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**FILED**  
San Francisco County Superior Court

JUL 16 2018

CLERK OF THE COURT

BY: *Jacqueline Alameda*  
Deputy Clerk

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11 Attorneys for Plaintiff  
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 AIRGAS, INC., et al.,

20 Defendants.

Case No. CGC-17-562298

<sup>JK</sup>  
~~PROPOSED~~ JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AND CONSENT  
JUDGMENT

Date: July 16, 2018

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Harold E. Kahn

Reservation No. 06010716-12

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

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

**IT IS SO ORDERED.**

Dated: 7/16/18

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

HAROLD KAHN

# **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.  
AIRGAS, INC., *et al.*,  
Defendants.

Case No. CGC-17-562298

**[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 Airgas USA, LLL ("Airgas"), with Vinocur and Airgas 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            Airgas 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 Airgas imports, sells, or distributes for sale in California, vinyl/PVC tool  
16     pouches and telescopic mirrors that contain Di(2-ethylhexyl)phthalate (DEHP) and lead without first  
17     providing the exposure warning required by Proposition 65. Lead and DEHP are listed pursuant to  
18     Proposition 65 as chemicals known to cause cancer and birth defects or other reproductive harm.

19            **1.5 Product Description**

20            The products covered by this Consent Judgment are vinyl/PVC tool pouches and telescopic  
21     mirrors containing DEHP and lead, including but not limited to, *Radnor Telescopic Mirror, UPC #6*  
22     *39890 02361 7* that are imported, distributed, sold and/or offered for sale in California by Airgas  
23     ("Products").

24            **1.6 Notice of Violation**

25            On June 29, 2017, Vinocur served Airgas, and the requisite public enforcement agencies with  
26     a 60-Day Notice of Violation ("Notice") alleging that Airgas violated Proposition 65 by failing to  
27     warn its customers and other potential users of the Products in California of the health hazards  
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1 associated with exposures to DEHP and lead from the Products. No public enforcer has commenced  
2 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On November 3, 2017, Vinocur filed the instant action ("Complaint"), naming Airgas as a  
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of  
6 the Notice. Trial is scheduled to begin on January 7, 2019.

7 **1.8 No Admission**

8 Airgas 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 Airgas's obligations, responsibilities, and duties under this  
15 Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Airgas 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 Provide Warnings**

27 Commencing by November 15, 2018 and continuing thereafter, Airgas agrees to only  
28 manufacture, import, distribute, sell or offer for sale in California either (a) "Reformulated Products"

1 as defined by subsection 2.2 below; or (b) Products sold and offered for sale with a clear and  
2 reasonable warning pursuant to subsection 2.3, below.

3 **2.2 Reformulated Products Defined**

4 **a. DEHP Limits Applicable to Reformulated Products**

5 With respect to their DEHP content, Reformulated Products are defined as Products  
6 containing no more than 1,000 parts per million (0.1%) DEHP in any component sampled and  
7 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and  
8 8270C to determine DEHP content in a solid substance.

9 **b. Lead Limits Applicable to Reformulated Products**

10 With respect to their lead content, Reformulated Products are defined as Products that (a)  
11 contain no more than 100 parts per million ("ppm") (0.01%) lead in any accessible component  
12 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and  
13 6010B; and (b) yield a result of no more than 1.0 micrograms of lead when sampled and analyzed  
14 pursuant to NIOSH 9100 testing protocol.

15 **c. Additional Methods of Analysis**

16 In addition to the above methodologies used to test for DEHP and/or lead in the Products, the  
17 Parties may use equivalent methodologies utilized by state or federal agencies to determine DEHP  
18 and/or lead content in a solid substance.

19 **2.3 Clear and Reasonable Warnings**

20 Commencing by November 15, 2018, Airgas shall provide clear and reasonable health hazard  
21 warnings for all Products, that are not Reformulated Products, it sells or distributes in California.  
22 Airgas agrees that the warning will be prominently placed with such conspicuousness when  
23 compared with other words, statements, designs, or devices as to render it likely to be read and  
24 understood by an ordinary individual under customary conditions before purchase or use. For  
25 purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed  
26 to or printed on the packaging, label, tag, or directly to a Product sold in California and containing the  
27 following statement:  
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1           **△ WARNING:**           This product can expose you to chemicals  
2   including DEHP and lead, which are known to the  
3   State of California to cause cancer and birth defects  
4   or other reproductive harm. For more  
5   information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

6           Alternatively, a clear and reasonable warning shall consist of an on-product, short form  
7           warning on the label – either on the product itself or its immediate container or packaging. The entire  
8           warning must be in a type size no smaller than the largest type size used for other consumer  
9           information on the product. The warning cannot appear in a type size smaller than 6-point type and  
10          shall contain the following statement:

11                                   **△ WARNING:** Cancer and Reproductive Harm - [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)

12          **3.    MONETARY SETTLEMENT TERMS**

13                   **3.1   Civil Penalty Payments**

14           Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims  
15           referred to in the Notice, Complaint, and this Consent Judgment, Airgas shall pay \$4,000 in civil  
16           penalties. The civil penalty payment shall be allocated according to Health and Safety Code section  
17           25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office  
18           of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent  
19           (25%) of the penalty retained by Vinocur. Vinocur’s counsel shall be responsible for delivering  
20           OEHHA’s portion of any penalty payment(s) made under this Consent Judgment. Airgas shall  
21           provide its payment in a check made payable to “Laurence Vinocur, Client Trust Account” in the  
22           amount of \$1,000 and a check made payable to “OEHHA” in the amount of \$3,000 to be delivered in  
23           accordance with Section 3.3, below.

24                   **3.2   Reimbursement of Attorney’s Fees and Costs**

25           The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without  
26           reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
27           be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
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1 other settlement terms had been finalized, the Parties negotiated the compensation due to Vinocur and  
2 his counsel under general contract principles and the private attorney general doctrine codified at  
3 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
4 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs  
5 on appeal, if any. Under these legal principles, Airgas shall pay \$43,750 for all fees and costs  
6 incurred by Vinocur investigating, bringing this matter to Airgas's attention, litigating and  
7 negotiating a settlement in the public interest. Airgas's payment shall be delivered to the address in  
8 Section 3.4 in a check payable to "The Chanler Group."

### 9           **3.3    Payment Timing; Payments Held in Trust**

10           The checks due under Section 3.1 and 3.2 of this Consent Judgment shall be delivered to  
11 Vinocur's counsel by overnight mail, with a tracking number, on or before July 10, 2018, which due  
12 date is anticipated to occur after the Effective Date. If, for some reason the settlement is not  
13 approved, Vinocur and his counsel shall return such funds to Airgas with interest at the prevailing  
14 federal funds rate within two business days.

### 15           **3.4    Payment Address**

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

17                           The Chanler Group  
18                           Attn: Proposition 65 Controller  
19                           2560 Ninth Street  
                              Parker Plaza, Suite 214  
                              Berkeley, CA 94710

## 20           **4.    CLAIMS COVERED AND RELEASED**

### 21           **4.1    Vinocur's Public Release of Proposition 65 Claims**

22           Vinocur, acting on his own behalf and in the public interest, releases Airgas and its parents,  
23 subsidiaries, affiliates, predecessors, successors, directors, officers, employees, and attorneys  
24 ("Releasees"), and each entity to whom Airgas directly or indirectly distributes or sells the Products  
25 including, without limitation, its downstream customers, distributors, wholesalers, and retailers  
26 ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the failure to  
27 warn about exposures to DEHP and lead from Products sold or distributed for sale by Airgas prior  
28 to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent

1 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP and lead  
2 from Products sold or distributed for sale by Airgas after the Effective Date.

3 **4.2 Vinocur's Individual Release of Claims**

4 Vinocur, in his individual capacity only and *not* in any representative capacity, also provides a  
5 release to Airgas, Releasees, and Downstream Releasees, which shall be effective as a full and final  
6 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
7 attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character  
8 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
9 exposures to DEHP and lead, as well as DINP, in Products sold or distributed for sale by Airgas  
10 before the Effective Date. Further, Vinocur will not pursue the newly added claims set forth in his  
11 April 27, 2018 supplemental notice and those relating to DEHP in vinyl/PVC cords referenced in the  
12 June 29, 2017 Notice.

13 **4.3 Airgas's Release of Vinocur**

14 Airgas, on its own behalf, and on behalf of its past and current agents, representatives,  
15 attorneys, successors, and assignees, hereby waives any and all claims against Vinocur, and his  
16 attorneys and other representatives, for any and all actions taken or statements made by Vinocur,  
17 and his attorneys and other representatives, whether in the course of investigating claims, otherwise  
18 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

19 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

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

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1     **7. GOVERNING LAW**

2             The terms of this Consent Judgment shall be governed by the laws of the state of California  
3 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
4 rendered inapplicable by reason of law generally or as to the Products, then Airgas may provide  
5 written notice to Vinocur of any asserted change in the law, and shall have no further injunctive  
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
7 so affected.

8     **8. NOTICE**

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

12     For Airgas:

13             Airgas USA, LLC  
14             259 North Radnor Chester Road, Ste. 100  
15             Radnor, PA 19087

16             with a copy to:

17             Brian Ledger, Esq.  
18             Gordon Rees Scully Mansukhani, LLP  
19             101 W. Broadway Suite 2000  
20             San Diego, CA 92101

21     For Vinocur:

22             Proposition 65 Coordinator  
23             The Chanler Group  
24             2560 Ninth Street  
25             Parker Plaza, Suite 214  
26             Berkeley, CA 94710-2565

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

29     **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **10. POST EXECUTION ACTIVITIES**

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

11 **11. MODIFICATION**

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

15 **12. AUTHORIZATION**

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

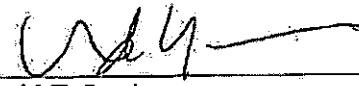
18 **AGREED TO:**

**AGREED TO:**

19  
20 Date: 5/29/2018

Date: 5/29/18

21 By:   
22 LAURENCE VINOCUR

By:   
David E. Levin  
Vice President - Hardgoods  
AIRGAS USA, LLC

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