

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and, WirthCo Engineering, Inc. (“WirthCo”), with Vinocur and WirthCo 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 contained in consumer products. WirthCo 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 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that WirthCo manufactures, imports, distributes, and/or sells in the State of California vinyl/PVC battery clamp cables that contain di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Vinocur alleges that WirthCo failed to provide consumers and other individuals in California exposed to DEHP from its vinyl/PVC battery clamp cables with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as battery maintainers, chargers, testers, clamps, controllers, and monitors with vinyl/PVC battery clamp or ring harness cables that contain DEHP and that are manufactured, sold, or distributed for sale in California by Wirthco including, but not limited to, the Products identified on Exhibit A to this Settlement Agreement.

1.4 Notice of Violation

On January 17, 2018, Vinocur served WirthCo, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”). The Notice alleges that WirthCo violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

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

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Provide Reformulated Products or Warnings


Commencing thirty (30) days after the Effective Date and continuing thereafter, WirthCo agrees to only sell or distribute for sale in California: (a) “Reformulated” Products as defined by Section 2.2, below; or (b) Products bearing a clear and reasonable warning in accordance with subsection 2.3 below.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible component when analyzed pursuant to Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 and Environmental Protection Agency testing methodologies 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

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by WirthCo that are not Reformulated Products, WirthCo agrees to sell or only offer such Products for sale with a clear and reasonable warning in accordance with this Section or title 27, California Code of Regulations section 25601, *et seq.* WirthCo further agrees that any warning used will be prominently placed in relation to the 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 clear and reasonable warning for the Products satisfying the above criteria that is affixed directly to a Product or its accompanying labeling or packaging containing the following statement shall be deemed clear and reasonable:

 **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP) [optional identification of additional chemical(s) in product], which is [are] 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 the Product, Product label (as defined in 27 Cal. Code Regs. § 25600.1(i), 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 (as defined in section 25600.1(c)) on the Product or Product label,

If WirthCo 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 page on which a Product is displayed and/or described; (b) in a clearly marked hyperlink using the word “WARNING” on the Product display page; (c) on the same page as the price for the Product; or (d) 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.

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, WirthCo agrees to pay a total of \$2,000 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 amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty retained by Vinocur. WirthCo will deliver its payment on or before the Effective Date in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) Laurence Vinocur, Client Trust Account” in the amount of \$500. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment.

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

and in 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.

codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. On or before the Effective Date, WirthCo agrees to pay \$22,000 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of WirthCo's management, and negotiating a settlement that provides a significant public benefit. WirthCo's payment shall be delivered 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 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 WirthCo

This Settlement Agreement is a full, final, and binding resolution between Vinocur and WirthCo, 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, attorneys and representatives against WirthCo or its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, representatives, attorneys, predecessor, successors, assignees (collectively, "Releasees") and each downstream entity to whom WirthCo directly or indirectly distributes, ships or sells Products, including, but not limited to, its distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Downstream Releasees"), for all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by WirthCo, 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, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs 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 WirthCo 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 for all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by WirthCo 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 WirthCo's Release of Vinocur

WirthCo, 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 action taken or statement made, whether in the course of investigating claims, 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 held 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 otherwise rendered inapplicable by reason of law generally, or as applied to

the Products, then WirthCo may provide written notice to Vinocur of the 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 Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required by 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 WirthCo:

Steven E. Wirth, President
WirthCo Engineering, Inc.
7491 Cahill Rd
Minneapolis, MN 55439

Barbara J. Grahn, Esq.
Fox Rothschild LLP
Campbell Mithun Tower
222 South Ninth Street, Suite 2000
Minneapolis MN 55402-3338

For Vinocur:

The Chanler Group
Attn: Prop 65 Coordinator
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.

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).

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10. MODIFICATION

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

11. ENFORCEMENT OF SETTLEMENT AGREEMENT

Any Party may file suit in California Superior Court to enforce the terms and conditions contained in this Settlement Agreement. The prevailing Party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

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 45 days in an effort to resolve the 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, understand, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 8/13/2018

Date: _____

By: 
LAURENCE VINOUCUR

By: _____
Andrew Wirth, VP Sales and Marketing
WIRTHCO ENGINEERING, INC.

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12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: 8-14-15

By: _____
LAURENCE VINOUCUR

By:  _____
Andrew Wirth, VP Sales and Marketing
WIRTHCO ENGINEERING, INC.

EXHIBIT A

Part #	Description	UPC (010054)
20026	BATTERY DOCTOR® 6/12V 900MA CEC CHARGER / MAINTAINER	20026 4
20063	BATTERY DOCTOR® 12V 2 AMP WALL MOUNT™ CEC CHARGER / MAINTAINER	20063 9
20067	BATTERY DOCTOR® 6/12V 2 AMP RAINPROOF® CEC CHARGER / MAINTAINER	20067 7
20069	BATTERY DOCTOR® 12V 1.25 AMP SPORT CEC CHARGER / MAINTAINER	20069 1
20068	BATTERY DOCTOR® 12/24V 4A/8A CEC SMART BATTERY CHARGER / MAINTAINER	20068 4
20093	BATTERY DOCTOR® 6/12V 2/10/55A BATTERY CHARGER W/ENGINE START	20093 6
20060	BATTERY DOCTOR® 12V 1A/4A CEC SMART BATTERY MAINTAINER	20060 8
20062	BATTERY DOCTOR® 12V 500mA CEC SMART BATTERY CHARGER / MAINTAINER	20062 2
20028	BATTERY DOCTOR® 6/12V 1.5A ON-BOARD CEC CHARGER / MAINTAINER	20028 8
20085	BATTERY CHARGER-2/4/8 AMP 12v	20085 1
20087	BATTERY DOC® 2/8/16 AMP 12 VOLT SMART BATTERY CHARGER/MAINTAINER	20087 5
20090	BATTERY DOCTOR® BATTERY ISOLATOR- 12V / 100 AMP	20090 5
20092	BATTERY DOCTOR® BATTERY ISOLATOR- 12V / 150 AMP	20092 9
20040	BATTERY DOCTOR® INSTANT "STATE OF CHARGE" TESTER	20040 0
23105	SOLAR-INDUSTRIAL LED LIGHT	23105 3
23130	SOLAR - MONOCRYSTALLINE 40 WATT PANEL	23130 5
23135	SOLAR - MONOCRYSTALLINE 90 WATT PANEL	23135 0
23137	SOLAR - MONOCRYSTALLINE 145 WATT PANEL	23137 4
23164	SOLAR DELUXE MONO KIT 80W=2x40W,CONTROLLER & ADD-A-PANEL	23164 0
23165	SOLAR MONO KIT 90W=90W PANEL+ 30A CONTROLLER	23165 7
23169	SOLAR MONO KIT 145W PANEL+30A CONTROLLER	23169 5
23140	SOLAR-AMORPHOUS-1.8 WATT PANEL	23140 4
23143	SOLAR-AMORPHOUS-5 WATT PANEL	23143 5
23144	SOLAR-AMORPHOUS-9 WATT PANEL	23144 2
23145	SOLAR-AMORPHOUS-20 WATT PANEL	23145 9
23167	SOLAR AMORPHOUS KIT: 20W PANEL+ 10A CONTROLLER	23167 1
23147	SOLAR-AMORPHOUS 40W KIT-2x20W PANELS+10A CONTROLLER	23147 3
23149	SOLAR-AMORPHOUS 60W KIT-3x20W PANELS+10A CONTROLLER	23149 7
23148	SOLAR-AMORPHOUS 80W KIT-4x20W PANELS & 10A CONTROLLER	23148 0
23125	30 AMP SOLAR REGULATOR WITH LCD DIGITAL DISPLAY	23125 1
23122	SOLAR CONTROLLER 10AMP	23122 0
23129	SOLAR-4-IN-1 ADAPTER-ADD-A-PANEL-RETAIL PKG	23129 9
20099	BATTERY DOCTOR® SURGE PROTECTOR & CHARGE 3-IN-1 MONITOR-RETAIL PKG	20099 8
20075	RING TERMINAL HARNESS WITH BULLET-STYLE QUICK-CONNECT	20075 2
20075-7	RING TERMINAL HARNESS WITH BULLET-STYLE QUICK-CONNECT-EACH	00230 1
20073-7	BATTERY CLAMP HARNESS WITH BULLET-STYLE QUICK-CONNECT-EACH	20073 8