleges that Motorsport Aftermarket manufactures, sells, and distributes for sale in California gloves with vinyl/PVC components containing di(2-ethylhexyl) phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are gloves with vinyl/PVC components containing DEHP that are manufactured by River Road and sold or distributed for sale in California by Motorsport Aftermarket including, but not limited to, the *River Road Laredo Gloves, #091571*, (“Products”).

### 1.4 Notice of Violation

On September 29, 2016, Vinocur served Motorsport Aftermarket, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Motorsport Aftermarket violated Proposition 65 when it failed to

warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

**1.5 No Admission**

Motorsport Aftermarket denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Motorsport Aftermarket of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Motorsport Aftermarket of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Motorsport Aftermarket. This Section shall not, however, diminish or otherwise affect Motorsport Aftermarket's obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 17, 2017.

**2. INJUNCTIVE RELIEF**

Motorsport Aftermarket represents that it is not presently selling or otherwise distributing the Products for sale in or into California. Motorsport Aftermarket agrees, however, that should it recommence sales of the Products in California in the future, it will only offer Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of determining DEHP

content in a solid substance.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims alleged in the Notice and referred to in this Settlement Agreement, within five days of the Effective Date, Motorsport Aftermarket agrees to pay \$2,875 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty paid to Vinocur. Motorsport Aftermarket shall issue its payment in two checks for the following amounts: (a) “OEHHA” in the amount of \$2,156.25; and (b) “Laurence Vinocour, Client Trust Account” in the amount of \$718.75. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made under this Settlement Agreement.

#### **3.2 Attorneys’ Fees and Costs**

The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Settlement Agreement had been settled. After the Parties reached an agreement as to all other settlement terms, the Parties then reached an accord on the compensation due to Vinocur and his counsel, under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, within five days of the Effective Date, Motorsport Aftermarket agrees to pay \$25,000 to Vinocur and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Motorsport Aftermarket’s management, and negotiating a

settlement in the public interest. Motorsport Aftermarket's payment shall be delivered in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Vinocur's Release of Motorsport Aftermarket**

This Settlement Agreement is a full, final, and binding resolution between Vinocur, on his own behalf and not on behalf of the public, and Motorsport Aftermarket of any violation of Proposition 65 that was or could have been asserted by Vinocur on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Motorsport Aftermarket, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Motorsport Aftermarket, directly or indirectly, distributes or sells Products, including, but not limited, to Ed Tucker Distributor, Inc., Tucker Rocky Distributing, and any of its other downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in the Products manufactured, sold or distributed for sale in California by Motorsport Aftermarket before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Motorsport Aftermarket and

Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65, with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Motorsport Aftermarket before the Effective Date.

The releases provided by Vinocur under this Settlement Agreement are provided solely on Vinocur's behalf and are not releases on behalf of the public.

#### **4.2 Motorsport Aftermarket's Release of Vinocur**

Motorsport Aftermarket, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Vinocur and his attorneys and other representatives for any and all actions taken or statements made by Vinocur and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Products, then Motorsport Aftermarket may provide written notice to Vinocur of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Motorsport Aftermarket:

Andrew Graves, Chief Executive Officer  
Motorsport Aftermarket Group, Inc.  
17771 Mitchell North, Suite A  
Irvine, CA 92614

with a copy to:

Levi Heath, Esq.  
Barnes & Thornburg, LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067

For Vinocur:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Vinocur and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.


**AGREED TO:**

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Date: 2/15/2017

Date: Feb. 14, 2017

By:   
LAURENCE VINO CUR

By:   
Rick Walters, CFO & Secretary  
MOTORSPORT AFTERMARKET  
GROUP, INC.