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13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN FRANCISCO  
16 UNLIMITED CIVIL JURISDICTION  
17

18 LAURENCE VINOCUR,  
19 Plaintiff,  
20  
21 v.  
22 AMERICAN EXCHANGE TIME LLC; *et al.*,  
23 Defendants.

24 Case No. CGC-18-568973  
25 **CONSENT JUDGMENT**  
26 (Health & Safety Code § 25249.6 *et seq.* and  
27 Code of Civil Procedure § 664.6)  
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur (Vinocur)  
4 and defendant American Exchange Time LLC (American Exchange Time), with Vinocur and  
5 American Exchange Time each referred to individually as a “Party” and collectively as the  
6 “Parties.”

7 **1.2 Plaintiff**

8 Vinocur is a resident of the State of California who seeks to promote awareness of  
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
10 substances contained in consumer products.

11 **1.3 Defendant**

12 American Exchange Time employs ten or more persons and is a person in the course of  
13 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health and Safety Code § 25249.5 *et seq.* (Proposition 65).

15 **1.4 General Allegations**

16 Vinocur alleges that American Exchange Time manufactures, imports, sells and/or  
17 distributes for sale in California, watch bands containing di(2-ethylhexyl)phthalate (DEHP), and  
18 that it does so without providing the health hazard warning that Vinocur alleges is required by  
19 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
20 California to cause cancer, birth defects and other reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are watches with vinyl bands (the  
23 “Products”), including but not limited to the *Jessica Carlyle Watch Gift Set, #61457529* that are  
24 manufactured, imported, distributed, sold and/or offered for sale in California by American  
25 Exchange Time.

26 **1.6 Notice of Violation**

27 On April 26, 2018, Vinocur served American Exchange Time, Stein Mart, Inc. and the  
28 requisite public enforcement agencies with a 60-Day Notice of Violation (the Notice), alleging that

1 American Exchange Time violated Proposition 65 when it failed to warn its customers and  
2 consumers in California that the Products expose users to DEHP. To the best of the Parties'  
3 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce  
4 the allegations set forth in the Notice.

5 **1.7 Complaints**

6 On August 16, 2018, Vinocur commenced the instant action (Complaint), naming American  
7 Exchange Time as one of the defendants for the alleged violations of Proposition 65 that are the  
8 subject of the Notice.

9 **1.8 No Admission**

10 American Exchange Time denies the material, factual, and legal allegations contained in the  
11 Notice and Complaint, and maintains that all of the products that it has sold or distributed for sale in  
12 California, including the Products, have been, and are, in compliance with all laws. Nothing in this  
13 Consent Judgment shall be construed as an admission by American Exchange Time of any fact,  
14 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
15 Judgment constitute or be construed as an admission by American Exchange Time of any fact,  
16 finding, conclusion of law, issue of law, or violation of law. This section shall not, however,  
17 diminish or otherwise affect American Exchange Time's obligations, responsibilities, and duties  
18 under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
21 jurisdiction over American Exchange Time as to the allegations contained in the Complaint, that  
22 venue is proper in the County of San Francisco, and that the Court has jurisdiction to enter and  
23 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil  
24 Procedure § 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
27 Consent Judgment is approved by the Court, including an unopposed tentative ruling.  
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Commitment to Reformulate or Provide Warnings**

3 Commencing on the Effective Date and continuing thereafter, American Exchange Time  
4 shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are  
5 Reformulated Products as defined by Section 2.2, below, or Products that are labeled with a clear  
6 and reasonable warning as set forth under Sections 2.3 through 2.6, below. The reformulation and  
7 warning requirements described in this Section do not apply to any Products that are no longer in  
8 American Exchange Time’s possession and already in the stream of commerce as of the Effective  
9 Date.

10 **2.2 Reformulation Standard**

11 “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1  
12 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory  
13 accredited by the State of California, a federal agency, or a nationally recognized accrediting  
14 organization. For purposes of compliance with this reformulation standard, testing samples shall be  
15 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-  
16 CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology  
17 8270D, or other methodologies utilized by federal or state government agencies to determine  
18 phthalate content in a solid substance. American Exchange Time may rely upon test results  
19 commissioned by itself or by its suppliers in order to determine whether the Products are  
20 “Reformulated Products” so long as the testing methodology, analysis, and results comport with the  
21 standards set forth in this paragraph.

22 **2.3 Clear and Reasonable Warnings**

23 Commencing on or before the Effective Date, American Exchange Time shall provide clear  
24 and reasonable warnings for all Products provided for sale to customers in California in accordance  
25 with this Section. Such warning may consist of any warning that complies with Title 27, California  
26 Code of Regulations, section 25600, *et. seq.*, as amended August 30, 2016 and subsequently  
27 thereafter, or, alternatively, any warning that complies with Section 2.3(a) or Section 2.3(b) below.  
28 Each warning shall be prominently placed with such conspicuousness as compared with other

1 words, statements, designs, or devices as to render it likely to be read and understood by an  
2 ordinary individual under customary conditions before purchase or use and shall be provided in a  
3 manner such that it is clearly associated with the specific Product to which the warning applies.

4 (a) **Warning.** The warning shall consist of the following statement (Warning):

5 **⚠ WARNING:** This product can expose you to DEHP, which is  
6 known to the State of California to cause cancer and  
7 birth defects or other reproductive harm. For more  
information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

8 (b) **Short-Form Warning.** American Exchange Time may, but is not required to,  
9 use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning),  
10 and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

11 **⚠ WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)  
12

### 13 **2.4 Product Warnings**

14 American Exchange Time shall affix a warning to the Product label or otherwise directly on  
15 each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the  
16 internet to customers located in California. For the purpose of this agreement, “Product label”  
17 means a display of written, printed or graphic material that is printed on or affixed to a Product or  
18 its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-  
19 point type and no smaller than the largest type size used for other consumer information on the  
20 product. The warning shall consist of either the Warning, the Short-Form Warning described in  
21 subsection 2.3(a) or (b), respectively, or any warning that complies with Title 27, California Code  
22 of Regulations, section 25600, *et. seq.*, as amended August 30, 2016 and subsequently thereafter.

### 23 **2.5 Mail Order Catalog Warnings**

24 In the event that, after the Effective Date, American Exchange Time prints new catalogs and  
25 sells Products via mail order through such catalogs to customers located in California, American  
26 Exchange Time shall provide a warning for each Product both on the Product label in accordance  
27 with Section 2.4, and in the catalog in a manner that clearly associates the warning with the specific  
28 Product being purchased. Any warning provided in a mail order catalog shall be in the same type



1 size or larger than other consumer information provided for the Product within the catalog and shall  
2 be provided on the same page and in the same location as the display and/or description of the  
3 Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b)  
4 if the warning provided on the Product label also uses the Short-Form Warning content.

## 5 **2.6 Internet Warnings**

6 If, after the Effective Date, American Exchange Time sells Products via the internet to  
7 customers located in California, American Exchange Time shall provide warnings for each Product  
8 both on the Product label in accordance with Section 2.4, and on the web page on which the Product  
9 is sold in a manner that clearly associates it with the specific Product being purchased. Warnings  
10 given in conjunction with the sale of the Products via the internet shall appear either: (i) on the  
11 same web page on which the Product is displayed; (ii) on the same web page as the order form for  
12 the Product; or (iii) on one or more web pages displayed to a purchaser during the checkout process.  
13 The warning shall appear in any of the above instances adjacent to or immediately following the  
14 display or description of the Product for which it is given in the same type size or larger than the  
15 Product description text. The internet warning may use the Short-Form Warning content described  
16 in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning  
17 content.

## 18 **3. MONETARY SETTLEMENT TERMS**

### 19 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

20 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to  
21 in the Notice, Complaint, and this Consent Judgment, American Exchange Time agrees to pay  
22 \$6,500 in civil penalties. American Exchange Time's civil penalty payment will be allocated  
23 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of  
24 the penalty paid to the California Office of Environmental Health Hazard Assessment (OEHHA),  
25 and the remaining twenty-five percent (25%) of the penalty payment retained by Vinocur.  
26 American Exchange Time shall issue its payment in two checks for the following amounts made  
27 payable to (a) "OEHHA" in the amount of \$4,875; and (b) "Laurence Vinocur, Client Trust  
28

1 Account” in the amount of \$1,625. Vinocur’s counsel shall be responsible for delivering OEHHA’s  
2 portion of the penalty payment.

3 **3.2 Reimbursement of Attorneys’ Fees and Costs**

4 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute  
5 without reaching terms on their fees and costs. Shortly after the other settlement terms had been  
6 finalized, the Parties negotiated the compensation to be paid to Vinocur and his counsel under  
7 general contract principles and the private attorney general doctrine codified at California Code of  
8 Civil Procedure § 1021.5 for all work performed through the mutual execution of this Consent  
9 Judgment and court approval of the same, but exclusive of fees and costs on appeal, if any.  
10 American Exchange Time agrees to pay \$30,000 by a check made payable to “The Chanler Group”  
11 for all fees and costs incurred investigating, bringing this matter to American Exchange Time’s  
12 attention, litigating, and negotiating a settlement in the public interest.

13 **3.3 Payment Timing; Payments Held in Trust**

14 All payments due under this Consent Judgment shall be held in trust until the Court  
15 approves the Parties’ settlement. American Exchange Time shall deliver its civil penalty and  
16 attorneys’ fee reimbursement payments to its counsel within fifteen (15) days of the date that this  
17 Consent Judgment is fully executed by the Parties. American Exchange Time’s counsel shall  
18 provide Vinocur’s counsel with written confirmation following its receipt of the settlement funds.  
19 Thereafter, American Exchange Time’s counsel shall hold the settlement funds in trust the Court  
20 grants the motion for approval of this Consent Judgment contemplated by Section 5 and shall  
21 disburse the funds to Vinocur’s counsel within five (5) days after the Effective Date.

22 **3.4 Payment Address**

23 All payments required by this Consent Judgment shall be delivered to the following address:

24 The Chanler Group  
25 Attn: Proposition 65 Controller  
26 2560 Ninth Street  
27 Parker Plaza, Suite 214  
28 Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Vinocur's Release of Proposition 65 Claims**

3 Vinocur, acting on his own behalf and in the public interest, releases American Exchange  
4 Time and its parents, subsidiaries, affiliated entities under common ownership, directors, officers,  
5 employees, and attorneys (Releasees) and each entity to whom American Exchange Time directly  
6 or indirectly distributes or sells the Products including, but not limited to, its downstream  
7 distributors, wholesalers, customers, retailers (including Stein Mart, Inc.), franchisers, cooperative  
8 members, licensors and licensees (Downstream Releasees) for any violations arising under  
9 Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported,  
10 distributed or sold by American Exchange Time prior to the Effective Date, as set forth in the  
11 Notice and Complaint. Compliance with the terms of this Consent Judgment constitutes  
12 compliance with Proposition 65 by American Exchange Time with respect to the alleged or actual  
13 failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale  
14 by American Exchange Time after the Effective Date.

15 **4.2 Vinocur's Individual Release of Claims**

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

25 **4.3 American Exchange Time's Release of Vinocur**

26 American Exchange Time, on its own behalf and on behalf of its past and current agents,  
27 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against  
28 Vinocur and his attorneys and other representatives, for any and all actions taken or statements



1 made (or those that could have been taken or made) by Vinocur and his attorneys and other  
2 representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in  
3 this matter, or with respect to the Products.

4 **5. COURT APPROVAL**

5 This Consent Judgment shall be null and void if, for any reason, it is not approved and  
6 entered by the Court within one year after it has been fully executed by all Parties. Vinocur and  
7 American Exchange Time agree to support the entry of this agreement as a judgment, and to obtain  
8 the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant  
9 to California Health and Safety Code § 25249.7(f), a noticed motion is required for judicial  
10 approval of this Consent Judgment, which motion Vinocur shall draft and file. In furtherance of  
11 obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their  
12 counsel, to support the entry of this agreement as a judgment, and to obtain judicial approval of  
13 their settlement in a timely manner. For purposes of this section, "best efforts" shall include, at a  
14 minimum, supporting the motion for approval, responding to any objection that any third-party may  
15 file or lodge, and appearing at the hearing before the Court if so requested.

16 **6. SEVERABILITY**

17 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,  
18 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
19 remaining provisions shall not be adversely affected.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California  
22 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
23 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then American  
24 Exchange Time may provide Vinocur with written notice of any asserted change in the law, and  
25 shall have no further injunctive obligations pursuant to this Consent Judgment, with respect to, and  
26 to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be  
27 interpreted to relieve American Exchange Time from its obligation to comply with any pertinent  
28 state or federal law or regulation.

1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment  
3 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
4 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
5 following addresses:

6  
7 To American Exchange Time:

8 Ouni Mamrout, President  
9 American Exchange Time LLC  
10 1441 Broadway Fl 27  
11 New York, NY 10018

To Vinocur:

Attn: Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

11 With a Copy to:

12 Landon D. Bailey, Esq.  
13 Peg Carew Toledo, Law Corporation  
3001 Douglas Blvd., Suite 340  
Roseville, CA 95661

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

16 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

17 This Consent Judgment may be executed in counterparts and by facsimile or portable  
18 document format (pdf) signature, each of which shall be deemed an original and, all of which, when  
19 taken together, shall constitute one and the same document.

20 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

21 Vinocur and his counsel agree to comply with the reporting form requirements referenced in  
22 California Health and Safety Code § 25249.7(f).

23 **11. ENTIRE AGREEMENT**

24 This Consent Judgment contains the sole and entire agreement and understanding of the  
25 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
26 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
27 therein. There are no warranties, representations, or other agreements between the Parties except as  
28 expressly set forth herein. No representations, oral or otherwise, express or implied, other than

1 those specifically referred to in this Consent Judgment have been made by any Party hereto. No  
2 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed  
3 to exist or to bind any of the Parties hereto.

4 **12. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **13. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their  
10 respective Parties and have read, understood, and agreed to all of the terms and conditions of this  
11 Consent Judgment.

13 **AGREED TO:**

14 Date: 10/12/18

15  
16 By:   
17 LAURENCE VINOUCUR

**AGREED TO:**

Date: 10-11-18

16 By:   
17 AMERICAN EXCHANGE TIME LLC

28