

# SETTLEMENT AGREEMENT

## **1. INTRODUCTION**

### **1.1 Laurence Vinocur and Seirus Innovative Accessories, Inc.**

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Seirus Innovative Accessories, Inc. (“Seirus”), with Vinocur and Seirus 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. Seirus 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 Seirus has manufactured, imported, distributed and/or sold in the State of California gloves with vinyl/PVC components containing Di(2-ethylhexyl)phthalate (“DEHP”). 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 defined as gloves with vinyl/PVC components including, but not limited to, the *Seirus Mountain Challenger Glove*, #8002, SKU #04351185, UPC #0 90897 04238 2, which are manufactured, imported, distributed, sold and/or offered for sale by Seirus in the State of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On July 11, 2014, Vinocur served Seirus and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Seirus was in violation of California Health & Safety Code § 25249.6 for failing to

warn consumers that the Product exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Seirus denies the material, factual and legal allegations contained in Vinocur's 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 Seirus of any fact, conclusion, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Seirus of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Seirus. However, this section shall not 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 September 15, 2015.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

**2.1 Reformulation Standards**

A Reformulated Product is defined as a Product containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

**2.2 Reformulation and Warning Commitment**

As of the Effective Date, Seirus shall only manufacture, import, sell or distribute for sale in California Products that are Reformulated Product pursuant to Section 2.1 above. However, specifically excluded from this reformulation commitment is the "Workman" product line. Seirus shall take all commercially reasonable efforts to reformulate the "Workman" line but,

until such efforts result in reformulation of the “Workman” line, Seirus shall utilize the warning set forth in Section 2.3. on the “Workman” Products.

### **2.3 Product Warnings**

As of the Effective Date Seirus will apply the following warnings to the “Workman” line of Products only:

**WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

This warning utilized by Seirus shall be applied to the “Workman” line of Products that cannot be Reformulated and that are manufactured or imported for sale in California after the Effective Date, until such time as those Products can be reformulated pursuant to Section 2.2 above. All other Products shall qualify as Reformulated Products, on or before the Effective Date. However, Seirus represents that following receipt of the Sixty-Day Notice it began applying warnings to its existing inventory of Products that state: “WARNING: This product may contain a chemical known to the State of California to cause birth defects and other reproductive harm.” As such, Products in Seirus’ inventory as of the Effective Date, if any, that contain the earlier warning, shall be otherwise exempt from the Reformulation and Warning commitment in Section 2.2 above.

### **3. CIVIL PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Seirus shall pay \$2,500 in civil penalties in accordance with this Section. The civil penalty shall be paid within five days of the Effective Date through the issuance of a check payable to “Laurence Vinocur, Client Trust Account” in the amount of \$2,500. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Vinocur. The penalty payment 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. REIMBURSEMENT OF 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 this fee issue to be resolved after the material terms of the agreement had been settled. The parties then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach 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 agreement. Seirus shall pay \$12,000 for fees and costs incurred as a result of investigating, bringing this matter to Seirus' attention, and negotiating a settlement. Seirus shall issue a check payable to "The Chanler Group" within five days of the Effective Date, to the address listed in Section 3.2 above.

**5. CLAIMS COVERED AND RELEASED**

**5.1 Vinocur's Release of Proposition 65 Claims**

Vinocur, acting on his own behalf, and *not* on behalf of the public, releases Seirus, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity whom supplied Seirus with the Products, and to whom Seirus directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products sold by Seirus, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice.

## **5.2 Vinocur's Individual Releases of Claims**

Vinocur, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Vinocur of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Seirus prior to the Effective Date. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Seirus' Products.

## **5.3 Seirus' Release of Vinocur**

Seirus, 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.

## **6. 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.

## **7. 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 Seirus shall provide written notice to Vinocur of any asserted change in the law and shall have

no further 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 Seirus from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

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 Seirus:

Michael Carey, President  
Seirus Innovative Accessories, Inc.  
13975 Danielson Street  
Poway, CA 92064

With a copy to:

George Dowell, Esq.  
Dowell LLP  
1153 Lincoln Ave., Suite C  
San Jose, CA 95125

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.

**9. 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.

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

Vinocur agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

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

**12. AUTHORIZATION**

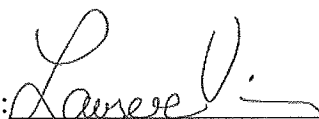
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

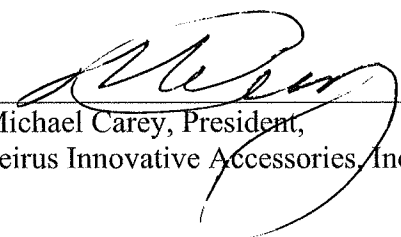
**AGREED TO:**

**AGREED TO:**

Date: September 18, 2015

Date: 10.5.15

By:   
Laurence Vinocur

By:   
Michael Carey, President,  
Seirus Innovative Accessories, Inc.