

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Alex Brands and Laurence Vinocur

This Settlement Agreement (Settlement Agreement) is entered into by and between Poof-Alex Holdings, LLC and Panline USA, Inc. (wholly owned subsidiaries of Alex Brands (“Alex Brands”)) and Laurence Vinocur (“Vinocur”), with Vinocur and Alex Brands referred to individually as the “Party” and, collectively, as the “Parties.” Vinocur is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Alex Brands 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 §§ 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

Vinocur alleges that Alex Brands manufactures, imports, sells and/or distributes for sale in California, vinyl pen pouches that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Vinocur alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl pen pouches containing DEHP that are manufactured, imported, distributed, sold and/or offered for sale by Alex Brands in the State of California, including, but not limited to, the *Alex 10 Metallic Gel Pens, #976M, UPC #7 31346 09762 0*, hereinafter the “Products.”

1.4 Notice of Violation

On or about November 28, 2018, Vinocur served Poof-Alex Holdings, LLC, Panline USA, Inc. and certain requisite public enforcement agencies with a 60-Day Notice of Violation

(“Notice”), alleging that Alex Brands violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Alex Brands denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed 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 Alex Brands of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Alex Brands of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean April 1, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

Commencing on the Effective Date, and continuing thereafter, Alex Brands agrees it will only manufacture, import, distribute, sell or offer for sale, in California, Products that are either (a) reformulated to meet the reformulation standard, detailed in Section 2.1, below; or (b) bearing a clear and reasonable health hazard warning, pursuant to Sections 2.2 through 2.3, below.


2.1 Reformulated Products Defined

“Reformulated Products” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and

extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.2 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, Alex Brands shall provide clear and reasonable warnings as set forth in this section for all Products imported, sold or distributed for sale, in California, that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions *before* purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Settlement Agreement, a clear and reasonable warning displayed or transmitted according the above criteria, and containing the following statement, shall satisfy these requirements:

 **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

Or, if placed directly on a Product or the Product's packaging and/or labeling, Alex Brands may use the following short-form warning statement, provided it appears in a type size no smaller than the largest type size used for other consumer information on the Product's label and in no case smaller than 6-point type:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov/product

2.3 Internet Product Warnings

In the event Alex Brands sells Products that do not qualify as Reformulated Products via the internet to customers located in California, the warning requirements of this Section shall be satisfied if, prior to purchase: (a) one of the foregoing warnings, described in Section 2.2,

appears on the same page, in the same type size or larger than the Product description text, as the Product; (b) a warning appears on the same web page as the price for the Product, in the same type size or larger than the Product description text; (c) a warning appears on one or more web pages displayed to the consumer prior to purchase, in the same type size or larger than the Product description text; or (d) a hyperlink, clearly marked “WARNING,” appears on the Product display page, in type large enough so that the consumer does not have to search for it, and a prominently placed warning appears elsewhere, such as on the Product description page, in a manner that clearly associates it with the Product to which the warning applies, prior to checkout or purchase.

Alex Brands represents that it is no longer selling or distributing the Products in California, but, if it imports, sells or distributes Product in California after the Effective Date, it will comply with the reformulation and warning requirements of this Section.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Alex Brands agrees to pay a total of \$2,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty amount retained by Vinocur.

Alex Brands will deliver its payment on or before the Effective Date, in two checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$500. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

3.2 Reimbursement of 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 the agreement had been settled. Shortly after the Parties finalized the other settlement terms, Alex Brands expressed a desire to resolve Vinocur's fees and costs. The Parties negotiated a resolution of 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. Alex Brands agreed to reimburse Vinocur and his counsel \$18,000 for all fees and costs incurred by Vinocur in investigating, bringing this matter to Alex Brands' attention and negotiating a settlement. Alex Brands' payment shall be delivered to the address in Section 3.3, below, on or before the Effective Date, in the form of a check made payable to "The Chanler Group."

3.3 Payment Address

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

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 Alex Brands

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and Alex Brands, of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Alex Brands, its parents, subsidiaries (including, without limitation, Poof-Alex Holdings, LLC and Panline USA, Inc.), affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Alex Brands directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged

exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Alex Brands in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Vinocur's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Vinocur may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to DEHP in Products manufactured, distributed, sold and/or offered for sale by Alex Brands, as alleged in the Notice, prior to the Effective Date (collectively, Claims), against Alex Brands and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Alex Brands. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Alex Brands' Products.

4.2 Alex Brands' Release of Vinocur

Alex Brands, on behalf of itself, 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 (or those that could have been taken or made) by Vinocur and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Alex Brands shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Alex Brands from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Alex Brands:

Richard O'Donnell, Chief Supply Chain Officer
Alex Brands
40 Lane Road
Fairfield, NJ 07004

With a Copy to:

Robert Niemann, Esq.
Keller & Heckman, LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111

For Vinocur:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

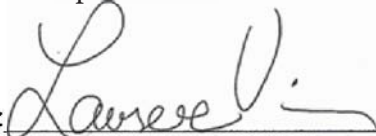
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: April 4, 2019

Date: April 1, 2019

By: 
LAURENCE VINO CUR

By: 
Richard O'Donnell, Chief Supply Chain
Officer ALEX BRANDS