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Laralei Paras, State Bar No. 203319
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
Email: laralei@chanler.com

Attorneys for Plaintiff
LAURENCE VINOCUR

FILED
San Francisco County Superior Court

JUN 28 2018

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

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

LAURENCE VINOCUR,

Plaintiff,

v.

ELECTRO TAPE SPECIALTIES, INC.,

Defendant.

Case No. CGC18566420

^{mk}
~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: June 28, 2018
Time: 9:30 a.m.
Courtroom: 302
Judge: Hon. Harold E. Kahn
Reservation No.: 05140628-01

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Plaintiff Laurence Vinocur and defendant Electro Tape Specialties, Inc., having agreed through their respective counsel that judgment be entered pursuant to the terms of their settlement agreement in the form of a consent judgment, and following this Court's issuance of an order approving their Proposition 65 settlement and Consent Judgment on June 4, 2018,

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 1**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement pursuant to Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 6/20/18



JUDGE OF THE SUPERIOR COURT

HAROLD KAHN

Exhibit 1

1 Laralei Paras, State Bar No. 203319
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118
Email: laralei@chanler.com

5 Attorneys for Plaintiff
6 LAURENCE VINOCUR

7 Whitney Jones Roy, State Bar No. 211541
SHEPPARD MULLIN
8 Sheppard Mullin Richter & Hampton LLP
333 South Hope Street, 43rd Floor
9 Los Angeles, CA 90071-1422
Telephone: (213) 620-1780
10 Email: WRoy@sheppardmullin.com

11 Attorneys for Defendant
ELECTRO TAPE SPECIALTIES, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17 LAURENCE VINOCUR,
18 Plaintiff,
19 v.
20 ELECTRO TAPE SPECIALTIES, INC.,
21 Defendant.
22

Case No. CGC18566420
[PROPOSED]
CONSENT JUDGMENT
Cal. Health & Safety Code § 25249.6 et seq.
and Cal. Code Civ. Proc. § 664.6

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 ("Vinocur") and defendant Electro Tape Specialties, Inc. ("Electro Tape"), with Vinocur and Electro
5 Tape each individually referred to as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Electro Tape employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Vinocur alleges that Electro Tape has manufactured, imported, distributed, shipped, sold
16 and/or offered for sale in the State of California vinyl/PVC electrical tape that contains
17 concentrations of di(2-ethylhexyl)phthalate ("DEHP") above the allowable state limits without first
18 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
19 65 as chemicals known to the State of California to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, "Products" are defined as vinyl/PVC electrical tape
22 containing DEHP including, but not limited to, *Electro 60 Vinyl Electrical Tape, Cat No. 1506, UPC*
23 *#0 74508 15068 0*, that are manufactured, purchased for resale or imported by Electro Tape.

24 **1.6 Notice of Violation**

25 On January 17, 2018, Vinocur served Electro Tape and the requisite public enforcement
26 agencies with a "60-Day Notice of Violation" (the "Notice") that provided the recipients with notice
27 of alleged violations of Proposition 65 based on Electro Tape's alleged failure to warn its customers
28 and consumers that its Products expose users in California to DEHP. No public enforcer has

1 commenced or is prosecuting an action to enforce the violations alleged in the Notice.

2 **1.7 Complaint**

3 On May 9, 2018, Vinocur filed the instant action (“Complaint”), naming Electro Tape as a
4 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

5 **1.8 No Admission**

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

13 **1.9 Consent to Jurisdiction**

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

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
20 the Court approves this Consent Judgment.

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

22 As of September 1, 2018, and continuing thereafter, all Products manufactured on or after
23 September 1, 2018 which Electro Tape ships, sells, offers for sale, or distributes for sale in
24 California shall either: (a) be Reformulated Products pursuant to the definition in Section 2.1, below;
25 or (b) have a clear and reasonable warning pursuant to Section 2.2, below.

26 **2.1 Reformulated Standard**

27 “Reformulated Products” are defined as Products that contain (i) DEHP in a concentration
28 not greater than 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by

1 the State of California, a federal agency, or a nationally recognized accrediting organization. For
2 purposes of compliance with this reformulation standard, testing samples shall be prepared and
3 extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-
4 C1001.09.3 and analyzed using U.S. Environmental Protection Agency (“EPA”) methodology
5 8270C, or other methodologies utilized by federal or state government agencies to determine
6 phthalate content in a solid substance.

7 **2.2 Consumer Product Exposure Warning**

8 **2.2.1 Warning Content.** As of September 1, 2018, for all Products shipped,
9 sold, offered for sale or distributed for sale in California other than Reformulated Products, Electro
10 Tape shall provide clear and reasonable Consumer Product Exposure Warnings that state:

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

14 -or-

15 **⚠WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

16 **2.2.2 Warning Placement.** Electro Tape shall affix, or cause to be affixed, the
17 Consumer Product Exposure Warning to the packaging, labeling or directly on any Products that
18 are not Reformulated Products which are distributed, shipped, sold or offered for sale within
19 California. Each warning shall be prominently placed with such conspicuousness as compared
20 with other words, statements, designs or devices as to render it likely to be read and understood by
21 an ordinary individual under customary conditions before purchase or use. Each warning shall be
22 provided in a manner such that the California consumer or user understands to which *specific*
23 Product(s) the warning applies, so as to minimize the risk of consumer confusion. By entering into
24 this Consent Judgment, the Parties do not intend to expand or restrict any obligations or
25 responsibilities that may be imposed upon Electro Tape by laws other than Proposition 65, nor do
26 the Parties intend this Consent Judgment to affect any defenses available to Electro Tape under
27 laws other than Proposition 65.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims alleged in the
4 Notice and Complaint or referred to in this Consent Judgment, Electro Tape shall pay a total civil
5 penalty in the amount of \$4,000 within five business days of the Effective Date by issuing two
6 separate checks payable as follows: (a) "OEHHA" in the amount of \$3,000; and (b) "Laurence
7 Vinocur Client Trust Account" in the amount of \$1,000. The civil penalty payment will be allocated
8 in accordance with Health & Safety Code § 25249.12(c)(1) & (d), with Vinocur remitting 75% of
9 the funds to the California Office of Environmental Health Hazard Assessment ("OEHHA") and
10 retaining the remaining 25% of the penalty.

11 **3.2 Reimbursement of Attorney's Fees and Costs**

12 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
14 issue to be resolved after the material terms of this Consent Judgment had been settled. Vinocur
15 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
16 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
17 Vinocur and his counsel under general contract principles and the private attorney general doctrine
18 codified at Code of Civil Procedure § 1021.5, for all work performed through court approval of this
19 Consent Judgment to inform Electro Tape of the allegations in the Notice and resolve this matter in
20 the public interest. Electro Tape shall tender a check payable to "The Chanler Group" in the amount
21 of \$27,500 within five business days of the Effective Date.

22 **3.3 Payment Procedures**

23 All payments pursuant to Sections 3.1 and 3.2 shall be delivered to the following payment

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

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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 his representative capacity as an enforcer of the
4 public interest on behalf of the people of California, releases Electro Tape and its parents,
5 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
6 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
7 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
8 franchisers, resellers, cooperative members, licensors and licensees ("Downstream Releasees") for
9 any actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
10 liabilities, demands, or violations of any nature, character or kind, whether known or unknown,
11 suspected or unsuspected, arising under Proposition 65 for alleged or actual exposures to DEHP
12 from Products prior to the Effective Date, as set forth in the Notice.

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

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

20 **4.3 Electro Tape's Release of Vinocur**

21 Electro Tape, on its own behalf, and on behalf of its past and current agents, representatives,
22 attorneys, successors, and assignees, releases any and all claims against Vinocur and his attorneys and
23 other representatives, for any and all actions taken or statements made by Vinocur and his attorneys
24 and other representatives, whether in the course of investigating claims, otherwise seeking to enforce
25 Proposition 65 against it in this matter or with respect to 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, for any reason, it is not approved and entered by the Court within one year after
4 it has been fully executed by the Parties.

5 **6. SEVERABILITY**

6 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
7 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
8 remaining provisions shall not be 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 or DEHP, then Electro Tape
13 may provide written notice to Vinocur of the asserted change in the law, and shall have no further
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
15 are so affected.

16 **8. NOTICES**

17 Unless specified herein, all correspondence and notices required to be provided pursuant to
18 this Consent Judgment shall be sent by: (i) first-class, registered or certified mail, return receipt
19 requested; or (ii) overnight courier on any party by the other party at the following addresses:

20 For Electro Tape:

21 Whitney Jones Roy, Esq.
22 Sheppard, Mullin, Richter & Hampton LLP
23 333 South Hope Street
24 Forty-Third Floor
25 Los Angeles, CA 90071

20 For Vinocur:

21 The Chanler Group
22 Attention: Prop 65 Coordinator
23 2560 Ninth Street
24 Parker Plaza Suite 214
25 Berkeley CA, 94710

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

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1 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Vinocur agrees to comply with the reporting form requirements referenced in California
7 Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and
8 Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent
9 Judgment. Vinocur and Electro Tape agree to support the entry of judgment pursuant to terms of
10 this Consent Judgment, and to obtain judicial approval of this Consent Judgment in a timely manner.

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**

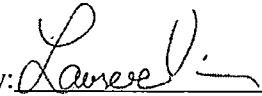
16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective Parties and have read, understood and agree to all of the terms and conditions of this
18 Consent Judgment.

19 **AGREED TO:**

AGREED TO:

20
21 Date: 5/9/2018

Date: _____

22
23
24 By: 
25 Laurence Vinocur

By: _____
Darren J. Miller, President
Electro Tape Specialties, Inc.

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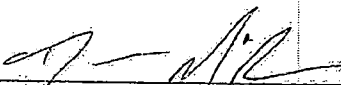
19 **AGREED TO:**

AGREED TO:

20
21 Date: _____

21 Date: 5/8/18

22
23
24 By: _____
25 Laurence Vinocur

24 By: 
25 Darren J. Miller, President
26 Electro Tape Specialties, Inc.