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

16 LAURENCE VINOUCUR,

17 Plaintiff,

18 v.

19 BUYERS PRODUCTS COMPANY; *et al.*,

20 Defendants.

Case No. CGC-19-574653

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Vinocur alleges that Buyers Products manufactures, imports, sells or distributes for sale in
16 California vinyl/PVC ratchet tie-downs with grips of varying sizes and construction containing di(2-
17 ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that
18 Vinocur alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
19 chemical known to the State of California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are vinyl/PVC ratchet tie-downs of varying
22 sizes and construction including grips that contain DEHP that are manufactured, imported, sold, or
23 distributed for sale in California by Buyers Products, including, but not limited to, the *trailer Star by*
24 *Buyers 1”x12’ Ratchet Tie Downs, No. RTD211218, UPC #7 24920 08512 4* (hereinafter,
25 “Products”.)

26 **1.6 Notice of Violation**

27 On March 21, 2018, Vinocur served Buyers Products and the requisite public enforcement
28 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Buyers Products violated

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

4 **1.7 Complaint**

5 On March 20, 2019, Vinocur commenced the instant action ("Complaint"), naming Buyers
6 Products as one of the defendants for the alleged violations of Proposition 65 that are the subject of
7 the Notice.

8 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Buyers Products as to the allegations contained in the Complaint, that venue is
19 proper in the County of {County}, and that the Court has jurisdiction to enter and enforce the
20 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
21 § 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
24 Consent Judgment is approved by the Court, including any unopposed tentative ruling.

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

26 Commencing on the Effective Date and continuing thereafter, Buyers Products agrees to only
27 manufacture, import, sell or distribute for sale, in or into California Products that are either: (a)
28

1 “Reformulated Products”, as defined in Section 2.1, below; or (b) Products bearing a clear and
2 reasonable health hazard warning, per Section 2.2.

3 **2.1 Reformulated Products Defined**

4 For purposes of this Settlement Agreement, “Reformulated Products” are defined as Products
5 containing DEHP in a maximum concentration of 0.1% (1,000 parts per million) in any accessible
6 component (i.e., any component that may be touched during a reasonably foreseeable use) when
7 analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally
8 recognized accrediting organization. For purposes of compliance with this reformulation standard,
9 testing samples shall be prepared and extracted using Consumer Product Safety Commission
10 (“CPSC”) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection
11 Agency (“EPA”) testing methodology 8270D, or equivalent methodologies utilized by federal or
12 state government agencies for the purpose of determining DEHP content in a solid substance.

13 **2.2 Product Warnings**

14 Commencing on the Effective Date and continuing thereafter, Buyers Products shall provide
15 clear and reasonable warnings as set forth in this Section for all Products manufactured, imported,
16 sold, or distributed for sale in California that do not qualify as Reformulated Products. Each Product
17 warning shall be prominently placed with such conspicuousness as compared with other words,
18 statements, designs, or devices as to render it likely to be read and understood by an ordinary
19 individual under customary conditions before purchase or use. Each warning shall be provided in a
20 manner such that the consumer or user understands to which *specific* Product the warning applies, so
21 as to minimize the risk of consumer confusion. For purposes of this Settlement Agreement, a clear
22 and reasonable warning displayed or transmitted according the criteria detailed in Cal. Code of Regs.
23 § 25602 et seq. and detailed below shall satisfy these requirements.

24 For Products:




WARNING:

This product can expose you to chemicals, including DEHP, which is 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, if placed directly on a Product or the Product's packaging and/or labeling, Buyers Products may use the following short-form warning statement, provided it appears in a type size no smaller than the largest type size used for other consumer information on the Product's label and in no case smaller than 6-point type:

 **WARNING:** Cancer and Reproductive Harm
www.P65Warnings.ca.gov

2.3 Catalogue and Internet Product Warnings

In the event Buyers Products sells Products that do not qualify as Reformulated Products via a catalogue or the internet to customers located in California, the warning requirements of this Section shall be satisfied if, prior to purchase: (a) one of the foregoing warnings, described in Section 2.2, appears on the same page, in the same type size or larger than the Product description text, as the Product; (b) a warning appears on the same web page as the price for the Product, in the same type size or larger than the Product description text; (c) a warning appears on one or more web pages displayed to the consumer prior to purchase, in the same type size or larger than the Product description text; or (d) a hyperlink, clearly marked "WARNING," appears on the Product display page, in type large enough so that the consumer does not have to search for it, and a prominently placed warning appears elsewhere, such as on the Product description page, in a manner that clearly associates it with the Product to which the warning applies, prior to checkout or purchase. If Buyers Products utilizes the short-form label content, pursuant to Cal Code Regs. §25602(a)(4) and detailed above, the warning provided on the website or in the catalogue may use the same content.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to in the Notice, Complaint, and this Consent Judgment, Buyers Products agrees to pay \$2,750 in civil penalties. Buyers Products' civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California

1 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five
2 percent (25%) of the penalty payment retained by Vinocur. Buyers Products shall issue its payment
3 in two checks made payable to (a) "OEHHA" in the amount of \$2,062.50; and (b) "Laurence
4 Vinocur, Client Trust Account" in the amount of \$687.50. Vinocur's counsel shall be responsible for
5 delivering OEHHA's portion of the penalty payment.

6 **3.2 Reimbursement of Attorneys' Fees and Costs**

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

16 **3.3 Payment Timing; Payments Held in Trust**

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

25 **3.4 Payment Address**

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

27 The Chanler Group
28 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 Proposition 65 Claims

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

4.2 Vinocur's Individual Release of Claims

Vinocur, in his individual capacity only and *not* in his representative capacity, also provides a release to Buyers Products, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by Buyers Products before the Effective Date. Nothing in Section 4 affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee or Downstream Releasee that does not involve Buyers Products' Products.

4.3 Buyers Products' Release of Vinocur

Buyers Products, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waive any and all claims against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made

1 (or those that could have been taken or made) by Vinocur and his attorneys and other representatives
2 in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or
3 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 Buyers Products agree to support the entry of this agreement as a judgment, and to obtain the Court's
8 approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to
9 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval
10 of this Consent Judgment, which motion Vinocur shall draft and file. In furtherance of obtaining
11 such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to
12 support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement
13 in a timely manner. For purposes of this section, "best efforts" shall include, at a minimum,
14 supporting the motion for approval, responding to any objection that any third-party may file or
15 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, any
18 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 Buyers
24 Products may provide Vinocur with written notice of any asserted change in the law, and shall have
25 no further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the
26 extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to
27 relieve Buyers Products from its obligation to comply with any pertinent state or federal law or
28 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 To Buyers Products:

7 Mark J. Saltzman, President
8 Buyers Products Company
9 9049 Tyler Boulevard
Mentor, OH 44090

To Vinocur:

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

10 With a Copy To:

11 Elizabeth V. McNulty, Esq.
12 Taylor Anderson LLP
19100 Von Karman Avenue, Suite 820
Irvine, CA 92612

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

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

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

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

22 **11. ENTIRE AGREEMENT**

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

1 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
2 exist or to bind any of the Parties hereto.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

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

11
12 **AGREED TO:**

13 Date: 4/4/2019

14
15 By: 
16 LAURENCE VINO CUR

AGREED TO:

13 Date: 03/29/2019

14
15 By: 
16 Mark J. Saltzman, President
BUYERS PRODUCTS COMPANY

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18 SCOTT MOORMAN
19 DIRECTOR OF ENGINEERING
BUYERS PRODUCTS COMPANY

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