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Attorneys for Plaintiff
LAURENCE VINOCUR

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

LAURENCE VINOCUR,

Plaintiff,

v.

M. EAGLES TOOL WAREHOUSE, INC.;
S&G TOOL-AID CORP.; *et al.*,

Defendants.

Case No. CGC-18-568572

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

Date: June 10, 2019
Time: 9:30 a.m.
Dept.: 302
Judge: Ethan P. Schulman

Reservation No.: 04230610-12

FILED
San Francisco County Superior Court

JUN 10 2019

CLERK OF THE COURT
BY:  Deputy Clerk

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In the above-entitled action, Plaintiff Laurence Vinocur and Defendants M. Eagles Tool Warehouse, Inc. and S&G Tool-Aid Corp., 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,

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: June 10, 2019



JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Laralei Paras, State Bar No. 203319
2 Kimberly Gates, State Bar No. 282369
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
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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 M. EAGLES TOOL WAREHOUSE, INC.; S &
20 G TOOL-AID CORP.; *et al.*,

21 Defendants.

Case No. CGC-18-568572

[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 M. Eagles Tool Warehouse, Inc. (“M. Eagles”) doing business as S & G Tool-Aid
5 Corp. (registered in New Jersey as an alternate name for M. Eagles), with Vinocur and M. Eagles
6 each individually referred to as a “Party” and, collectively, as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Vinocur alleges that M. Eagles manufactures, imports, sells, or distributes for sale in
17 California circuit testers with vinyl/PVC components containing di(2-ethylhexyl)phthalate
18 (“DEHP”), as described with particularity in Paragraph 1.5, without first providing the exposure
19 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
20 to cause birth defects or other reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are circuit testers with vinyl/PVC
23 components containing DEHP that are manufactured, imported, sold or distributed for sale, in
24 California, by M. Eagles, specifically limited to the *Tool Aid Extra Long, Heavy Duty Circuit Tester*
25 *with Retractable Wire, #27250, UPC # 6 38570 27250 5*, hereinafter, the “Products.”

26 **1.6 Notice of Violation**

27 On March 21, 2018, Vinocur served M. Eagles, S & G Tool-Aid Corp., the California
28 Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation

1 alleging that M. Eagles violated Proposition 65 by failing to warn its customers and consumers in
2 California of the health hazards associated with exposures to DEHP from the Products. To the best of
3 the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to
4 enforce the violations alleged in the Notices.

5 **1.7 Complaint**

6 On July 31, 2018, Vinocur filed the instant action ("Complaint"), naming M. Eagles as a
7 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
8 Notice.

9 **1.8 No Admission**

10 M. Eagles denies the material, factual, and legal allegations contained in the Notice and
11 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
12 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
13 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
14 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
15 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
16 not, however, diminish or otherwise affect M. Eagles' obligations, responsibilities, and duties under
17 this Consent Judgment.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over M. Eagles as to the allegations in the Complaint, that venue is proper in the County
21 of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
25 the Court grants the motion for approval of the Consent Judgment contemplated by Section 5.

26 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

27 Commencing on the Effective Date and continuing thereafter, M. Eagles shall only
28 manufacture for sale, import for sale, sell or distribute for sale, in California, Products that are either:


1 (a) Reformulated Products, as defined in Section 2.1, below; or (b) Products bearing a clear and
2 reasonable health hazard warning, pursuant to Sections 2.2 and 2.3.

3 **2.1 Reformulated Products Defined**


4 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products
5 containing DEHP in maximum concentrations of less than 0.1 percent (1,000 parts per million) in any
6 accessible component (i.e., any component that may be touched during a reasonably foreseeable use)
7 when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally
8 accrediting organization. For purposes of compliance with this reformulation standard, testing
9 samples shall be prepared and extracted using Consumer Product Safety Commission ("CPSC")
10 methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency
11 ("EPA") methodology 8270D, or other equivalent methodologies utilized by federal or state agencies
12 for the purpose of determining DEHP content in a solid substance.

13 **2.2 Clear and Reasonable Warnings**

14 Commencing on the Effective Date and continuing thereafter, M. Eagles shall provide clear
15 and reasonable warnings as set forth in this Section for all Products manufactured, imported, sold or
16 distributed for sale, in California, that do not qualify as Reformulated Products. Each warning shall
17 be prominently placed with such conspicuousness as compared with other words, statements, designs,
18 or devices as to render it likely to be read and understood by an ordinary individual under customary
19 conditions *before* purchase or use. Each warning shall be provided in a manner such that the
20 consumer or user understands to which *specific* Product the warning applies, so as to minimize the
21 risk of consumer confusion. For purposes of this Consent Judgment, a clear and reasonable warning
22 displayed or transmitted according the above criteria, and containing the following statement, shall
23 satisfy these requirements:

24  **WARNING:** This product can expose you to chemicals, including
25 DEHP, which is known to the State of California to cause birth
26 defects or other reproductive harm. For more information go to
27 www.P65Warnings.ca.gov
28

1 Or, if placed directly on a Product or the Product's packaging and/or labeling, M. Eagles
2 may use the following short-form warning statement, provided it appears in a type size no smaller
3 than the largest type size used for other consumer information on the Product's label and in no case
4 smaller than 6-point type:

5  **WARNING:** Reproductive Harm-
6 www.P65Warnings.ca.gov/product

7 For purposes of this Consent Judgment, "Product Label" means a display of written, printed
8 or graphic material that is printed on or affixed to a Product or its immediate container or wrapper.
9 M. Eagles may also comply with the warning requirements specified by Title 27 California Code of
10 Regulations, Article 6 "Clear and Reasonable Warnings" (§§ 25600 – 25607.31), as amended from
11 time to time.

12 **2.3 Internet Product Warnings**

13 In the event M. Eagles directly sells Products via an internet site operated or controlled by M.
14 Eagles to customers located in California, the warning requirements of this Section shall be satisfied
15 if, prior to purchase: (a) one of the foregoing warnings, described in Section 2.2, appears on the same
16 page, in the same type size or larger than the Product description text, as the Product; (b) a warning
17 appears on the same web page as the price for the Product, in the same type size or larger than the
18 Product description text; (c) a warning appears on one or more web pages displayed to the consumer
19 prior to purchase, in the same type size or larger than the Product description text; or (d) a hyperlink,
20 clearly marked "WARNING," appears on the Product display page, in type large enough so that the
21 consumer does not have to search for it, and a prominently placed warning appears elsewhere, such
22 as on the Product description page, in a manner that clearly associates it with the Product to which the
23 warning applies, prior to checkout or purchase. M. Eagles may alternatively comply with this
24 Section by providing clear and reasonable warnings in accordance with Title 27 California Code of
25 Regulations, Article 6 "Clear and Reasonable Warnings" (§§ 25600 – 25607.31), as amended from
26 time to time.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to in
4 the Notice, Complaint, and this Consent Judgment, M. Eagles shall pay \$1,500 in civil penalties. The
5 civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)
6 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
7 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%)
8 of the penalty retained by Vinocur. M. Eagles shall provide its payment in two checks as follows: (1)
9 a check made payable to OEHHA in the amount of \$1,125; and (2) a check made payable to
10 “Laurence Vinocur, Client Trust Account” in the amount of \$375. Vinocur’s counsel shall be
11 responsible for delivering OEHHA’s portion of any penalty payment(s) made under this Consent
12 Judgment. Upon request by M. Eagles, Vinocur shall promptly provide any requested W-9 forms in
13 advance of the payment deadline.

14 **3.2 Reimbursement of Attorney’s Fees and Costs**

15 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
17 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
18 other settlement terms were finalized, the Parties negotiated the compensation due to Vinocur and his
19 counsel under general contract principles and the private attorney general doctrine, codified at
20 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
21 this Consent Judgment, and court approval of the same, but exclusive of fees and costs on appeal, if
22 any. Under these legal principles, M. Eagles shall pay \$12,000 for all fees and costs incurred by
23 Vinocur in investigating, bringing this matter to M. Eagles’ attention, litigating and negotiating a
24 settlement in the public interest. M. Eagles shall provide its payment in a check payable to “The
25 Chanler Group” and delivered to the address in Section 3.4. Upon request by M. Eagles, Vinocur
26 shall promptly provide any requested W-9 forms in advance of the payment deadline.

27 **3.3 Payment Timing**

28 Within ten (10) calendar days of the Court’s approval of this Consent Judgment, M. Eagles’

1 shall deliver the civil penalty and attorneys' fee reimbursement payments to Vinocur's counsel at the
2 address in Section 3.4, supra.

3 **3.4 Payment Address**

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

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Vinocur's Public Release of Proposition 65 Claims**

10 Vinocur, acting on his own behalf and in the public interest, releases M. Eagles and its
11 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
12 and attorneys ("Releasees"), and each entity to whom M. Eagles directly or indirectly distributes or
13 sells the Products including, without limitation, its downstream customers, distributors, wholesalers,
14 and retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to
15 the failure to warn about exposures to DEHP from Products sold or distributed for sale by M.
16 Eagles prior to the Effective Date, as set forth in the Notice.

17 **4.2 Vinocur's Individual Release of Claims**

18 Vinocur, in his individual capacity only and *not* in any representative capacity, also provides a
19 release to M. Eagles, Releasees, and Downstream Releasees, which shall be effective as a full and
20 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
21 attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
22 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
23 exposures to DEHP in Products sold or distributed for sale by M. Eagles prior to the Effective Date.
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
25 with respect to exposures to DEHP from Products sold or distributed for sale by M. Eagles after the
26 Effective Date.

1 **4.3 M. Eagles' Release of Vinocur**

2 M. Eagles, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Vinocur, and his
4 attorneys and other representatives, for any and all actions taken or statements made by Vinocur,
5 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the state of California
17 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
18 rendered inapplicable by reason of law generally or as to the Products, then M. Eagles may provide
19 written notice to Vinocur of any asserted change in the law, and shall have no further injunctive
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
21 so affected.

22 **8. NOTICE**

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

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1 For M. Eagles:

2 Brad Gering, Plant Manager
3 M. Eagles Tool Warehouse, Inc.
4 178 Sherman Ave, #192
5 Newark, NJ 07114

6 With a copy to:

7 Tom Boer, Esq.
8 Hunton Andrews Kurth LLP
9 50 California Street, Suite 1700
10 San Francisco, CA 94111

11 For Vinocur:

12 Proposition 65 Coordinator
13 The Chanler Group
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Vinocur agrees to comply with the reporting form requirements referenced in Health and
25 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
26 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion
27 Vinocur shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
28 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 and appearing
at the hearing before the Court if so requested.

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11. MODIFICATION

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

12. AUTHORIZATION

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


AGREED TO:

AGREED TO:

Date: March 14, 2019

Date: March 11, 2019

By: 
LAURENCE VINOUCUR

By: 
BRAD GERING, PLANT MANAGER
M. EAGLES TOOL WAREHOUSE, INC.