

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Tarte, Inc. (“Tarte”), with Vinocur and Tarte 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. Vinocur alleges that Tarte 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 Tarte manufactures, sells, and/or distributes for sale in California, vinyl/PVC cosmetic cases containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Vinocur alleges that Tarte failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC cosmetic cases.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC cosmetic cases containing DEHP including, but not limited to, the *Tarte High-Performance Naturals Powderful, MB01, UPC #8 39437 00836 1*, manufactured, sold or distributed for sale in California by Tarte (“Products”).

1.4 Notice of Violation

On or about March 13, 2015, Vinocur served Tarte, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Tarte violated Proposition 65 when it failed to warn its customers and consumers in California that its vinyl/PVC cosmetic cases 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

Tarte denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has manufactured, distributed or sold 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 Tarte 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 Tarte of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Tarte. However, this Section shall not diminish or otherwise affect Tarte'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 July 27, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before December 31, 2015, and continuing thereafter, Tarte agrees to only manufacture for sale or purchase for sale in or into California Products that qualify as "Reformulated Products". For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP, di-n-butyl phthalate ("DBP"), butyl benzyl phthalate ("BBP") and Diisononyl phthalate ("DINP") in concentrations of less than 0.1 percent (1,000 parts per million) in any Accessible Component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP, DBP, BBP and DINP content in a solid substance. For purposes of this Consent Judgment, "Accessible Component" shall

mean a plastic, PVC or vinyl component of a Covered Product that could be touched by a person during reasonably foreseeable use.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Tarte agrees to pay \$14,000 in civil penalties, as set forth below. Each penalty payment will be allocated by Vinocur in accordance with California Health and Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) and the remaining 25% of the penalty amount retained by Vinocur, as follows:

3.1.1 Initial Civil Penalty. On or before the Effective Date, Tarte shall pay an initial civil penalty in the amount of \$4,000 in one check made payable to “Laurence Vinocur, Client Trust Account.”

3.1.2 Final Civil Penalty. On or before October 26, 2015, Tarte shall pay a final civil penalty of \$10,000 in one check made payable to “Laurence Vinocur, Client Trust Account.” The final civil penalty shall be waived in its entirety, however, if, on or before October 15, 2015, an officer of Tarte provides Vinocur’s counsel with written certification that as of the date of the certification, Tarte has complied with the requirements of Section 2.1 and that continuing thereafter, Tarte will continue to comply with the requirements of Section 2.1. The option to provide a written certification of expedited reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence. Tarte shall deliver its certificate, if any, to Vinocur’s counsel at the address provided in Section 3.3, below. In the event that Tarte does not timely certify to its compliance or make the final civil penalty payment required by this Section, Vinocur may seek relief under any available legal remedy. If successful, the Parties further agree that Vinocur shall be entitled to his reasonable attorneys’ fees and costs pursuant to general contract principles and Code of Civil Procedure § 1021.5.

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 § 1021.5 for all work performed in this matter. Under these legal principles, Tarte agrees to pay \$27,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Tarte's management, and negotiating a settlement in the public interest. Tarte's payment shall be due on or before the Effective Date 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 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 Tarte

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and not on behalf of the public, and Tarte, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees (collectively, the "Releasors"), and Releasors hereby release any such claims, against Tarte, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Tarte directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively, the "Releasees"), based on the failure to warn about alleged exposures to any DEHP contained in Products manufactured, distributed, sold or offered for sale by Tarte in California before the date that this Settlement Agreement is fully executed by the Parties.

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/or assignees, and not in his representative capacity, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Releasees, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees (collectively, "Claims") arising under Proposition 65 with respect to DEHP, DBP, BBP and DINP contained in the Products manufactured, distributed, sold and/or offered for sale by Tarte before the date that this Settlement Agreement is fully executed by the Parties. Furthermore, Vinocur, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, and not in his representative capacity, provides a general release to Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of Vinocur of any nature, character or kind, known or unknown, suspected or unsuspected, arising under Proposition 65 with respect to DEHP, DBP, BBP and DINP contained in the Products manufactured, distributed, sold and/or offered for sale by Tarte before the date that this Settlement Agreement is fully executed by the Parties. Vinocur acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Vinocur, in his individual capacity only and not in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may conferred on him by the provisions of Civil Code § 1542 to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

Tarte and Vinocur, in his individual capacity only and not in his representative capacity, agree that compliance by Tarte with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to any DEHP, DBP, BBP and DINP contained in the Products.

4.2 Tarte's Release of Vinocur

Tarte, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims of any nature, character or kind, known or unknown, suspected or unsuspected, 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 in this matter, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to DEHP, DBP, BBP and DINP in the Products. Tarte acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tarte expressly waives and relinquishes any and all rights and benefits which it may have under, or which may conferred on it by the provisions of Civil Code § 1542 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

4.3 Reservation of Rights

Nothing in Section 4 affects or limits any Party's right to institute any proceeding to enforce the terms of this Settlement Agreement.

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 otherwise rendered inapplicable by reason of law generally, as to Tarte specifically as a result of a statutory exemption, or as to the Products, then Tarte may provide written notice to Vinocur of any asserted change in the law, or its applicability to Tarte or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Tarte or 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:

Tarte

Scott McDonough, general manager
Tarte, Inc.
1375 Broadway, Floor 8
New York, NY 10018

With a copy on behalf of Tarte to:

Sarah Esmaili
Arnold & Porter LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

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.

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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**

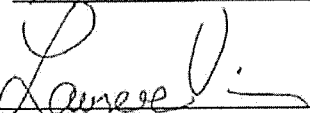
This Settlement Agreement may be modified only by written agreement of the Parties.

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.

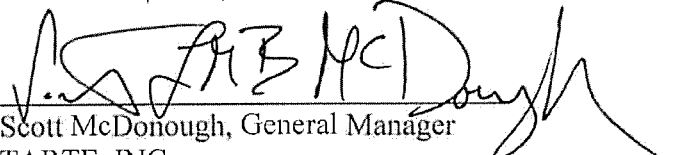
AGREED TO:

Date: June 15, 2015

By: 
LAURENCE VINO CUR

AGREED TO:

Date: July 20, 2015

By: 
Scott McDonough, General Manager
TARTE, INC.