

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Laurence Vinocur and Prinsco, Inc.

This Settlement Agreement (**Settlement Agreement**) is entered into by and between Laurence Vinocur (**Vinocur**) and Prinsco, Inc. (**Prinsco**), with Vinocur and Prinsco collectively referred to 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. Prinsco 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 Prinsco manufactures, imports, sells and/or distributes for sale in California, vinyl tape that contains 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 cancer, and birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl adhesive materials such as vinyl tape containing DEHP including, but not limited to, the *Drainage Industries Industrial Strength Corrugated Tile Tape, Part #BT02R050B, UPC #0 97333 05490 0*, manufactured, imported, or purchased for resale by Prinsco and distributed, sold and/or offered for sale in the State of California, hereinafter the “**Products**.”

1.4 Notice of Violation

On or about August 29, 2018, Vinocur served Prinsco, a retailer and certain requisite public enforcement agencies with a 60-Day Notice of Violation (**Notice**), alleging that Prinsco

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

Prinsco 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 Prinsco 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 Prinsco 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 of the Parties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "**Effective Date**" shall mean January 15, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing on the Effective Date and continuing thereafter, and except as otherwise provided in this Settlement Agreement, Prinsco shall only manufacture for sale, import for sale, and purchase for resale in California Products that are Reformulated Products as defined by Section 2.2. Any Products that are not Reformulated Products, which Prinsco sells, ships for sale, or distributes for sale to customers or consumers in California, or to customers with nationwide distribution, after the Effective Date, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, after the Effective Date, Prinsco sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Prinsco shall also provide warnings for such Products by identifying the specific Product to which the warning applies as specified in Sections 2.4 through 2.6.


2.2 Reformulation Standards

“**Reformulated Products**” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component 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 generally accepted methodologies utilized by federal or state government agencies to determine the DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Prinsco shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* 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, and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

- (a) **Warning.** The warning shall consist of the following statement (**Warning**):

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

- (b) **Short-Form Warning.** Prinsco may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (**Short-Form Warning**), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag that is used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.4 Product Warnings

Prinsco shall affix a Warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, Prinsco prints new catalogs and sells Products via mail order through such catalogs to customers located in California, Prinsco shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.6 Internet Warnings

If, after the Effective Date, Prinsco directly sells Products via the internet to customers located in California, Prinsco shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase, or during the purchase of the Products, without requiring customers

to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for which it is given in the same type size or larger than the Product consumer information text. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

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, Prinsco agrees to pay a total of Fifteen Hundred Dollars (\$1,500.00) 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.

Prinsco will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by plaintiff’s counsel on or before the Effective Date. Prinsco shall provide two checks, one made payable to “OEHHA” in the amount of Eleven Hundred and Twenty-Five Dollars (\$1,125.00), and the other made payable to “Laurence Vinocur, Client Trust Account” in the amount of Three Hundred and Seventy Five Dollars (\$375.00). Thereafter, Vinocur’s counsel shall send OEHHA’s portion of the penalties paid by Prinsco to OEHHA.

3.2 Reimbursement of Attorneys’ Fees and Costs

The Parties agreed 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 and after the mutual execution of this agreement, Prinsco shall reimburse Vinocur and his counsel Ten Thousand Dollars (\$10,000.00). Prinsco will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by plaintiff's counsel on or before the Effective Date, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Vinocur investigating, bringing this matter to Prinsco's attention and negotiating, finalizing a settlement of the matter and otherwise in connection with this matter.

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 Prinsco

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual, and Prinsco 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 (collectively, **Releasers**), against Prinsco, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Prinsco directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, **Releasees**) in connection with the Products. Releasers hereby fully release and waive further claims against Releasees for all claims for violations of Proposition 65 relating to the Products through the Effective Date, and for any claims arising out of the labeling of, warnings for or exposure to or from the Products. Compliance with the terms

of this Settlement Agreement constitute compliance with Proposition 65 with respect to the Products.

In further consideration of the promises and agreements herein contained, Releasors hereby waive all of their rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Releasors may have against Releasees, 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 including, but not exclusively, investigation fees, expert fees, and attorneys' fees with respect to the Products (collectively, **Claims**).

Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

4.2 Prinsco's Release of Vinocur

Prinsco, 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 Prinsco shall have no further obligations under this Settlement Agreement.

7. NOTICE

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

For Prinsco:

Jeremy Duininck, CEO
Prinsco, Inc.
1717 16th Street NE, Floor 3
Willmar, MN 56201

With a Copy to:

Nancy Quattlebaum Burke, Esq.
Gray Plant Mooty
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

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:

Date: 1/8/19

By: 
Laurence Vinocur

AGREED TO:

Date: 1/8/2019

By: 
Jeremy Dujinck, CEO
Prinsco, Inc.