

FILED
San Francisco County Superior Court

MAY 18 2018

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

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12 LAURENCE VINO CUR

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16 LAURENCE VINO CUR,

17 Plaintiff,

18 v.

19 RUSTICO LLC, et al.,

20 Defendant.

Case No. CGC-17-560768

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

Date: May 18, 2018

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Harold E. Kahn

Reservation No.: 03290518-06

1 Plaintiff Laurence Vinocur and defendant Rustico LLC having agreed through their
2 respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a stipulated judgment ("Consent judgment"), and following this
4 Court's issuance of an order approving their Proposition 65 settlement and Consent
5 Judgment, and for good cause being shown,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
8 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
9 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
10 enforce the terms of the settlement under Code of Civil Procedure section 664.6.

11 **IT IS SO ORDERED.**

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14 Dated: MAY 18 2018



JUDGE OF THE SUPERIOR COURT

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16 RICHARD B. ULMER
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EXHIBIT 1

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LAURENCE VINOCUR

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

LAURENCE VINOCUR,
Plaintiff,
v.
RUSTICO LLC, *et al.*,
Defendants.

Case No. CGC-17-560768
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 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 Rustico LLC, ("Rustico"), with Vinocur and Rustico each individually referred to
5 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
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Rustico 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 Rustico imports, sells, or distributes for sale in California, luggage tags
16 with vinyl/PVC components that contain di(2-ethylhexyl)phthalate ("DEHP") without first providing
17 the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to cause birth defects or other reproductive harm. Rustico generally denies these
19 allegations.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are luggage tags with vinyl/PVC components
22 including, but not limited to, the *Rustico Luggage Tag, #400005387449* that are manufactured,
23 imported, distributed, sold and/or offered for sale in California by Rustico ("Products").

24 **1.6 Notice of Violation**

25 On April 27, 2017, Vinocur served Rustico, and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation ("Notice") alleging that Rustico violated Proposition 65 by failing
27 to warn its customers and consumers in California of the health hazards associated with exposures to
28

1 DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action
2 to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On August 16, 2017, Vinocur filed the instant action ("Complaint"), naming Rustico as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Rustico denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Rustico's obligations, responsibilities, and duties under
15 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 Rustico as to the allegations in the Complaint, that venue is proper in the County of
19 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
24 approval of this Consent Judgment.

25 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

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

1 Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and
2 reasonable health hazard warning pursuant to Section 2.3 below.

3 **2.2 Reformulation Standard**

4 For the purposes of this Consent Judgment, "Reformulated Products" are defined as Products
5 that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed
6 pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C
7 or equivalent methodologies utilized by state or federal agencies for the purpose of determining
8 DEHP content in a solid substance.

9 **2.3 Clear and Reasonable Warnings**

10 Commencing on the Effective Date and continuing thereafter, for any Products offered for
11 sale in California by Rustico that are not Reformulated Products, Rustico agrees to only offer such
12 Products for sale with a clear and reasonable warning in accordance with this Section, or Title 27
13 California Code of Regulations section 25602 and 25603. Rustico further agrees that the warning
14 will be prominently placed with such conspicuousness when compared with other words, statements,
15 designs, or devices as to render it likely to be read and understood by an ordinary individual under
16 customary conditions before purchase or use. For purposes of this Consent Judgment, a clear and
17 reasonable warning shall consist of a warning affixed to or printed on the packaging, label, tag, or
18 directly to a Product sold in California and containing the following statement:

19 **⚠ WARNING:** This product can expose you to chemicals
20 including DEHP, which is known to the
21 State of California to cause birth defects
22 or other reproductive harm. For more
23 information go to www.P65Warnings.ca.gov.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Civil Penalty Payments**

26 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
27 referred to in the Notice, Complaint, and this Consent Judgment, Rustico shall pay \$2,000 in civil
28 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
of Environmental Health Hazard Assessment ("OEHHHA"), and the remaining twenty-five percent ³

1 (25%) of the penalty retained by Vinocur. Vinocur's counsel shall be responsible for delivering
2 OEHHA's portion of any penalty payment(s) made under this Consent Judgment. Rustico shall
3 provide its payment in a check made payable to "Laurence Vinocur, Client Trust Account" in the
4 amount of \$500 and a check made payable to "OEHHA" in the amount of \$1,500 to be delivered to
5 the address provided in Section 3.3, below.

6 **3.2 Reimbursement of Attorney's Fees and Costs**

7 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
9 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
10 other settlement terms had been finalized, the Parties negotiated the compensation due to Vinocur and
11 his counsel under general contract principles and the private attorney general doctrine codified at
12 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
13 execution of this Consent Judgment, and court approval of the same. Under these legal principles,
14 Rustico shall pay \$14,000 for all fees and costs incurred by Vinocur investigating, bringing this
15 matter to Rustico's attention, litigating and negotiating a settlement in the public interest. Rustico's
16 payment shall be delivered to the address in Section 3.4 in a check payable to "The Chanler Group."

17 **3.3 Payment Timing; Payments Held in Trust**

18 All payments due under this Consent Judgment shall be held in trust until such time as the
19 Court approves the Parties' settlement. Within five (5) days of the date that this Consent Judgment is
20 fully executed by the Parties, all payments due under this agreement shall be delivered to Rustico's
21 counsel and held in trust until the Effective Date. Rustico's counsel shall provide Vinocur's counsel
22 with written confirmation upon its receipt of the settlement payments. Within five days of the
23 Effective Date, Rustico's counsel shall deliver the civil penalty and attorneys' fee reimbursement
24 payments to Vinocur's counsel.

25 **3.4 Payment Address**

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

27 The Chanler Group
28 Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214

Berkeley, CA 94710

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2 **4. CLAIMS COVERED AND RELEASED**

3 **4.1 Vinocur's Public Release of Proposition 65 Claims**

4 Vinocur, acting on his own behalf and in the public interest, releases Rustico and its parents,
5 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
6 attorneys ("Releasees"), and each entity to whom Rustico directly or indirectly distributes or sells
7 the Products including, without limitation, its downstream customers, distributors, wholesalers, and
8 retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the
9 failure to warn about exposures to DEHP from Products sold or distributed for sale by Rustico prior
10 to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent
11 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from
12 Products sold or distributed for sale by Rustico after the Effective Date.

13 **4.2 Vinocur's Individual Release of Claims**

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

20 **4.3 Rustico's Release of Vinocur**

21 Rustico, on its own behalf, and on behalf of its past and current agents, representatives,
22 attorneys, successors, and assignees, hereby waives any and all claims against Vinocur, and his
23 attorneys and other representatives, for any and all actions taken or statements made by Vinocur,
24 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
25 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.
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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if it is not approved and entered by the Court within one year after it has been fully
4 executed by the Parties, or by such additional time as the Parties may agree in writing.

5 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
12 rendered inapplicable by reason of law generally or as to the Products, then Rustico may provide
13 written notice to Vinocur of any asserted change in the law, and shall have no further injunctive
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
15 so affected.

16 **8. NOTICE**

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

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For Rustico:

Isaac Childs, President
Rustico LLC
119 North 1380 West
Orem, UT 84057

with a copy to:

Brian Rothschild, Esq.
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

For Vinocur:

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

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

9. COUNTERPARTS- FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. POST EXECUTION ACTIVITIES

Vinocur agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion Vinocur shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to any objection that any third-party may file or lodge, and appearing at the hearing before the Court if so requested.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

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AGREED TO:

AGREED TO:

Date: 2/13/2018

Date: Feb 13th 2018

By: 
LAURENCE VINO CUR

By:  (print name)
Isaac Childs, President
RUSTICO LLC