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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 LAURENCE VINO CUR,

17 Plaintiff,

18 v.

19 W.C. REDMON CO., INC.; *et al.*,

20 Defendants.

Case No. RG16832669

**STIPULATED SETTLEMENT
AGREEMENT PURSUANT TO SECTION
664.6 C.C.P.**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Settlement Agreement pursuant to Section 664.6 C.C.P. (the “Settlement Agreement”)
4 is entered into by and between Laurence Vinocur (“Vinocur”) and W.C. Redmon Co., Inc.
5 (“Redmon”), with Vinocur and Redmon each individually referred to as a “Party” and collectively as
6 the “Parties.” Vinocur is an individual residing in the State of California who seeks to promote
7 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
8 hazardous substances used in consumer products. Redmon employs ten or more persons and is a
9 person in the course of doing business for purposes of the Safe Drinking Water and Toxic
10 Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* (“Proposition
11 65”).

12 **1.2 General Allegations**

13 Vinocur alleges that Redmon manufactures, sells, and/or distributes for sale in California,
14 tent/shelter fabrics that allegedly contain tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”). TDCPP
15 is listed pursuant to 27 C.C.R. section 27001 as a chemical known to cause cancer. Vinocur alleges
16 Redmon failed to provide the health hazard warning required by 27 C.C.R., Division 4, Article 6 (§§
17 25601 *et seq.*) for consumer exposures to TDCPP from the tent/shelter fabrics.

18 **1.3 Product Description**

19 The products covered by this Settlement Agreement are tent/shelter fabrics, containing
20 TDCPP that are manufactured, sold, or distributed for sale in California by Redmon. The products
21 at issue include, but are not limited to, the *Pop-Up Super Shade Dome Beach Baby, Model/Item*
22 *#6131, UPC #0 27061 21515 0* (collectively referred to as the “Products”).

23 **1.4 Notice of Violation**

24 On May 26, 2016, Vinocur served Redmon and the requisite public enforcement agencies
25 with a 60-Day Notice of Violation (the “Notice”), alleging that Redmon violated Proposition 65
26 when it failed to warn consumers in California of the health hazards associated with exposures to
27 TDCPP from the Products. Neither Party is aware of any public enforcer diligently prosecuting an
28 action in which the alleged violations are those referred to, in whole or in part, in the Notice.

1 **1.5 Complaint**

2 On September 26, 2016, Vinocur commenced the instant action (“Complaint”), setting forth
3 Redmon as a defendant for the alleged violations that are the subject of the Notice.

4 **1.6 Jurisdiction**

5 For purposes of this Settlement Agreement only, the Parties stipulate, pursuant to section
6 664.6 C.C.P., that this Court has jurisdiction over Vinocur and Redmon as to the allegations
7 contained in the Notice and in the Complaint, that venue is proper in the County of Alameda, and
8 that the Court has jurisdiction to enforce the provisions of this Settlement Agreement pursuant to
9 section 664.6 C.C.P. as to: (a) the alleged violations of Proposition 65 as set forth in the Notice and
10 Complaint; and (b) the terms of this Settlement Agreement.

11 **1.7 No Admission**

12 This Agreement resolves claims that are denied and disputed by Redmon. The Parties enter
13 into this Agreement pursuant to a full and final settlement of all claims between the Parties for the
14 purpose of avoiding prolonged litigation.

15 Redmon denies that a consumer is exposed to TDCPP from the use of the Products or any of
16 its other products from the reasonably foreseeable use such that said use mandates a warning of the
17 type as set forth in sections 25249.6 & 25249.10 H.&S.C. and 27 C.C.R., Division 4, Article 6,
18 section 25601 et seq.

19 Redmon further denies the material, factual, and legal allegations contained in the 60-Day
20 Notice and in the Complaint, and maintains that all of the products that Redmon has sold, imported,
21 and/or distributed in California, and all of said products manufactured, imported, sold, or
22 distributed by others in which Redmon is in the stream of commerce, including the Products, have
23 been and are in compliance with all laws, including but not limited to Proposition 65.

24 Nothing herein shall be construed as an admission by Redmon of any fact, finding, issue of
25 law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be
26 construed as an admission by Redmon of any fact, finding, conclusion, issue of law, or violation of
27 law.

1 Except as expressly set forth herein, nothing in this Settlement Agreement shall prejudice,
2 waive, or impair any right, remedy, argument, complaint, or defense the Parties may have in any
3 other or future legal proceeding unrelated to this specific proceeding.

4 **1.8 Effective Date**

5 For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date
6 this Settlement Agreement is approved by the Court.

7 **2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATED PRODUCTS**

8 Commencing on the Effective Date and continuing thereafter, Redmon agrees to only
9 manufacture for sale in, purchase for sale in, or convey for sale in California the “Reformulated
10 Products.” For purposes of this Settlement Agreement, “Reformulated Products” shall mean
11 products containing less than or equal to 25 parts per million (0.0025%) each of TDCPP, TCEP
12 and/or tris(2, 3-dibromopropyl)phosphate (“TDBPP”) when analyzed pursuant to U.S.
13 Environmental Protection Agency testing methodologies 8545 and 8270C, or alternative
14 methodologies used by state or federal agencies for determining TDCPP content in a solid substance.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payments**

17 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
18 alleged in the Notice, the Complaint, or referred to in this Settlement Agreement, Redmon agrees to
19 pay \$5,000 in civil penalties. The penalty payment will be allocated in accordance with California
20 Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to
21 the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
22 25% of the penalty amount paid to Vinocur. Within five (5) days of the Effective Date, Redmon
23 shall tender its payment in two separate checks made payable to “Laurence Vinocur, Client Trust
24 Account” in the amount of \$1,250 and to “OEHHA” in the amount of \$3,750, sent to the address
25 provided in Section 3.3 below. Vinocur’s counsel shall undertake and be responsible for delivering
26 OEHHA’s portion of any civil penalty payment made under this Settlement Agreement to OEHHA.

1 **3.2 Attorneys' Fees and Costs**

2 The Parties reached an accord on the compensation due to Vinocur and his counsel under
3 general contract principles and the private attorney general doctrine codified at Code of Civil
4 Procedure section 1021.5 for all work performed in this matter. Under these legal principles,
5 Redmon agrees to pay \$27,500 within five (5) days of the Effective Date, in the form of a check
6 made payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this
7 matter to the attention of Redmon's management, and negotiating a settlement in the public interest.

8 **3.3 Payment Address**

9 All payments under this Settlement Agreement shall be delivered to:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

15 **3.4 Payment Timing; Payments Held in Trust**

16 Redmon shall deliver all settlement payment checks required by this Agreement to its
17 counsel within one week of the date that this Agreement is fully executed by the Parties. Redmon's
18 counsel shall confirm receipt of settlement checks in writing to Vinocur's counsel and, thereafter,
19 hold the checks until such time as the Court approves this settlement contemplated by Section 12.

20 Within five (5) business days of the date a) the Court approves the settlement, and b)
21 Vinocur's counsel informs counsel for Redmon that the settlement has been approved, Redmon's
22 counsel shall deliver the settlement checks it has held to Vinocur's counsel as follows:

- 23 1. A civil penalty check payable to "OEHHA" (Memo line "Prop. 65 Penalties, 2016-
24 00217"), in the amount of \$3,750.00;
- 25 2. A civil penalty check payable to "Laurence Vinocur" (Memo line "Prop. 65 Penalties,
26 2016-00217") in the amount of \$1,250.00; and
- 27 3. A check payable to "Chanler Law Firm" (Memo line "Prop. 65 1021.5, 2016-00217") in
28 the amount of \$27,500.00.

1 **4. RELEASE OF ALL CLAIMS**

2 **4.1** Vinocur, suing in the public interest, hereby releases Redmon; all of Redmon's
3 downstream distributors and retailers of the Products; and, the affiliates and subsidiaries of each of
4 these aforementioned entities; the divisions, successors, subsidiaries, parent corporations, related entities,
5 affiliates, agents, contractors, experts, consultants, counsel, service providers, officers, directors, and
6 employees of Redmon; and, all of the aforementioned entities described or named in this Para. 4.1,
7 of any liability whatsoever pursuant to Proposition 65 related to the Products and the alleged failure
8 to warn California consumers of an alleged exposure to TDCPP from any of the Products sold in
9 California on or before the Effective Date.

10 **4.2** Redmon, on behalf of itself, and on behalf of its past and current officers, directors,
11 managers, agents, representatives, counsel, successors, and/or assignees, hereby waives any and all
12 claims against Vinocur, his counsel and other representatives, for any and all actions taken or
13 statements made (or those that could have been taken or made) by Vinocur and his attorneys and
14 other representatives, whether in the course of investigating claims about or otherwise seeking to
15 enforce Proposition 65 against them in this matter with respect to the Products.

16 **4.3** Vinocur, on behalf of himself, his past and current agents, representatives, attorneys,
17 and successors and/or assignees, and *not* in his representative capacity, hereby provides a release that
18 shall be effective as a full and final accord and satisfaction, as a bar to all Claims under Proposition
19 65, Bus. & Prof. Code section 17200 et seq., and any other statutory or common law, that are or may
20 have been asserted against Redmon, its past and current officers, directors, managers, agents,
21 representatives, counsel, successors, and/or assignees, and/or those downstream entities in Redmon's
22 chain of distribution, as to claims whether known or unknown, suspected or unsuspected, arising out
23 of alleged exposures to, and/or failure to warn of alleged exposures to, TDCPP from the Products
24 shipped, distributed, or sold prior to the Effective Date.

25 **4.4** The Parties agree, understand, and acknowledge that this Settlement Agreement
26 represents a compromise of this action and the release of claims as set forth herein, and that neither
27 the fact nor the terms of this Settlement Agreement shall be construed as an admission of liability or
28 wrongdoing on the part of the Parties.

1 **4.5 Mutual Waiver of California Civil Code Section 1542**

2 The Parties each acknowledge he/it is familiar with section 1542 of the Civil Code, which
3 provides as follows:

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

9 The Parties, each on his/its own behalf (and Vinocur in his individual capacity only and *not* in any
10 representative capacity), and on behalf of his/its past and current agents, representatives, counsel,
11 successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which
12 they may have under, or which may be conferred upon them by the provisions of Civil Code section
13 1542 as well as under any other state or federal statute or common law principle of similar effect, to
14 the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters,
15 as defined by Sections 4.2 and 4.3, above.

14 **5. APPLICATION AND SEVERABILITY**

15 **5.1** This Settlement Agreement shall apply to, be binding upon, and benefit the Parties
16 and their respective officers, directors, shareholders, employees, agents, parent companies,
17 subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers,
18 retailers, predecessors, successors, and assigns. This Settlement Agreement shall have no
19 application to the Products which are distributed or sold outside the State of California and which
20 thereafter are not used by consumers in California.

21 **5.2** If, subsequent to the execution of this Settlement Agreement, any provision of this
22 Settlement Agreement is held by a court to be unenforceable, the validity of the remaining
23 provisions shall not be adversely affected.

24 **6. GOVERNING LAW**

25 The terms of this Settlement Agreement shall be governed by the laws of the State of
26 California and apply within the State of California. Compliance with the terms of this Settlement
27 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
28 alleged exposures to TDCPP arising from the Products. In the event that Proposition 65 is repealed

1 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Redmon
2 may provide written notice to Vinocur of any asserted change in the law, and shall have no further
3 injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that,
4 the Products are so affected.

5 **7. NOTICE**

6 Unless specified otherwise in this Settlement Agreement, all correspondence and notice
7 required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a)
8 personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a
9 recognized overnight courier on any Party by the other Party at the following addresses:

10 For Vinocur:

11 Proposition 65 Coordinator
12 The Chanler Group
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 For Redmon:

17 C. Peter Redmon, President
18 W.C. Redmon Co., Inc.
19 P.O. Box 7
20 Peru, IN 46970

21 with a copy to:

22 Thomas H. Clarke, Jr.
23 RMKB
24 150 Spear Street, Suite 850
25 San Francisco, CA 94105

26 Ph: (415) 543-4800
27 Fax: (415) 972-6301
28 Email: thomas.clarke@rmkb.com

For all notices and correspondence required to be provided in writing pursuant to this Settlement
Agreement, the Parties shall also send a courtesy notice by electronic mail, traditional mail, and/or
facsimile to counsel with the correspondence or notice attached thereto. The provision of such
courtesy notice shall not lessen, diminish, or void the requirement noted herein regarding how actual

1 notices and correspondence are to be sent. Any Party may, from time to time, specify in writing to
2 the other Party a change of address to which all notices and other communications shall be sent.

3 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Settlement Agreement may be executed in counterparts and by facsimile or portable
5 document format (PDF) signature, each of which shall be deemed an original, and all of which,
6 when taken together, shall constitute one and the same document.

7 **9. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

8 Vinocur and his attorneys agree to comply with the reporting form requirements referenced
9 in California Health and Safety Code section 25249.7(f).

10 **10. MODIFICATION**

11 This Settlement Agreement may be modified only by signed written agreement of the Parties
12 or order of the Court.

13 **11. AUTHORIZATION**

14 **11.1** Each of the Parties acknowledges that they had the right and ability to consult with
15 and seek the advice of counsel of their choice and each voluntarily has entered into this Settlement.

16 **11.2** The undersigned affirmatively represent that they are authorized to execute this
17 Settlement on behalf of their respective Party and have read, understood, and agree to all of the
18 terms and conditions of this document, and further certifies that he or she is fully authorized by the
19 Party he or she represents to execute the Settlement Agreement on behalf of the Party represented
20 and legally bind that Party.

21 **11.3** Except to the extent otherwise noted, each of the Parties shall bear its own costs and
22 fees.

23 **12. COURT APPROVAL**

24 **12.1** After execution of this Settlement Agreement by the Parties, Vinocur shall notice a
25 Motion for Court Approval. The Parties shall use their best efforts to support approval of this
26 Settlement Agreement.

1 **12.2** If the California Attorney General objects to any term in this Settlement Agreement,
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior
3 to the hearing on the motion.

4 **12.3** If this Settlement Agreement is not approved by the Court, it shall be void and have
5 no force or effect.

6 **13. DRAFTING**

7 The terms of this Settlement Agreement have been reviewed by the respective counsel for
8 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
9 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
10 construction of this Settlement Agreement, no inference, assumption, or presumption shall be drawn,
11 and no provision of this Settlement Agreement shall be construed against any Party, based on the
12 fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
13 portion of the Settlement Agreement. It is conclusively presumed that all of the Parties participated
14 equally in the preparation and drafting of this Settlement Agreement.

15 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES AND ENFORCEMENT**

16 **14.1** If a dispute arises with respect to either Party's compliance with the terms of this
17 Settlement Agreement, the Parties shall meet in person or by telephone and endeavor to resolve the
18 dispute in an amicable manner prior to filing of any motion related to the terms and conditions of the
19 Settlement Agreement.

20 **14.2** For purposes of this Settlement Agreement only, the Parties stipulate that in the event
21 that enforcement of this Settlement Agreement is deemed necessary by one or both of the Parties, or
22 a dispute between the Parties arises regarding this Settlement Agreement, the Superior Court of
23 California, County of Alameda, has proper jurisdiction and venue over the Parties as to the terms and
24 conditions of this Settlement Agreement, that venue is proper in the County of Alameda, and that
25
26
27
28

1 this Court has jurisdiction to approve, enter, and oversee the enforcement of this Settlement
2 Agreement.


3
4 **AGREED TO:**

5 Date: 2/2/2017

6
7 By: 
8 LAURENCE VINO CUR

AGREED TO:

9
10 Date: 1/30/17

11
12 By: 
13 For: W.C. REDMON CO., INC.
14 By: Peter Redmon
15 Its: President