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11 FASHION ACCESSORY BAZAAR LLC

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF MARIN
15 UNLIMITED CIVIL JURISDICTION
16

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18 LAURENCE VINOCUR,
19 Plaintiff,
20 v.
21 FASHION ACCESSORY BAZAAR LLC; and
DOES 1-150, inclusive,
22 Defendants.
23
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Case No. CIV1502070
Assigned for All Purposes to:
Hon. Roy O. Chernus
Courtroom B-06
**[PROPOSED] CONSENT JUDGMENT AS
TO FASHION ACCESSORY BAZAAR LLC**

1 **1. INTRODUCTION**

2 **1.1. Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Laurence Vinocur (“Vinocur”)
4 and Defendant, Fashion Accessory Bazaar LLC (“FAB”), with Vinocur and FAB each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2. Plaintiff**

7 Vinocur is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3. Defendant**

11 FAB employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4. General Allegations**

15 Vinocur alleges that FAB manufactures, imports, sells, or distributes for sale in California,
16 badge holders that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure
17 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to
18 the State of California to cause birth defects or other reproductive harm.

19 **1.5. Product Description**

20 The products covered by this Consent Judgment include badge holders that contain DEHP
21 including, but not limited to, the *1 Rectangle Lanyard Badge Holder Non-leather, F54112-FPP-*
22 *030113, ADX437049, UPC #6 88955 68947 3*, manufactured, imported, sold, or distributed for sale in
23 California by FAB, hereinafter the “Covered Products”.

24 **1.6. Notice of Violation**

25 On or about March 13, 2015, Vinocur served FAB and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) regarding the alleged violation of Proposition
27 65 with respect to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has
28 commenced and is diligently prosecuting the allegations set forth in the Notice.

1 **1.7. Complaint**

2 On June 5, 2015, Vinocur filed the instant action (“Complaint”), naming FAB as a defendant for
3 its alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

4 **1.8. No Admission**

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

13 **1.9. Jurisdiction**

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

18 **1.10. Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall be five (5) days after
20 Vinocur’s counsel provides written notice to FAB’s counsel that the Motion to Approve the Consent
21 Judgment has been granted by the Court.

22 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

23 **2.1. Reformulated Products**

24 Commencing on the later of the Effective Date or April 1, 2016, and continuing thereafter,
25 Covered Product(s) which FAB sells, or distributes for sale, in California shall either: a) contain less
26 than or equal to 1,000 parts per million of DEHP when analyzed pursuant to U.S. Environmental
27 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or
28

1 state government agencies for the purpose of determining DEHP content in a solid substance
2 (“Reformulated Product(s)”); or b) have a clear and reasonable warning pursuant to Section 2.2 below.

3 **2.2. Clear and Reasonable Warnings**

4 Warnings shall be prominently placed with such conspicuousness as compared with other words,
5 statements, designs or devices as to render it likely to be read and understood by an ordinary individual
6 under customary conditions prior to exposure. FAB shall affix a warning to the packaging, labeling, or
7 directly on any Covered Product(s) that are not Reformulated Product(s) defined in Section 2.1, above,
8 and sold or distributed for sale in California that states:

9 **WARNING:** This product contains chemicals known to
10 the State of California to cause cancer and
birth defects or other reproductive harm.

11 or any other warning that complies with Proposition 65 pursuant to Section 7 below.

12 **2.3. Sales of Existing Inventory or Additional Products with Warnings**

13 To the extent that FAB has any non-Reformulated Covered Products in its possession, custody,
14 and control, that it seeks to ship to or sell in California, such non-Reformulated Covered Products shall
15 be accompanied by a clear and reasonable warning as provided by Section 2.2 above.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1. Civil Penalty Payments**

18 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims
19 referred to in this Consent Judgment, FAB shall pay \$14,500 in civil penalties in accordance with this
20 Section. Each civil penalty payment will be allocated in accordance with California Health & Safety
21 Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the funds remitted to the California
22 Office of Environmental Health Hazard Assessment (“OEHHA”) by Vinocur.

23 **3.1.1 Initial Civil Penalty**

24 Within five days of the Effective Date, FAB shall make an initial civil penalty payment of
25 \$4,500. FAB shall provide its payment in a single check made payable to “Laurence Vinocur, Client
26 Trust Account”, to be delivered to the address provided in Section 3.3, below. Vinocur’s counsel shall
27 be responsible for remitting FAB’s penalty payment under this Consent Judgment to OEHHA within
28 five (5) business days of receipt.

1 **3.1.2 Final Civil Penalty**

2 On or before September 30, 2016, FAB shall make a final civil penalty payment of \$10,000 in a
3 single check made payable to “Laurence Vinocur, Client Trust Account”, to be delivered to the address
4 provided in Section 3.3, below. Pursuant to title 11 California Code of Regulations, section 3203(c),
5 Vinocur agrees that the final civil penalty payment shall be waived in its entirety if, no later than
6 September 15, 2016, an officer of FAB provides Vinocur’s counsel a written certification that either:
7 (a) all Covered Products purchased for sale or manufactured for sale in California as of the date of such
8 certification are Reformulated Products as defined by Section 2.1, or (b) FAB no longer sells non-
9 Reformulated Covered Products in California as of the date of such certification. The option to certify
10 pursuant to this section 3.1.2 in lieu of making the final civil penalty payment required by this Section is
11 a material term and time is of the essence.

12 **3.2. Reimbursement of Attorneys’ Fees and Costs**

13 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be
15 resolved after the material terms of this Consent Judgment had been settled. The Parties then attempted
16 to (and did) reach an accord on the compensation due to Vinocur and his counsel under general contract
17 principles and the private attorney general doctrine codified at California Code of Civil Procedure
18 section 1021.5 for all work performed through the mutual execution of this Consent Judgment. Within
19 five (5) days after the Effective Date, FAB shall pay \$33,000 for the fees and costs incurred by Vinocur
20 investigating, bringing this matter to FAB’s attention, litigating and negotiating a settlement in the
21 public interest. Payment, in the form of a check made payable to “The Chanler Group”, shall be sent to
22 the address set forth in Section 3.3 below.

23 **3.3. Payment Address**

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

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

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1. Vinocur’s Public Release of Proposition 65 Claims**

3 Vinocur, acting on his own behalf and in the public interest, releases FAB and its parents,
4 subsidiaries, affiliated entities under common ownership or control, directors, officers, employees, and
5 attorneys, successors and assignees (“Releasees”) and each entity to whom it directly or indirectly
6 distributes or sells the Covered Products including, but not limited to, its downstream distributors,
7 wholesalers, customers, retailers, franchisers, cooperative members, licensors, and licensees
8 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures to
9 DEHP from the Covered Products sold by FAB prior to the Effective Date, as set forth in the Notice.

10 **4.2. Vinocur’s Individual Release of Claims**

11 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides a
12 release to FAB, Releasees, and Downstream Releasees which shall be effective as a full and final accord
13 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
14 damages, losses, claims, liabilities and demands of Vinocur of any nature, character or kind, whether
15 known or unknown, suspected or unsuspected, arising out of alleged or actual violations of Proposition
16 65 or exposures from the Covered Products sold or distributed for sale by FAB before the Effective
17 Date.

18 **4.3. FAB’s Release of Vinocur**

19 FAB, on its own behalf, and on behalf of its past and current agents, representatives, attorneys,
20 successors, and assignees, hereby waives any and all claims against Vinocur and his attorneys and other
21 representatives, for any and all actions taken or statements made by Vinocur and his attorneys and other
22 representatives, whether in the course of investigating claims, and seeking to enforce Proposition 65
23 against FAB in this matter with respect to the Covered Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall be
26 null and void if, for any reason, it is not approved and entered by the Court within one (1) year after it
27 has been fully executed by the Parties.
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1 **6. SEVERABILITY**

2 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
3 provision is determined by a court to be unenforceable, the parties shall give full meaning to the intent
4 of the parties to resolve and settle all this matter in its entirety, and the validity of the remaining
5 provisions shall not be adversely affected.

6 **7. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the state of California and
8 apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
9 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then FAB
10 may provide written notice to Vinocur of any asserted change in the law, and shall have no further
11 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
12 Covered Products are so affected. If Proposition 65 or associated regulations are amended or modified
13 to require or allow different warning language content and/or amended or modified methods of
14 transmission, FAB shall be deemed to be in compliance with Proposition 65 warning requirements by
15 either adhering to Section 2.2 above or, after providing written notice to Vinocur of any substitute for
16 the warning specified in Section 2.2 above, by complying with the amended or modified warning
17 requirements. Nothing in this Consent Judgment shall be interpreted to relieve FAB from any
18 obligation to comply with any pertinent state or federal toxics control laws.

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notice required by this Consent Judgment shall
21 be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return
22 receipt requested; or (iii) a recognized overnight courier with delivery confirmation to the following
23 addresses:

24 **Fashion Accessory Bazaar LLC**

25 Steven Russo, Chief Executive Officer
26 Fashion Accessory Bazaar LLC
27 15 West 34th Street
28 New York, NY 10001

Malcolm C. Weiss, Esq. and Gerard Olson, Esq.
Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

1 **Laurence Vinocur**
2 The Chanler Group
3 Attn: Proposition 65 Coordinator
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Vinocur agrees to comply with the reporting form requirements referenced in Health and Safety
15 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
16 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
17 furtherance of obtaining such approval, Vinocur and FAB agree to mutually employ their best efforts,
18 and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
19 approval of their settlement in a timely manner. For purposes of this Section, “best efforts” shall mean
20 cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and
21 appearing at the hearing before the Court.

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
24 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
25 Party, and the entry of a modified consent judgment by the Court.

26 **12. INTEGRATION**

27 This Consent Judgment constitutes the entire agreement between the parties with respect to the
28 subject matter hereof and may not be amended or modified except in writing.

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13. AUTHORIZATION

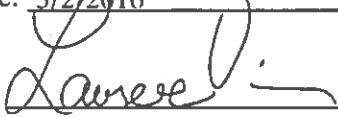
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 3/2/2016

Date: 3/7/16

By: 
LAURENCE VINO CUR

By: 
Steven Russo, Chief Executive Officer
FASHION ACCESSORY BAZAAR LLC