

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and T. Christy Enterprises (“T. Christy”), with Vinocur and T. Christy 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. T. Christy 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that T. Christy manufactures, sells, and distributes for sale in California, vinyl/PVC electrical tape (“Electrical Tape”) containing the phthalate chemical 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 T. Christy failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Electrical Tape.

1.3 Product Description

The product covered by this Settlement Agreement is Electrical Tape containing DEHP that is manufactured, sold, or distributed for sale in California by T. Christy, including, but not limited to, the Electrical Tape described as *Christy's Vinyl Electrical Tape 3/4 in. x 60 ft., Part No. TA.33.CL60 UPC #0 44752 75060 8* (hereinafter “Products”).

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1.4 Notice of Violation

On April 27, 2016, Vinocur served T. Christy and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that T. Christy violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. 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

T. Christy denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 T. Christy 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 T. Christy of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by T. Christy. This Section shall not, however, diminish or otherwise affect T. Christy’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 August 20, 2016.

2. INJUNCTIVE RELIEF: WARNING AND REFORMULATION STANDARD

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date and continuing thereafter, T. Christy agrees to only manufacture for sale or purchase for sale in or into California Products that either are: (a), “Reformulated Products,” as this term is defined in Section 2.2 below; or (b) provided with a warning as set forth in Section 2.3 below.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

For Products manufactured for sale in California or purchased for sale in California, which are not Reformulated Products, T. Christy shall provide a clear and reasonable warning pursuant to this Section.

2.3.1 General Warning Requirements

T. Christy agrees that 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.

2.3.2 Product Warnings

For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by T. Christy that contains one of the following statements:

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

Or

WARNING: This product contains a chemical known to the state of California to cause cancer and birth defects or other reproductive harm.

For Products that T. Christy reasonably believes contain one or more additional Proposition 65-listed chemical(s), it may use the following warning statement:

WARNING: This product contains chemicals known to the state of California to cause cancer and birth defects or other reproductive harm.

In the event that T. Christy sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.4 Grace Period for Existing Inventory of Products

T. Christy represents that, prior to entering this Settlement Agreement, it implemented a health hazard warning for the Products, which may include warning language other than that set forth in Section 2.3 above. Thus, the injunctive requirements of this Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

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, T. Christy agrees to pay \$2,250 in civil penalties. Within five days of the Effective Date, T. Christy shall

pay the civil penalty in the amount of \$2,250. 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 amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Vinocur, and delivered to the address in Section 3.3 herein. T. Christy will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,687.50 and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$562.50.

3.2 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 other settlement terms had been reached, T. Christy expressed a desire to resolve Vinocur’s 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, within five days of the Effective Date, T. Christy agrees to pay \$12,750 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of T. Christy’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments under 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 T. Christy

This Settlement Agreement is a full, final and binding resolution between Vinocur and T. Christy, 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 T. Christy, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys ("Releasees"), and each entity to whom T. Christy directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Downstream Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by T. Christy in California before the Effective Date.

In further consideration of the promises and agreements herein, Vinocur, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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 arising under Proposition 65 with respect to exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by T. Christy before the Effective Date, even if such Products are sold by Downstream Releasees after the Effective Date. The releases provided by Vinocur under this Settlement Agreement are provided solely on Vinocur's own behalf and not on behalf of the public in California.

4.2 T. Christy's Release of Vinocur

T. Christy, 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

against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made by Vinocur and his attorneys and other representatives, whether in the course of investigating claims in this matter, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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 as to the Products, then T. Christy may 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. If there is a future revision of Title 27, California Code of Regulations, Article 6, section 25601, *et seq.* relating to the content and/or method of transmission of a safe harbor warning for exposures to Proposition 65-listed chemicals resulting from use of consumer products, then T. Christy may use such warning content and/or method of transmission as set forth in such revised regulations to comply with Proposition 65's warning requirement with regard to exposures to DEHP from the Products.

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 T. Christy:

Ann G. Grimaldi, Esq.
Grimaldi Law Offices
50 California Street, Suite 1500
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 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. AUTHORIZATION

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

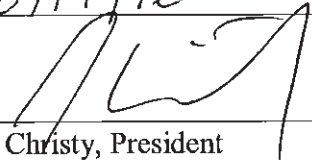
AGREED TO:

Date: 8/22/2016

By: 
LAURENCE VINO CUR

AGREED TO:

Date: 8/19/16

By: 
Jonathan Christy, President
T. CHRISTY ENTERPRISES