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11 LAURENCE VINOUCUR

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINOUCUR,

Plaintiff,

v.

TAYLOR CORPORATION; COSCO
INDUSTRIES, INC.; *et al.*,

Defendants.

Case No. RG13682497

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Laurence Vinocur
4 (“Vinocur”), and defendant, Navitor, Inc. (“Navitor”) successor in interest to Cosco Industries, Inc.
5 (“Cosco”), with Vinocur and Navitor each individually referred to as a “Party” and collectively as the
6 “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 improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Vinocur alleges that Navitor, successor in interest to Cosco, manufactures, imports, sells, or
17 distributes for sale vinyl/PVC ID holders containing di(2-ethylhexyl)phthalate (“DEHP”) without
18 first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
19 Proposition 65 as a chemical known to the state of California to cause birth defects or other
20 reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are vinyl/PVC ID holders that are
23 imported, manufactured, sold, or distributed for sale by Navitor, successor in interest to Cosco, in
24 California including, but not limited to, the *My ID Card Holder (#0 39956 75020 2)* (the “Products”).

25 **1.6 Notice of Violation**

26 On or about November 21, 2012, Vinocur served Cosco and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided recipients
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1 with notice that Cosco was in violation of Proposition 65 for failing to warn its customers and
2 consumers in California that the Products expose users to DEHP.

3 **1.7 Complaint**

4 On June 6, 2013, Vinocur filed the instant action against Cosco (“Complaint” or “Action”) for
5 the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Navitor as to the allegations in the Complaint, that venue is proper in Alameda
18 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
19 Judgment.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
22 Consent Judgment is approved by the Court.

23 **2. INJUNCTIVE RELIEF**

24 **2.1 Reformulation**

25 Commencing on or before the Effective Date and continuing thereafter, Navitor shall only
26 purchase for sale or manufacture for sale in California “Reformulated Products.” For purposes of this
27 Consent Judgment, Reformulated Products are those Products purchased for sale or manufactured for
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1 sale in California by Navitor that contain a maximum of 1,000 parts per million (0.1%) DEHP
2 content in any component analyzed pursuant to EPA testing methodologies 3580A and 8270C.

3 **2.2 Interim Product Warnings**

4 On or before the Effective Date, Navitor shall provide Proposition 65 warnings with respect
5 to all Products shipped, sold, or offered for sale in California that are not Reformulated Products. For
6 any Product Navitor sells or distributes for sale in California after the Effective Date that is not a
7 Reformulated Product, Navitor shall provide a clear and reasonable warning affixed to the packaging
8 or labeling, or directly to the Product, with the language set forth below. Each warning shall be
9 prominently placed with such conspicuousness as compared with other words, statements, designs, or
10 devices as to render it likely to be read and understood by an ordinary individual under customary
11 conditions before purchase or use. Each warning shall also be provided in a manner such that the
12 consumer or user understands to which specific Product the warning applies, so as to minimize the
13 risk of consumer confusion.

14 **(a) Retail Store Sales.**

15 **(i) Product Labeling.** Navitor shall affix a warning to the packaging,
16 labeling, or directly on each Product sold in retail outlets in California by Navitor or its agents,
17 containing the following language:

18 **WARNING:** This product contains DEHP, a chemical
19 known to the State of California to cause
20 birth defects and other reproductive harm.

21 **(ii) Point-of-Sale Warnings.** Alternatively, Navitor may provide warning
22 signs in the form below to its customers in California with instructions to post the warnings in close
23 proximity to the point of display of the Products.

24 **WARNING:** This product contains DEHP, a chemical known
25 to the State of California to cause birth defects
26 and other reproductive harm.
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1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning (e.g., Reformulated Products as defined in Section 2.1 or Products distributed prior
3 to the Effective Date), the following statement must be used:¹

4 **WARNING:** These products contain DEHP, a chemical known
5 to the State of California to cause birth defects
6 and other reproductive harm.

7 [*list products for which warning is required*]

8 **(b) Mail Order Catalog and Internet Sales.** In the event that Navitor sells
9 Products via mail order catalog or internet to customers located in California after the Effective Date
10 that are not Reformulated Products, Navitor shall provide a warning for Products sold via mail order
11 catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the website.
12 Warnings given in the mail order catalog or on the website shall identify the *specific* Product to
13 which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

14 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
15 catalog must be in the same type size or larger than the Product description text within the catalog.
16 The following warning shall be provided on the same page and in the same location as the display
17 and/or description of the Product, on the front cover of the catalog, or on the order form for which the
18 customer places the order for the Product when Navitor utilizes a designated symbol to cross-
19 reference the applicable warning:

20 **WARNING:** This product contains DEHP, a chemical known
21 to the State of California to cause birth defects
22 and other reproductive harm.

23 Where the applicable warning is on a page other than the same pages as the Product display,
24 cross-reference to the applicable warning shall include the following language:

25 **WARNING:** Certain products identified with this symbol
26 ▼ and offered for sale in this catalog contain
27 DEHP, a chemical known to the State of
28 California to cause birth defects and other
 reproductive harm.

¹For purposes of the consent judgment, “sold in proximity” shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 The designated symbol must appear on the same page and in close proximity to the display
2 and/or description of the Product. On each page where the designated symbol appears, Navitor must
3 provide a header or footer directing the consumer to the warning language and definition of the
4 designated symbol.

5 If Navitor elects to provide warnings in the mail order catalog, then the warnings must be
6 included in all catalogs offering to sell one or more Products printed after the Effective Date.

7 (ii) **Internet Website Warning.** A warning shall be given in conjunction
8 with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on
9 which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the
10 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
11 during the checkout process. The following warning statement shall be used and shall appear in any
12 of the above instances adjacent to or immediately following the display, description, or price of the
13 Product for which it is given in the same type size or larger than the Product description text:

14 **WARNING:** This product contains DEHP, a chemical known
15 to the State of California to cause birth defects
16 and other reproductive harm.

17 Alternatively, the designated symbol may appear adjacent to or immediately following the
18 display, description, or price of the Product for which a warning is being given, provided that the
19 following warning statement also appears elsewhere on the same web page, as follows:

20 **WARNING:** Products identified on this page with the
21 following symbol contain DEHP, a chemical
22 known to the State of California to cause birth
23 defects and other reproductive harm: ▼

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Payments pursuant to Health and Safety Code § 25249.7(b)**

26 In settlement of all the claims referred to in this Consent Judgment, Navitor shall pay
27 \$20,000 in civil penalties. Each civil penalty payment shall be allocated according to Health and
28 Safety Code section 25249.7(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the
California Office of Environmental Health Hazard Assessment and twenty-five percent (25%) of the

1 funds remitted to Vinocur. All civil penalty payments shall be delivered to the payment addresses
2 provided in section 3.3.1.

3 **3.1.1 Initial Civil Penalty**

4 Within fifteen (15) days of the mutual execution of this agreement, Navitor shall make
5 an initial civil penalty payment of \$5,000. Navitor shall provide its payment in two checks for the
6 following amounts made payable to: (a) The Chanler Group in Trust for "OEHHA" in the amount of
7 \$3,750; and (b) "The Chanler Group in Trust for Laurence Vinocur" in the amount of \$1,250.

8 **3.1.2 Final Civil Penalty**

9 On or before March 15, 2014, Navitor shall make a final civil penalty payment of
10 \$15,000. Pursuant to title 11 California Code of Regulations, section 3203(c), the final civil penalty
11 payment shall be waived in its entirety if, no later than March 1, 2014, an officer of Navitor provides
12 Vinocur with written certification that all of the Products manufactured, imported, distributed, sold
13 and offered for sale in California are Reformulated Products, and that Navitor will continue to only
14 manufacture, import, distribute, sell and offer for sale Reformulated Products in California. The
15 written certification of reformulation in lieu of the final civil penalty payment required by this section
16 is a material term, and time is of the essence. Unless waived, Navitor shall issue two checks for the
17 following amounts payable to: (a) "OEHHA" in the amount of \$11,250; and (b) "The Chanler Group
18 in Trust for Laurence Vinocur" in the amount of \$3,750.

19 **3.2 Reimbursement of Fees and Costs**

20 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
22 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
23 other settlement terms had been finalized, Navitor, successor in interest to Cosco, expressed a desire
24 to resolve the fee and cost issue. The Parties then attempted to (and did) reach an accord on the
25 compensation due to Vinocur and his counsel under general contract principles and the private
26 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
27 performed through the mutual execution of this Consent Judgment. Navitor shall pay \$28,750 for fees
28 and costs incurred investigating, bringing this matter to Navitor's, successor in interest to Cosco,

1 attention, and negotiating a settlement in the public interest. Navitor’s payment of fees and costs
2 shall be made with a check payable to “The Chanler Group in Trust” and shall be held in trust by The
3 Chanler Group pending the Court’s approval of the Consent Judgment. Navitor shall deliver this
4 payment to The Chanler Group in accord with Section 3.3.1 within forty-five (45) days of the
5 execution of this Consent Judgment by all parties.

6 **3.3 Payment Procedures**

7 **3.3.1 Payment Address**

8 All payments shall be delivered to the following address:

9 The Chanler Group
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

14 If the Court denies or otherwise does not grant the motion to approve this Consent Judgment,
15 and the Parties choose not to pursue a modified Consent Judgment or to appeal a decision denying
16 approval within 30 days of said denial or other non-approval, or in the event the Court approves this
17 Consent Judgment and any person successfully appeals that approval, all payments made pursuant to
18 this Consent Judgment will be returned to Defendant within fifteen (15) days of written notice made
19 to Vinocur, and the Action shall return to *status quo ante* as if there had been no settlement, and
20 nothing in or about the settlement, this proposed Consent Judgment, or any act, agreement or
21 statement of Defendants or any other Releasee related thereto shall be admissible, discoverable or
22 otherwise considered for any purpose whatsoever.

23 **3.3.2 Required Tax Documentation**

24 (a) Navitor agrees to provide appropriate 1099 form documentation for the civil
25 penalties paid to OEHHA. The form shall be transmitted to the “Office of Environmental Health
26 Hazard Assessment,” 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486);

27 (b) For the civil penalties paid to Vinocur, Navitor agrees to issue a 1099 form to
28 “Laurence Vinocur,” whose address and tax identification number shall be furnished after this
Consent Judgment is fully executed by the Parties.

1 (c) For the reimbursement of fees and costs pursuant to section 3.2, Navitor shall
2 issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522) to the address listed in
3 Section 3.3.1(a) above.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Vinocur’s Public Release of Proposition 65 Claims**

6 Vinocur, acting on his own behalf and in the public interest, releases Navitor and its parents
7 (including but not limited to Taylor Corporation), subsidiaries, affiliated entities under common
8 ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to whom they
9 directly or indirectly distribute or sell the Products, including but not limited to its downstream
10 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
11 licensees (“Downstream Releasees”) from any and all claims, charges, actions, causes of action,
12 damages or monetary obligations for any violations arising under Proposition 65 regarding
13 exposures to DEHP from the Products sold by Navitor, successor in interest to Cosco, prior to the
14 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
15 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
16 sold by Navitor, successor in interest to Cosco, in the State of California prior to the Effective Date.

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

18 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides
19 a release to Navitor, 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 the Products sold or distributed for sale by Navitor, successor in interest to
24 Cosco, before the Effective Date. Compliance with the terms of this Consent Judgment constitutes
25 compliance with Proposition 65 with respect to exposures to DEHP from the Products sold by
26 Navitor, successor in interest to Cosco, in the State of California prior to the Effective Date.
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1 **4.3 Navitor’s Release of Vinocur**

2 Navitor, 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 and
5 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, for any reason, it is not approved and entered by the Court within one year after it
10 has been fully executed by the Parties.

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, preempted, or is
18 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Navitor may
19 provide written notice to Vinocur of any asserted change in the law, and shall have no further
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
21 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Navitor from any
22 obligation to comply with any pertinent state or federal toxics control laws.

23 **8. NOTICES**

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

2 John Anthony, Leader
3 Tom Ninneman
4 President
5 Navitor, Inc.
6 1725 Roe Crest Drive
7 North Mankato, MN 56003

8 with a copy to:

9 General Counsel
10 Navitor, Inc.
11 1725 Roe Crest Drive
12 North Mankato, MN 56003

13 and

14 Thomas Downey, Esq.
15 Burnham Brown
16 1901 Harrison Street, 14th Floor
17 Oakland, CA 94612

18 For Vinocur:

19 The Chanler Group
20 Attn: Proposition 65 Coordinator
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile or portable
28 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.

29 **10. POST EXECUTION ACTIVITIES**

30 Vinocur agrees to comply with the reporting form requirements referenced in Health and
31 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
32 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
33 furtherance of obtaining such approval, Vinocur and Navitor agree to mutually employ their best
34 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain

1 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
2 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 and supporting the motion for judicial approval.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**


9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions contained herein.

11 **AGREED TO:**

AGREED TO:

12
13 Date: December 16, 2013

Date: _____

14
15 By: 
16 Laurence Vinocur

By: _____
Suzanne M. Spellacy
V.P. and General Counsel, NAVITOR, INC.

1 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
2 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 and supporting the motion for judicial approval.

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6 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
7 application of any Party and the entry of a modified consent judgment by the Court.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions contained herein.

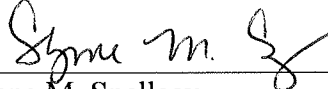
11 **AGREED TO:**

AGREED TO:

12 Date: _____

13 Date: 12/6/2013

14 By: _____
15 Laurence Vinocur

16 By: 
17 Suzanne M. Spellacy
18 V.P. and General Counsel, NAVITOR, INC.