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THINGS REMEMBERED, INC.
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION
16

17 LAURENCE VINO CUR,
18 Plaintiff,
19 v.
20 THINGS REMEMBERED, INC.; and
21 DOES 1-150, inclusive,
22 Defendants.
23

Case No. RG13670147
**STIPULATION AND [PROPOSED]
CONSENT JUDGMENT**
(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Laurence Vinocur and Things Remembered, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and Things Remembered, Inc. (“TRI”), with Vinocur and TRI collectively referred to
5 as the “parties,” and individually as a “party.” Vinocur is an individual residing in the State of
6 California who seeks to promote awareness of exposure to toxic chemicals and to improve human
7 health by reducing or eliminating hazardous substances contained in consumer and commercial
8 products. TRI is a Delaware Corporation that operates retail stores in the State of California. TRI
9 has more than ten employees.

10 **1.2 General Allegations**

11 Vinocur alleges that TRI has manufactured, imported, distributed and/or sold vinyl/PVC
12 sports-themed clocks containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of California
13 without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to
14 cause developmental and reproductive toxicity.

15 **1.3 Product Description**

16 The products that are covered by this Consent Judgment are: Baseball Clock Award, SKU
17 #652652, Football Clock Award, SKU #65266 and Basketball Clock Award, SKU #652678,
18 manufactured, imported, distributed and/or sold by TRI in the State of California, hereinafter the
19 “Products.”

20 **1.4 Notice of Violation**

21 On December 20, 2012, Vinocur served TRI and various public enforcement agencies with a
22 document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice
23 alleging that TRI was in violation of Proposition 65 for failing to warn consumers and customers
24 that its vinyl/PVC sports-themed clocks exposed users in the State of California to DEHP. To the
25 best of the parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth
26 in the Notice.

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1.5 Complaint

On or about March 7, 2013, Vinocur filed a complaint in the Superior Court in and for the County of Alameda against Things Remembered, Inc., and Does 1 through 150, *Vinocur v. Things Remembered, Inc., et al.*, Case No. RG13670147, alleging violations of Proposition 65, based on the alleged consumer products exposures to DEHP contained in certain vinyl/PVC sports-themed clocks sold by TRI (“Complaint”) in the State of California.

1.6 No Admission

On May 1, 2013, TRI filed an answer to the Complaint denying the material, factual, and legal allegations contained in the Notice and the Complaint. TRI maintains that all products that it has sold, manufactured, imported and/or distributed in the State of California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by TRI of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by TRI of any fact, finding, conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise affect TRI’s obligations, responsibilities and duties under this Consent Judgment.

1.7 Consent to Jurisdiction

For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over TRI as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.8 Execution Date

For purposes of this Consent Judgment, the term “Execution Date” shall mean the date the agreement is signed by all parties.

1.9 Effective Date

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

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Commitment**

3 Commencing on the Execution Date, TRI shall only sell, ship or offer for sale in State of
4 California Products that are Reformulated Products as defined in Section 2.2.

5 **2.2 Reformulation Standard**

6 Reformulated Products are Products containing DEHP in concentrations of less than 0.1
7 percent (1,000 parts per million) in each accessible component when analyzed pursuant to U.S.
8 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
9 methodology utilized by federal or state agencies for the purpose of determining DEHP content in a
10 solid substance.

11 **3. PAYMENT OF CIVIL PENALTIES**

12 In settlement of all the claims referred to in this Consent Judgment, TRI shall pay a total of
13 \$21,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated
14 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
15 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
16 remaining 25% of the penalty remitted to Vinocur, as follows:

17 **3.1 Initial Civil Penalty.** TRI shall pay an initial civil penalty in the amount of \$6,000.
18 TRI shall issue two separate checks made payable as follows: (a) the first to “OEHHA” in the
19 amount of \$4,500 to be mailed within ten (10) business days of the Execution Date; and (b) the
20 second to “The Chanler Group in Trust for Laurence Vinocur” in the amount of \$1,500 to be
21 mailed within ten (10) business days of the Execution Date. All penalty payments shall be mailed
22 to the addresses listed in Section 3.3 below.

23 **3.2 Final Civil Penalty.** TRI shall pay a final civil penalty of \$15,000 on or before July
24 1, 2014. The final civil penalty shall be waived in its entirety, however, if an officer of TRI provides
25 Vinocur with written certification that, as of the Execution Date, and continuing into the future, TRI
26 has met the Reformulation Standard specified in Section 2.1 above such that all Products
27 manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in State
28 of California are Reformulated Products. Vinocur must receive any such certification on or before

1 June 17, 2014, and time is of the essence. The final civil penalty shall also be apportioned in
2 accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds
3 remitted to OEHHA and the remaining 25% of the penalty remitted to Vinocur.

4 **3.3 Payment Procedures**

5 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

6 (a) All payments owed to Vinocur, pursuant to Sections 3.1 through 3.2,
7 shall be delivered to the following payment address:

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

13 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
14 Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties")
15 at the following addresses:

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

28 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth
above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, TRI shall issue
separate 1099 forms for each payment to Vinocur, whose address and tax identification number
shall be furnished upon request after this Consent Judgment has been fully executed by the parties,
and OEHHA at the applicable addresses listed in Section 3.3.1 above.

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1 **3.4 Representations**

2 TRI represents that the sales data, product reformulation and/or knowledge of DEHP that it
3 provided to Vinocur in negotiating this Consent Judgment was truthful to its knowledge at the time
4 of execution of this Consent Judgment and a material factor upon which Vinocur relied to
5 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If,
6 within nine months of the Effective Date, Vinocur discovers and presents to TRI, evidence
7 demonstrating that the preceding representation and warranty was materially inaccurate
8 (“Evidence”), then TRI shall have 30 days to meet and confer regarding Vinocur’s contention.
9 Should this 30 day period pass without any such resolution between Vinocur and TRI, Vinocur
10 shall be entitled to file a formal legal claim to enforce the allegations in the Complaint based on
11 Evidence not addressed by this Consent Judgment.

12 **4. REIMBURSEMENT OF FEES AND COSTS**

13 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
15 issue to be resolved after the material terms of the agreement had been settled. The parties then
16 reached an accord on the compensation due to Vinocur and his counsel under general contract
17 principles and the private attorney general doctrine codified at California Code of Civil Procedure §
18 1021.5, for all work performed and to be performed through the Effective Date. TRI shall pay
19 \$40,000 for fees and costs incurred as a result of investigating, bringing this matter to TRI’s
20 attention, negotiating a settlement in the public interest, and seeking Court approval and entry of
21 this Consent Judgment as a Judgment. TRI shall issue a separate 1099 for fees and costs (EIN: 94-
22 3171522), make the check payable to “The Chanler Group” and mail payment within ten (10)
23 business days of the Execution Date, to the address listed in Section 3.3.1(a) above.

24 **5. CLAIMS COVERED AND RELEASED**

25 **5.1 Vinocur’s Release of TRI**

26 Vinocur, acting on his own behalf and in the public interest, releases TRI, its parents,
27 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
28 attorneys, and each entity to whom TRI directly or indirectly distributes or sells Products,

1 including, but not limited to, downstream distributors, wholesalers, customers, retailers,
2 franchisees, cooperative members, licensors, and licensees (“Releasees”), from all claims for
3 violations of Proposition 65 up through the Execution Date based on exposure to DEHP from the
4 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
5 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in
6 the Notice.

7 Vinocur, also, in his individual capacity only, and *not* in his representative capacity, provides
8 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
9 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
10 liabilities and demands of Vinocur of any nature, character or kind, whether known or unknown,
11 suspected or unsuspected, except as provided in Section 3.4 herein, arising out of any alleged
12 exposures to DEHP in the Products or any alleged violation of the Proposition 65 related to the
13 Products as set forth in the Notice prior to the Effective Date.

14 **5.2 TRI’s Release of Vinocur**

15 TRI on behalf of itself, its past and current agents, representatives, attorneys, successors,
16 and/or assignees, hereby waives any and all claims against Vinocur, his attorneys and other
17 representatives, for any and all actions taken or statements made (or those that could have been
18 taken or made) by Vinocur and his attorneys and other representatives, whether in the course of
19 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
20 respect to the Products.

21 **5.3 Intent of the Parties**

22 It is the intention of the parties to this Consent Judgment that, upon entry of this consent
23 Judgment and conclusion of any and all appeals or litigation relating thereto, that this Consent
24 Judgment shall be effective as a full accord and satisfaction and release of the claims released by
25 Vinocur pursuant to Section 5.1, above, and of the claims released by TRI pursuant to Section 5.2,
26 above. In furtherance of this intention, the parties are familiar with California Civil Code § 1542,
27 which provides as follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
4 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
5 OR HER SETTLEMENT WITH THE DEBTOR

6 TRI and Vinocur, in his individual capacity only, and *not* in his representative capacity, hereby
7 waive and relinquish all of the rights and benefits that the parties have, or may have, under
8 California Civil Code § 1542 (as well as any similar rights and benefits which they may have by
9 virtue of any statute or rule of law in any other state or territory of the United States). The parties
10 hereby acknowledge that they may hereafter discover facts in addition to, or different from, those
11 which they now know or believe to be true with respect to the subject of the Consent Judgment and
12 the claims released pursuant to Section 5 herein, but, notwithstanding the foregoing, it is the parties'
13 intention hereby to fully, finally, completely and forever settle and release each, every and all of the
14 claims referenced in Section 5 herein, except as provided in Section 3.4 herein, and that in
15 furtherance of such intention, the releases herein given shall be and remain in effect as full and
16 complete general releases, notwithstanding the discovery or existence of any such addition or
17 difference facts, except as provided in Section 3.4 herein.

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and shall
20 be null and void if, for any reason, it is not approved and entered by the Court within one year after
21 it has been fully executed by all parties. In the event the Court does not approve this Consent
22 Judgment within one year, the funds paid pursuant to Sections 3 and 4 of this Consent Judgment
23 shall be returned to TRI.

24 **7. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
26 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
27 provisions remaining shall not be adversely affected.

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1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and the obligations of TRI hereunder as to the Products apply only within the State of California.
4 In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by
5 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
6 inapplicable or no longer required as a result of any such repeal or preemption or rendered
7 inapplicable by reason of law generally as to the Products, then TRI shall notify Vinocur and his
8 counsel and may have no further obligations pursuant to this Consent Judgment with respect to, and
9 to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
10 interpreted to relieve TRI from any obligation to comply with any pertinent state or federal toxics
11 control law.

12 **9. NOTICES**

13 Unless specified herein, all correspondence and notices required to be provided pursuant to
14 this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class,
15 (registered or certified mail) return receipt requested, (iii) sent by overnight courier, or (iv) sent by
16 email, but only if receipt is confirmed in an email from the recipient(s) at the following addresses:

17 To TRI:

18 Charles Ibold
19 Secretary & General Counsel
20 Things Remembered, Inc.
21 5500 Avion Park Drive
22 Highland Heights, OH 44143
23 CIbold@ThingsRemembered.com

To Vinocur:

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

24 With a copy to:

25 Jon Welner, Esq.
26 Jeffer Mangels Butler & Mitchell LLP
27 Two Embarcadero Center, 5th Floor
28 San Francisco, California 94111
jwelner@jmbm.com

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

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

2 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
3 each of which shall be deemed an original, and all of which, when taken together, shall constitute
4 one and the same document. A facsimile or pdf signature shall be as valid as the original.

5 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Vinocur and his attorneys agree to comply with the reporting form requirements referenced
7 in California Health & Safety Code § 25249.7(f).

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9 Vinocur and TRI agree to mutually employ their, and their counsel's, best efforts to support
10 the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by
11 the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety
12 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
13 which Vinocur shall draft and file, and TRI shall not oppose. If any third party objection to the
14 noticed motion is filed, Vinocur and TRI shall work together to file a joint reply or separate replies
15 if the parties so desire and appear at any hearing before the Court. This provision is a material
16 component of the Consent Judgment and shall be treated as such in the event of a breach. If the
17 Court does not grant the motion to approve this Consent Judgment, and if the parties choose not to
18 pursue a modified Consent Judgment within 30 days after the Court's denial of the motion to
19 approve, then, upon remittitur, any and all payments made pursuant to Sections 3 and 4 of this
20 Consent Judgment will be returned to TRI.

21 **13. MODIFICATION**

22 This Consent Judgment may be modified only: (1) by written agreement of the parties and
23 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
24 of any party and entry of a modified Consent Judgment by the Court.

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1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions of this Consent Judgment.

4 AGREED TO:

AGREED TO:

5
6 Date: April 11, 2014

Date: _____

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8 By: 
Plaintiff, Laurence Vinocur

By: _____
Francis M. Rowan
Senior Vice President
Defendant, Things Remembered, Inc.

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14. AUTHORIZATION

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

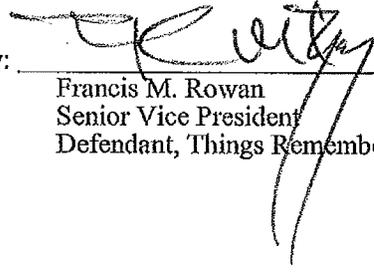
AGREED TO:

AGREED TO:

Date: _____

Date: 4/23/14

By: _____
Plaintiff, Laurence Vinocur

By: 
Francis M. Rowan
Senior Vice President
Defendant, Things Remembered, Inc.