Christopher C. Moscone, State Bar No. 170250
Laurence D. Haveson, State Bar No. 152631
MOSCONE EMBLIDGE & OTIS LLP
220 Montgomery Street, Suite 2100
San Francisco, CA 94104
Telephone: (415) 362-3599
Facsimile: (415) 362-2006

Attorneys for Plaintiff
LAURENCE VINOCUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR,

Plaintiff,

v.

MONO-SYSTEMS, INC., and DOES 1 - 100, inclusive,

Defendants.

Case No. CGC-15-544818

~~[PROPOSED]~~ **JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT**

Date: October 31, 2016
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Harold E. Kahn

Reservation No.: 09081031-03

In the above-entitled action, Plaintiff Laurence Vinocur and Defendant Mono-Systems, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent Judgment ("Consent Judgment"), and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on October 31, 2016,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 10/31/16

JUDGE OF THE SUPERIOR COURT
HON. HAROLD KAHN

EXHIBIT A

EXHIBIT A

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Laurence D. Haveson, State Bar No. 152631
MOSCONE EMBLIDGE & OTIS LLP
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[PROPOSED] CONSENT JUDGMENT

1. INTRODUCTION

1.1 Parties

The parties to this Consent Judgment ("Consent Judgment") are Plaintiff Laurence Vinocur ("Vinocur") on the one hand, and Defendant Mono-Systems, Inc. ("Mono-Systems") on the other hand (each individually referred to as a "Party" and collectively as "Parties"). The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and Complaint, or that could have been raised in the Notice and Complaint, arising out of the facts or conduct alleged therein.

1.2 Plaintiff

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.

1.3 Defendant

Vinocur alleges that Mono-Systems employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. ("Proposition 65").

1.4 General Allegations

Vinocur alleges that Mono-Systems manufactures, distributes, imports, sells and/or offers for sale in California vinyl/PVC cord protectors containing di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Vinocur alleges that Mono-Systems violated Proposition 65 by failing to provide Proposition 65 warnings for alleged exposures to DEHP caused by the vinyl/PVC cord protectors that Mono-Systems manufactures, distributes, imports, sells and/or offers for sale.

1.5 Product Description

The products that are covered by this Consent Judgment are vinyl/PVC cord protectors containing DEHP that are manufactured, imported or distributed for sale in California or sold or

offered for sale in California by Mono-Systems, including, but not limited to, *FlexiRings, FL5020-B, UPC #6 00170 02462 4*, hereinafter the "Products."

1.6 **Notice of Violation**

On October 24, 2014, Vinocur served Mono-Systems and certain public prosecutors with a "60-Day Notice of Violation" ("Notice") alleging that Mono-Systems violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 **Complaint**

On March 19, 2015, Vinocur filed the instant action ("Complaint") against Mono-Systems for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

1.8 **No Admission**

Mono-Systems denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has manufactured, imported, distributed, sold or offered for sale in California, including the Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Mono-Systems's obligations, responsibilities, and duties under this Consent Judgment.

1.9 **Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Mono-Systems as to the allegations in the Complaint, that venue is proper in San Francisco County and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 **Effective Date**

For purposes of this Consent Judgment, the term "Effective Date" means the date the Court enters this Consent Judgment.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 **Reformulation Standard**

Commencing no later than the Effective Date, Mono-Systems shall only manufacture, distribute, purchase or import for sale, sell, and/or offer for sale in California, Reformulated Products. For purposes of this Consent Judgment, "Reformulated Products" are Products whose accessible components contain less than 0.1 percent (1,000 parts per million ("ppm")) DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or California state agencies for the purpose of determining DEHP content in a solid substance.

3. PAYMENTS

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

Pursuant to Health and Safety Code section 25249.7(b)(2), Mono-Systems shall pay $1,500 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty paid to Vinocur, as follows: Within five (5) business days of the Effective Date, Mono-Systems shall provide its civil penalty payment in two checks for the following amounts made payable to: (a) "Office of Environmental Health Hazard Assessment" in the amount of $1,125; and (b) "Laurence Vinocur" in the amount of $375.

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

The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after all other settlement terms had been finalized, Mono-Systems expressed a desire to resolve Vinocur's fees and costs. The Parties then attempted to (and did) reach an

accord on the compensation due Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all costs, and all attorney's fees and any other work performed in this matter through the Court's approval of this Consent Judgment. Pursuant to this Consent Judgment, within five (5) business days of the Effective Date, Mono-Systems agrees to pay $12,500 by check made payable to Moscone Emblidge & Otis LLP for the fees and costs incurred by Vinocur and his counsel investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public interest.

3.3 **Payment Procedures**

Payments required under this Section 3 shall be delivered as follows:.

3.3.1 **Payment Addresses**

(a) All payments to Vinocur and Moscone Emblidge & Otis LLP shall be delivered to the following address:

Moscone Emblidge & Otis LLP
Attn: Proposition 65 Coordinator
220 Montgomery Street, Suite 220
San Francisco, CA 94104

All payments to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses, as appropriate:

For United States Postal Delivery:
Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:
Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

(b) A copy of the check(s) payable to OEHHA shall also be mailed to Moscone Emblidge & Otis LLP at the payment address provided in section 3.3.1(a), as proof of payment to OEHHA.

4. CLAIMS COVERED AND RELEASED

4.1 Public Release of Proposition 65 Claims

In consideration of the promises and commitments herein contained, Vinocur, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, and in the public interest, hereby waives and releases Mono-Systems, its parents, subsidiaries, affiliated entities under common ownership or control, directors, officers, employees, and attorneys ("Releasees"); and each entity to whom it directly or indirectly distributes or sells Products, including but not limited to its downstream distributors, wholesalers, customers, retailers (including without limitation Lowe's), franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees"), from all claims for violations or alleged violations of Proposition 65 asserted in the public interest in his Notice and Complaint based on alleged exposures to DEHP from the Products manufactured, imported, distributed, or sold through the Effective Date. This waiver and release is limited to those claims arising under Proposition 65 for unwarned exposures to DEHP from Covered Products manufactured, imported, distributed, sold or offered by sale by Mono-Systems, Releasees and Downstream Defendant Releasees before the Effective Date. Defendants' and Releasees' compliance with this Consent Judgment constitutes compliance with Proposition 65.

4.2 Private Release in Plaintiff's Individual, Non-representative Capacity

Vinocur, in his individual capacity only and *not* in his representative capacity, on behalf of himself, and his past and current agents, representatives, attorneys, successors, and/or assignees, also provides a release to Mono-Systems, the Releasees, and Downstream Defendant 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, relating to the Products manufactured, imported, distributed, sold or

offered for sale by Mono-Systems up through the Effective Date. Vinocur acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Vinocur, in his individual capacity only and *not* in his representative capacity, on behalf of himself and his past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

4.3 **Mono-Systems's Release of Vinocur**

Mono-Systems waives any and all claims against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Vinocur and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking enforcement of Proposition 65 against it in this matter, or with respect to the Products. Mono-Systems acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Mono-Systems, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common

law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

4.4 **No Upstream Release for Leco Plastics Inc.**

The Parties understand and agree that this release shall not extend upstream to Leco Plastics Inc., or act as a bar to Plaintiff's enforcement of Proposition 65 against Leco Plastics, Inc. related to the Products, or DEHP in the Products, or as to any other claim.

5. NOTICES

When any Party is entitled to receive any correspondence or notice under this Consent Judgment, the correspondence and/or notice shall be in writing and sent by: (a) first class, registered or certified mail, return receipt requested; (b) personal delivery; or (c) a recognized overnight courier at the following addresses:

For Vinocur:

Moscone Emblidge & Otis LLP
Attn: Proposition 65 Coordinator
220 Montgomery Street, Suite 220
San Francisco, CA 94104

For Mono-Systems:

Jordan Handler, President
Mono-Systems, Inc.
4 International Drive, Suite 280
Rye Brook, NY 10573

With a copy to:

James Robert Maxwell
Rogers Joseph O'Donnell
311 California Street
San Francisco, CA 94104

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

6. POST EXECUTION ACTIVITIES AND COURT APPROVAL

6.1 Vinocur agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

6.2 The Parties further acknowledge that, pursuant to Health and Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent Judgment. Vinocur and his counsel have sole responsibility for preparing and filing the motion to approve this Consent Judgment. In furtherance of obtaining such approval, Vinocur and Mono-Systems agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. If any third party objection to the noticed motion is filed, Vinocur and Mono-Systems shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

6.3 This Consent Judgment is not effective until it is approved and entered by the Court. If this Consent Judgment is not approved by the Court within one year after it has been fully executed by the Parties, (a) this Consent Judgment and any and all prior agreements between the Parties as to the Notice or Complaint referenced herein shall terminate and become null and void, and the action shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

7. ENFORCEMENT

Any Party may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

8. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

9. **GOVERNING LAW**

The terms of this Consent Judgment 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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Products, or if any of the provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally, or as to the Products, then Mono-Systems shall provide written notice to Vinocur of any asserted change in law, and, if Vinocur agrees, Mono-Systems shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Mono-Systems from any obligation to comply with any pertinent state or federal toxics control law.

10. **DRAFTING**

The Parties, including their counsel, have participated and cooperated in the drafting and preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code Section 1654.

11. **MODIFICATION**

This Consent Judgment may be modified only as follows: (1) by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified consent judgment by the Court.

12. **COUNTERPARTS; FACSIMILE SIGNATURE**

This Consent Judgment 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.

13. **AUTHORIZATION**

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to agree to the terms and conditions of this Consent Judgment, to enter into and execute the Consent Judgment on behalf of the Party represented, and to legally bind that Party. The undersigned certify that they have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: 8/22/2016

By: _____
Plaintiff Laurence Vinocur

AGREED TO:

Date: 8/18/16

By: _____
Defendant Mono Systems, Inc.