

1 Clifford A. Chanler, State Bar No. 135534
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118
clifford@chanler.com

5 Attorneys for Plaintiff
6 LAURENCE VINOCUR

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 CHANNEL CRAFT & DISTRIBUTION,
16 INC.; *et al.*,

17 Defendants.

Case No. CIV-1803860

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 Channel Craft & Distribution, Inc. (“Channel Craft”), with Vinocur and
5 Channel Craft 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 Channel Craft 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 Channel Craft manufactures, imports, sells and/or distributes for sale in
16 California game pieces containing di(2-ethylhexyl)phthalate (DEHP), and that it does so without
17 providing the health hazard warning that Vinocur alleges is required by Proposition 65. DEHP is
18 listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects
19 and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are game pieces containing DEHP
22 including, but not limited to, the *Bottle Cap Checkers*, #151113, 2430968, *BCCH*, *UPC #7 46887*
23 *18500 2* that are manufactured, imported, distributed, sold and/or offered for sale by Channel Craft
24 in the State of California, hereinafter the “Products.”

25 **1.6 Notice of Violation**

26 On May 31, 2018, Vinocur served Channel Craft and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Channel Craft violated
28 Proposition 65 when it failed to warn its customers and consumers in California that the Products

1 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On October 26, 2018, Vinocur commenced the instant action ("Complaint"), naming Channel
5 Craft as one of the defendants for the alleged violations of Proposition 65 that are the subject of the
6 Notice.

7 **1.8 No Admission**

8 Channel Craft denies the material, factual and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
10 including the Products, have been, and are, in compliance with Proposition 65. Nothing in this
11 Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute
12 or be construed as, an admission by Channel Craft of any fact, finding, conclusion of law, issue of
13 law, or violation of law. This section shall not, however, diminish or otherwise affect Channel
14 Craft's obligations, responsibilities, and duties under this Consent Judgment.

15 **1.9 Jurisdiction**

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

20 **1.10 Effective Date**

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

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

24 **2.1 Commitment to Reformulate or Provide Warnings**

25 Commencing on the Effective Date and continuing thereafter, Channel Craft shall only
26 manufacture for sale or import for sale in California Products that are either: (a) Reformulated
27 Products as defined by Section 2.2; or (b) in compliance with the provision of Section 2.3 below.
28 Any Products, that are not Reformulated Products, which Channel Craft distributes for sale or sells

1 to customers or consumers in California, or to customers with nationwide distribution, after the
2 Effective Date, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If,
3 after the Effective Date, Channel Craft sells Products that are not Reformulated Products via mail
4 order catalog and/or the internet to customers located in California, Channel Craft shall also provide
5 warnings for such Products by identifying the specific Product to which the warning applies as
6 specified in Sections 2.4 through 2.6.

7 **2.2 Reformulation Standard**

8 “Reformulated Products” are Products containing DEHP in a concentration of less than 0.1
9 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory
10 accredited by the State of California, a federal agency, or a nationally recognized accrediting
11 organization. For purposes of compliance with this reformulation standard, testing samples shall be
12 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology
13 CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA)
14 methodology 8270D, or other methodologies utilized by federal or state government agencies to
15 determine phthalate content in a solid substance.

16 **2.3 Clear and Reasonable Warnings**

17 Commencing on or before the Effective Date, Channel Craft shall provide clear and
18 reasonable warnings for all Products provided for sale to customers in California in accordance with
19 this Section pursuant to Title 27, California Code of Regulations, § 25600, *et seq.* Each warning
20 shall be prominently placed with such conspicuousness as compared with other words, statements,
21 designs, or devices as to render it likely to be read and understood by an ordinary individual under
22 customary conditions before purchase or use and shall be provided in a manner such that it is clearly
23 associated with the specific Product to which the warning applies.

24 (a) **Warning.** The warning shall consist of the following statement (“Warning”):

25  **WARNING:** This product can expose you to DEHP, which is
26 known to the State of California to cause birth
27 defects or other reproductive harm. For more
28 information go to www.P65Warnings.ca.gov.

1 Alternatively, if the Products also cause an exposure to other chemical(s) known to cause
2 birth defects or other reproductive harm or cancer pursuant to Proposition 65, Channel Craft may use
3 one of the following warnings, as appropriate:

4  **WARNING:** This product can expose you to chemicals including
5 DEHP, which are known to the State of California to
6 cause birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov.

7  **WARNING:** This product can expose you to chemicals including
8 DEHP, which are known to the State of California to
9 cause cancer and birth defects or other reproductive
harm. For more information go to
www.P65Warnings.ca.gov.

10  **WARNING:** This product can expose you to chemicals including
11 DEHP, which is known to the State of California to
12 cause birth defects or other reproductive harm, and
13 [name of chemical], which is known to the State of
California to cause cancer. For more information go
to www.P65Warnings.ca.gov.

14 **(b) Short-Form Warning.** Channel Craft may, but is not required to, use the
15 following short-form warning as set forth in this subsection 2.3(b) (“Short-Form Warning”), and
16 subject to the additional requirements in Sections 2.5 and 2.6, as follows:

17  **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

18
19 Alternatively, if the Products also cause an exposure to other chemical(s) known to cause
20 cancer pursuant to Proposition 65, Channel Craft may the following short-form warning:

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

22
23 **(c) Foreign Language Requirement.** Where a consumer product sign, label or
24 shelf tag used to provide a warning includes consumer information in a language other than English,
25 the warning must also be provided in that language in addition to English.

26 **2.4 Product Warnings**

27 Channel Craft shall affix a warning to the Product label or otherwise directly on each Product
28 provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to

1 customers located in California. For the purpose of this agreement, “Product label” means a display
2 of written, printed or graphic material that is printed on or affixed to a Product or its immediate
3 container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no
4 smaller than the largest type size used for other consumer information on the product. The warning
5 shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b),
6 respectively.

7 **2.5 Mail Order Catalog Warnings**

8 In the event that, after the Effective Date, Channel Craft prints new catalogs and sells
9 Products via mail order through such catalogs to customers located in California, Channel Craft shall
10 provide a warning for each Product both on the Product label in accordance with Section 2.4, and in
11 the catalog in a manner that clearly associates the warning with the specific Product being
12 purchased. Any warning provided in a mail order catalog shall be in the same type size or larger
13 than other consumer information provided for the Product within the catalog and shall be provided
14 on the same page and in the same location as the display and/or description of the Product. The
15 catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning
16 provided on the Product label also uses the Short-Form Warning content.

17 **2.6 Internet Warnings**

18 If, after the Effective Date, Channel Craft sells Products via the internet to customers located
19 in California, Channel Craft shall provide warnings for each Product both on the Product label in
20 accordance with Section 2.4, and by prominently displaying the warning to the customer prior to
21 completing the purchase or during the purchase of the Products without requiring customers to seek
22 out the warning. Warnings given in conjunction with the sale of the Products via the internet shall
23 appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page
24 as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during
25 the checkout process. The warning shall appear in any of the above instances adjacent to or
26 immediately following the display or description of the Product for which it is given in the same
27 type size or larger than the Product description text. The internet warning may use the Short-Form
28 Warning content described in Section 2.3(b) if the warning provided on the Product label also uses

1 the Short-Form Warning content. Channel Craft may also comply with this section by providing the
2 warning using a clearly marked hyperlink that includes the word “WARNING” on the same web
3 page and in the same location as the display and/or description of the Product.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
7 in the Notice, Complaint, and this Consent Judgment, Channel Craft agrees to pay \$15,000 in two
8 installments of \$1,500 and \$13,500. The second installment of \$13,500 shall be waived in its
9 entirety if, no later than December 1, 2019, an officer of Channel Craft confirm in writing to Vinocur
10 that it will not ship any Products that are not Reformulated Products into California on or after
11 December 15, 2019. Channel Craft’s civil penalty payment will be allocated according to Health
12 and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the
13 California Office of Environmental Health Hazard Assessment (OEHHA), and the remaining
14 twenty-five percent (25%) of the penalty payment retained by Vinocur. Channel Craft shall issue its
15 initial payment in two checks made payable to (a) “OEHHA” in the amount of \$1,125; and (b)
16 “Laurence Vinocur, Client Trust Account” in the amount of \$375. Vinocur’s counsel shall be
17 responsible for delivering OEHHA’s portion of the penalty payment.

18 **3.2 Reimbursement of Attorneys’ Fees and Costs**

19 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
20 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized,
21 the Parties negotiated the compensation to be paid to Vinocur and his counsel under general contract
22 principles and the private attorney general doctrine codified at California Code of Civil Procedure
23 § 1021.5 for all work performed through the mutual execution of this Consent Judgment and court
24 approval of the same, but exclusive of fees and costs on appeal, if any. Channel Craft agrees to pay
25 \$20,500 by a check made payable to “The Chanler Group” for all fees and costs incurred
26 investigating, bringing this matter to Channel Craft’s attention, litigating, and negotiating a
27 settlement in the public interest.

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1 **3.3 Payment Timing**

2 All payments due under this Consent Judgment shall be held in trust until the Court
3 approves the Parties’ settlement. Channel Craft shall deliver its civil penalty and attorneys’ fee
4 reimbursement payments to counsel on April 5, 2019. Thereafter, the settlement funds shall remain
5 in trust until the Court grants the motion for approval of this Consent Judgment contemplated by
6 Section 5 when it shall be promptly disbursed to Vinocur’s counsel. If the Court does not approve
7 the motion, then the \$22,000 (civil fines and fees) shall be promptly returned to Channel Craft within
8 five (5) days of the Motion to Approve being denied.

9 **3.4 Payment Address**

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

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

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Vinocur’s Release of Proposition 65 Claims**

16 Vinocur, acting on his own behalf and in the public interest, releases Channel Craft and its
17 parents, subsidiaries, divisions, affiliated entities under common ownership, owners, shareholders,
18 representatives, directors, officers, employees, attorneys, agents successors, assignees, and
19 transferees (collectively, Releasees) and each entity to whom Channel Craft directly or indirectly
20 distributes, transfers, or sells the Products including, but not limited to, its downstream distributors,
21 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
22 (Downstream Releasees) from all claims for violations arising under Proposition 65 for unwarned
23 exposures to DEHP from the Products manufactured, imported, distributed or sold by Channel Craft
24 prior to the Effective Date, as set forth in the Notice and Complaint. Compliance with the terms of
25 this Consent Judgment constitutes compliance with Proposition 65 by Channel Craft with respect to
26 the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or
27 distributed for sale by Channel Craft after the Effective Date.

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1 **4.2 Vinocur’s Individual Release of Claims**

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

11 **4.3 Channel Craft’s Release of Vinocur**

12 Channel Craft, on its own behalf and on behalf of its past and current agents, representatives,
13 attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his
14 attorneys and other representatives, for any and all actions taken or statements made (or those that
15 could have been taken or made) by Vinocur and his attorneys and other representatives in the course
16 of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
17 the Products.

18 **5. COURT APPROVAL**

19 This Consent Judgment shall be null and void if, for any reason, it is not approved and
20 entered by the Court within one year after it has been fully executed by all Parties. Vinocur and
21 Channel Craft agree to support the entry of this agreement as a judgment, and to obtain the Court’s
22 approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to
23 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval
24 of this Consent Judgment, which motion Vinocur shall draft and file. In furtherance of obtaining
25 such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to
26 support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement
27 in a timely manner. For purposes of this section, “best efforts” shall include, at a minimum,
28

1 supporting the motion for approval, responding to any objection that any third-party may file or
2 lodge, and appearing at the hearing before the Court if so requested.

3 **6. SEVERABILITY**

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

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California
9 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
10 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Channel
11 Craft may provide Vinocur with written notice of any asserted change in the law, and shall have no
12 further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent
13 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
14 Channel Craft from its obligation to comply with any pertinent state or federal law or regulation.

15 **8. NOTICE**

16 Unless specified herein, all correspondence and notice required by this Consent Judgment
17 shall be in writing and sent by: (a) personal delivery, (b) first-class registered or certified mail, return
18 receipt requested; or (c) a recognized overnight courier to any Party by the other at the following
19 addresses:

20 To Channel Craft:

21 Dean D. Helfer Jr., President
22 Channel Craft & Distribution, Inc.
23 PO Box 101
N Charleroi, PA 15022

24 With a Copy To:

25 Aleen Tomassian
26 Conkle Kremer & Engel PLC
3130 Wilshire Blvd., #500
Santa Monica, CA 90403
27 counsel@conklelaw.com

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28 ///

To Vinocur:

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

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

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

4 This Consent Judgment 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, when
6 taken together, shall constitute one and the same document.

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

10 **11. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
14 therein. There are no warranties, representations, or other agreements between the Parties except as
15 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
16 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
17 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
18 exist or to bind any of the Parties hereto.

19 **12. MODIFICATION**

20 This Consent Judgment may be modified only by: (a) a written agreement of the Parties and
21 the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion of
22 any party and the entry of a modified Consent Judgment by the Court thereon. Grounds for
23 modification include, but are not limited to, any amendment to Proposition 65 and/or its regulations;
24 the establishment or adoption by OEHHA of a “No Observable Effect Level” for DEHP greater than
25 that specified in Section 2.2 of this Agreement for Reformulated Products; and any consent
26 judgment, court decision or other relevant determination or decision by a court, OEHHA, or the
27 California Attorney General’s Office, which occurs after the Effective Date, that would put Channel
28 Craft at a disadvantage with respect to its competitors as a result of its continued compliance with

1 Section 2 of this Agreement (most favored nation clause). In the event that Channel Craft intends to
2 trigger the most favored nation clause, it shall do so by providing written notice to Vinocur's
3 counsel. If Vinocur's counsel does not agree with Channel Craft's invocation of the most favored
4 nation clause, the parties agree to meet and confer for thirty (30) calendar days to arrive at a
5 mutually acceptable resolution of their differing respective views.

6 **13. AUTHORIZATION**

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

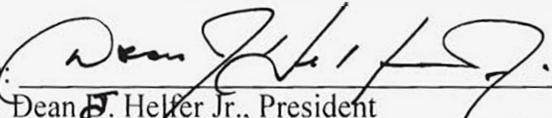
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11 **AGREED TO:**

12 Date: 3/25/19

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14 By: 
15 LAURENCE VINO CUR

11 **AGREED TO:**

12 Date: 3/25/19

13
14 By: 
15 Dean D. Helfer Jr., President
16 CHANNEL CRAFT & DISTRIBUTION, INC.

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