

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered by and between Laurence Vinocur (“Vinocur”) and Pyramex Safety Products, LLC (“Pyramex”), with Vinocur and Pyramex 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. Pyramex employs ten or more individuals 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 and Safety Code section 25249.6 et seq. (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that Pyramex sells and distributes for sale in California without a Proposition 65 warning Safety Glasses with nose pads containing di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer, birth defects or other reproductive harm.

1.3 Covered Products

For purposes of this Settlement Agreement “Covered Products” are defined as safety glasses with nose pads containing DEHP that are sold and/or distributed for sale in California by Pyramex. These Covered Products include, but are not limited to, Venture Gear by Pyramex Protective Eyewear, VGSB1810R15, UPC # 8 14992 00218 4.

1.4 Notice of Violation

On March 21, 2018, Vinocur served Pyramex, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Pyramex violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from Pyramex’s safety glasses with nose pads. No public enforcer has commenced and is diligently prosecuting an

action to enforce the violations alleged in the Notice.

1.5 No Admission

Pyramex denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has sold, distributed for sale, or offered for sale in California, including the Covered Products, comply with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Pyramex 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 Pyramex of any fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by Pyramex. This Section shall not, however, diminish or otherwise affect Pyramex'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 December 15, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

2.1.1 Commencing on the Effective Date and continuing thereafter, Pyramex agrees to only manufacture (or cause to be manufactured) for sale in California Covered Products that are either (a) "Reformulated Products" as defined by Section 2.2, or (b) that are offered with a clear and reasonable warning pursuant to Section 2.3.

2.1.2 The requirements in this Section 2 shall not apply to any Covered Product that as of the Effective Date is in the stream of commerce or has been manufactured as of the Effective Date.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, Reformulated Products are Covered Products containing (a) no more than 1,000 parts per million (0.1%) of DEHP in any component analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing

methodologies 3580A and 8270C. In addition to the above test methodologies, the Parties may use equivalent methodologies utilized by a state or federal agency to determine DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, subject to Section 2.1.2 above, for all Covered Products that do not meet the definition of Reformulated Products established by Section 2.2, Pyramex shall provide clear and reasonable warnings in accordance with this Section, or title 27 California Code of Regulations section 25600 et seq., as amended from time to time. Pyramex further agrees that any warning used will be prominently placed in relation to a Covered Product with such conspicuousness when 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 of purchase or use. For purposes of this Settlement Agreement, a warning displayed or transmitted according to the above criteria that is affixed directly to a Covered Product or its accompanying labeling or packaging that contains one of the following statements shall be deemed clear:

⚠ WARNING: This product can expose you to chemicals, including 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

or the following “short-form” warning:

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov¹

¹ This short-form warning may be used only on a product, product label, or as part of an internet warning, and must be in a type size no smaller than the largest type size used for consumer information on the product and no case smaller than 6-point type. The short-form warning may not be used on a warning sign, e.g., point-of-sale or shelf sign.

2.4 Internet Warnings

If, after the Effective Date, Pyramex sells Covered Products via the internet to customers located in California, Pyramex shall provide warnings for each Covered Product both on the Covered Product label in accordance with Section 2.3, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Covered 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 Covered Products via the internet shall appear either: (a) on the same web page on which the Covered Product is displayed; (b) on the same web page as the order form for the Covered 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 description text. The internet warning may use the “short-form” warning content described in Section 2.3 if the warning provided on the Covered Product label also uses the “short-form” warning content.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Pyramex agrees to pay \$1,800 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Vinocur. Pyramex agrees to deliver its payment on or before December 20, 2018 in two checks made payable to: (a) “OEHHA” in the amount of \$1,350; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$450. Vinocur’s counsel shall send OEHHA’s portion of the penalties paid by Pyramex to OEHHA.

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, on or before December 20, 2018, Pyramex agrees to pay \$12,000 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Pyramex's management, and negotiating a settlement that provides a significant public benefit. Pyramex's payment under this Section shall be delivered in 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 Pyramex

This Settlement Agreement is a full, final, and binding resolution between Vinocur and Pyramex, of any violation of Proposition 65 that was or could have been asserted by Vinocur on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Pyramex and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys ("Releasees"), and each entity to whom Pyramex directly or indirectly distributes or sells Covered Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Releasees"), based on the failure to warn about exposures to DEHP in Covered Products manufactured, sold, or distributed for sale by Pyramex 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 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 Pyramex, Releasees and Downstream Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, 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 Covered Products manufactured, distributed, sold or offered for sale by Pyramex, 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 in California.

4.2 Pyramex's Release of Vinocur

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

4.3 Public Benefit

It is Pyramex's position that the commitments it has agreed to herein, and actions to be taken by Pyramex under this Settlement Agreement, confer a significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Pyramex or any Releasee's failure to provide a warning concerning exposures to DEHP with respect to the Covered Products they have respectively manufactured distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Pyramex is in material

compliance with this Settlement Agreement. This Section does not constitute a release by Vinocur under this Settlement Agreement.

5. SEVERABILITY

If, after the execution of this Settlement Agreement, any provision relating to the non-monetary portions of this agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected so long as the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Agreement being contrary to the intent of the Parties in entering into this Agreement, or unless the Parties modify the Agreement such that the provision deemed unenforceable by the court is replaced with an enforceable provision that reflects the intent of the parties.

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. If Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Pyramex 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 Covered 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 Pyramex:

Joshua A. Bloom, Esq.
Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, CA 94607

For Vinocur:

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

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 section 25249.7(f).

10. **MODIFICATION**

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

11. **ENFORCEMENT OF SETTLEMENT AGREEMENT**

No action to enforce this Settlement Agreement may be commenced or maintained unless the party seeking enforcement notifies the other party of the specific acts alleged to breach this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than 30 days in an effort to resolve any alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Settlement Agreement.

12. AUTHORIZATION

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

AGREED TO:

Date: 12/6/18

By: 
LAURENCE VINOUCUR

AGREED TO:

Date: 12/7/2018

By: 
Travis Slater, for PYRAMEX