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FRY'S ELECTRONICS, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
15

16 LAURENCE VINOCUR,
17 Plaintiff,
18 v.
19 COHESION PRODUCTS, LLC; et al.
20 Defendants.

Case No. RG13678011

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**[PROPOSED] CONSENT JUDGMENT
AS TO COHESION PRODUCTS, LLC**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: May 2, 2013

28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Plaintiff”) and Cohesion Products, LLC (“Cohesion”), with Plaintiff and Cohesion collectively
5 referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Cohesion**

11 Cohesion 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 1.4.1 Plaintiff alleges that Cohesion manufactured, imported, sold and/or distributed
16 for sale in California, products with foam cushioned components containing tris(1,3-dichloro-2-
17 propyl) phosphate (“TDCPP”) and with upholstery vinyl containing di(2-ethylhexyl)phthalate
18 (“DEHP”) without the requisite Proposition 65 health hazard warnings. TDCPP and DEHP are
19 hereinafter collectively referred to as the “Listed Chemicals.”

20 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
21 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
22 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
23 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Plaintiff alleges that
24 TDCPP escapes from foam padding, leading to human exposures.

25 1.4.3 Pursuant to Proposition 65, on October 24, 2003, California listed DEHP
26 pursuant to Proposition 65, as a chemical known to cause reproductive harm or birth defects. DEHP
27 became subject to the “clear and reasonable warning” requirements of the act one year later on
28 October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and

1 25249.10(b). Vinocur alleges that DEHP escapes from the upholstery vinyl resulting in human
2 exposures.

3 1.5 Product Description

4 The categories of products that are covered by this Consent Judgment as to Cohesion are
5 identified on Exhibit A (hereinafter “Products”). Polyurethane foam or upholstery vinyl supplied,
6 shaped or manufactured for use as a component of another product, such as padded upholstered
7 gaming chairs, but not itself a finished product, is specifically excluded from the definition of
8 Products and shall not be identified by Cohesion on Exhibit A as a Product.

9 1.6 Notices of Violation

10 Beginning in February 2013, Plaintiff served Cohesion and requisite public enforcement
11 agencies with “60-Day Notices of Violation” (“TDCPP Notices”) that provided the recipients with
12 notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
13 consumers, and workers in California that the Products expose users to TDCPP. To the best of the
14 Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations
15 set forth in the Notices.

16 On or about October 4, 2013, Vinocur served Cohesion and requisite public enforcement
17 agencies, with a document entitled “Third Supplemental 60-Day Notice of Violation” (the “DEHP
18 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on
19 Cohesion’s alleged failure to warn customers, consumers, and workers in California that the
20 Products expose users to the Listed Chemicals. To the best of the parties’ knowledge, no public
21 enforcer has prosecuted the allegations set forth in the DEHP Notice. The TDCPP Notices and
22 DEHP Notice are collectively referred to herein as the “Notices.”

23 1.7 Complaint

24 On May 2, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County of
25 Alameda against the Cohesion, Fry’s Electronics, Inc. and Does 1 through 150, *Laurence Vinocur v.*
26 *Cohesion Products, LLC, et al.*, Case No. RG 13-678011, alleging violations of Proposition 65,
27 based in part on the alleged unwarned exposures to TDCPP contained in the Products. Following
28 the expiration of the 66 days after Vinocur’s issuance of the DEHP Notice referred to in Section 1.6

1 above, the Complaint in the above captioned matter shall be deemed amended to include allegations
2 that the Products herein described contained the Listed Chemicals.

3 **1.8 No Admission**

4 Cohesion denies the material factual and legal allegations contained in Plaintiff's Notices and
5 Complaint and maintains that all products that it has manufactured, imported, distributed, and/or sold
6 in California, including the Products, have been and are in compliance with all laws. Nothing in this
7 Consent Judgment shall be construed as an admission by Cohesion of any fact, finding, conclusion,
8 issue of law, conclusion of law, or violation of law, nor shall compliance with this Consent
9 Judgment constitute or be construed as an admission by Cohesion of any fact, finding, conclusion,
10 issue of law, conclusion of law, or violation of law. However, this Section shall not diminish or
11 otherwise affect Cohesion's obligations, responsibilities, and duties under this Consent Judgment.

12 **1.9 Consent to Jurisdiction**

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

17 **2. DEFINITIONS**

18 **2.1 California Customers**

19 "California Customer" shall mean any customer that Cohesion reasonably understands is
20 located in California, has a California warehouse or distribution center, maintains a retail outlet in
21 California, or has made internet sales into California on or after January 1, 2011.

22 **2.2 Detectable**

23 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent of
24 .0025%) of any one chemical in any material, component, or constituent of a subject product, when
25 analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
26 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
27 and measure the quantity, of TDCPP and/or tris(2-chloroethyl) phosphate ("TCEP") in a solid
28 substance.

1 **2.3 Effective Date**

2 “Effective Date” shall mean October 15, 2013.

3 **2.4 Private Label Covered Products**

4 “Private Label Covered Products” means Products that bear a brand or trademark owned or
5 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of
6 California.

7 **2.5 Reformulated Products**

8 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
9 or TCEP and no more than 1,000 ppm (0.1%) DEHP, butyl benzyl phthalate (“BBP”) or Di-n-butyl
10 phthalate (“DBP”) pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
11 and 8270C or any other methodology utilized by federal or state agencies for the purpose of
12 determining phthalate content in a solid substance.

13 **2.6 Reformulation Standard**

14 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
15 TDCPP and TCEP, and no more than 1,000 ppm for each of DEHP, BBP and DBP.

16 **2.7 Retailer**

17 “Retailer” means an individual or entity that offers a Product for retail sale to consumers in
18 the State of California.

19 **3. INJUNCTIVE RELIEF: REFORMULATION**

20 **3.1 Reformulation Commitment**

21 Commencing on March 31, 2014, Cohesion shall not manufacture or import for distribution
22 or sale to California Customers, or cause to be manufactured or imported for distribution or sale to
23 California Customers, any Products that are not Reformulated Products.

24 **3.2 Vendor Notification/Certification**

25 On or before the Effective Date, Cohesion shall provide written notice to all of its then-
26 current vendors of the Products that will be sold or offered for sale in California, or to California
27 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
28 Products for potential sale in California. In addressing the obligation set forth in the preceding

1 sentence, Cohesion shall not employ statements that will encourage a vendor to delay compliance
2 with the Reformulation Standard. Cohesion shall subsequently obtain written certifications, no later
3 than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products
4 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications
5 shall be held by Cohesion for at least two years after their receipt and shall be made available to
6 Plaintiff upon request.

7 3.3 Products No Longer in Cohesion's Control

8 No later than 45 days after the Effective Date, Cohesion shall send a letter, electronic or
9 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
10 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notices
11 Cohesion received from Plaintiff ("Exemplar Product"); and (2) any California Customer and/or
12 Retailer that Cohesion reasonably understands or believes had any inventory for resale in California
13 of Exemplar Products as of the Notices' date. The Notification Letter shall advise the recipient that
14 the Exemplar Product "contains TDCPP, a chemical known to the State of California to cause
15 cancer, and DEHP, a chemical known to the State of California to cause birth defects and other
16 reproductive harm," and request that the recipient either: (a) label the Exemplar Products remaining
17 in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or (b) return,
18 at Cohesion's sole expense, all units of the Exemplar Product held for sale in California, or to
19 California Customers, to Cohesion or a party Cohesion has otherwise designated. The Notification
20 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar
21 Product will be labeled or returned. Cohesion shall maintain records of all correspondence or other
22 communications generated pursuant to this Section for two years after the Effective Date and shall
23 promptly produce copies of such records upon Plaintiff's written request.

24 3.4 Current Inventory

25 Any Products in, or manufactured and en route to, Cohesion's inventory as of or after
26 December 31, 2013, that do not qualify as Reformulated Products and that Cohesion has reason to
27 believe may be sold or distributed for sale in California, shall contain a clear and reasonable warning
28 as set forth in Section 3.5 below unless Section 3.6 applies.

1 **3.5 Product Warnings**

2 **3.5.1 Product Labeling**

3 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
4 labeling, or directly on each Product. Each warning shall be prominently placed with such
5 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
6 to be read and understood by an ordinary individual under customary conditions before purchase.
7 Each warning shall be provided in a manner such that the consumer or user understands to which
8 specific Product the warning applies, so as to minimize the risk of consumer confusion.

9 The warning Cohesion had begun to provide prior to the Effective Date and shall continue to
10 provide pursuant to this Consent Judgment states:

11 **WARNING:** This product contains chemicals
12 known to the state of California to
13 cause cancer, birth defects and
14 reproductive harm.

14 **3.5.2 Internet Website Warning**

15 Cohesion shall instruct its California Customers that a warning shall be given in conjunction
16 with the sale of the Products to California, or California Customers, via the internet, and that a
17 warning shall appear on one or more web pages displayed to a purchaser during the checkout
18 process. Cohesion shall maintain (a) a copy of the instruction to its California Customers or (b) its
19 own efforts to update sites (as applicable) and shall provide such copies to Plaintiff upon reasonable
20 request. The following warning statement shall be used and shall: (a) appear adjacent to or
21 immediately following the display, description, or price of the Product; (b) appear as a pop-up box;
22 or (c) otherwise appear automatically to the consumer. The warning text shall be the same type size
23 or larger than the Product description text:

24 **WARNING:** This product contains TDCPP, a flame
25 retardant chemical known to the State
26 of California to cause cancer; and
27 DEHP, a phthalate chemical known to
28 the State of California to cause birth
 defects and other reproductive harm.

1 **3.6 Alternatives to Interim Warnings**

2 The obligations of Cohesion under Section 3.3 shall be relieved provided Cohesion certifies
3 on or before December 15, 2013 that only Exemplar Products meeting the Reformulation Standard
4 will be offered for sale in California, or to California Customers, after December 31, 2013. The
5 obligations of Cohesion under Section 3.4 shall be relieved provided Cohesion certifies on or before
6 December 15, 2013 that, after June 30, 2014, it will only distribute or cause to be distributed for sale
7 in, or sell in, California, or to California Customers, Products (i.e., Products beyond the Exemplar
8 Product) meeting the Reformulation Standard. The certifications provided by this Section are
9 material terms and time is of the essence.

10 **4. MONETARY PAYMENTS**

11 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

12 In settlement of all the claims referred to in this Consent Judgment, Cohesion shall pay the
13 civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment will
14 be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with
15 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
16 (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for Laurence Vinocur.”
17 Each penalty payment shall be delivered to the addresses listed in Section 4.5 below. Cohesion shall
18 be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing
19 under this Section that are not received within two business days of the due date.

20 4.1.1 Initial Civil Penalty. On or before the Effective Date, Cohesion shall make an
21 initial civil penalty payment in the amount identified on Exhibit A.

22 4.1.2 Second Civil Penalty. On or before January 15, 2014, Cohesion shall make a
23 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
24 penalty may be reduced according to any penalty waiver for which Cohesion is eligible under
25 Sections 4.1.4(i) and 4.1.4(iii), below.

26 4.1.3 Third Civil Penalty. On or before November 30, 2014, Cohesion shall make a
27 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
28

1 may be reduced according to any penalty waiver for which Cohesion is eligible under Sections
2 4.1.4(ii) and 4.1.4(iv), below.

3 4.1.4 Reductions to Civil Penalty Payment Amounts. Cohesion may reduce the
4 amount of the second and/or third civil penalty payments identified on Exhibit A by providing
5 Plaintiff with certification of certain efforts undertaken to reformulate its Products or limit the
6 ongoing sale of non-reformulated Products in California. The options to provide a written
7 certification in lieu of making a portion of the civil penalty payment constitute material terms of this
8 Consent Judgment, and with regard to such terms, time is of the essence.

9 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
10 **Products Sold or Offered for Sale in California.**

11 As shown on Exhibit A, a portion of the second civil penalty shall be waived, to the extent
12 that it has agreed that, as of November 1, 2013, and continuing into the future, it shall only
13 manufacture or import for distribution or sale to California Customers or cause to be manufactured
14 or imported for distribution or sale to California Customers, Reformulated Products. An officer or
15 other authorized representative of Cohesion that has exercised this election shall provide Plaintiff
16 with a written certification confirming compliance with such conditions, which certification must be
17 received by Plaintiff's counsel on or before December 15, 2013.

18 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

19 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
20 Cohesion has agreed that, as of March 31, 2014, and continuing into the future, it shall only
21 manufacture or import for distribution or sale in the California or cause to be manufactured or
22 imported for distribution or sale in the California, Reformulated Products which also do not contain
23 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
24 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject
25 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
26 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
27 presence, and measure the quantity of TDBPP in a solid substance. An officer or other authorized
28 representative of Cohesion that has exercised this election shall provide Plaintiff with a written

1 certification confirming compliance with such conditions, which certification must be received by
2 Plaintiff's counsel on or before November 15, 2014.

3 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
4 **Exemplar Products from the California Market.**

5 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
6 other authorized representative of Cohesion provides Plaintiff with written certification, by
7 December 15, 2013, confirming that each individual or establishment in California to which it
8 supplied the Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to return
9 all Exemplar Products held for sale in California.¹

10 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
11 **California of Unreformulated Inventory.**

12 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
13 other authorized representative of Cohesion provides Plaintiff with written certification, on or before
14 November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to distribute, offer
15 for sale, or sell in California, or to California Customers, only Reformulated Products.

16 **4.2 Representations**

17 Cohesion represents that the sales data and other information concerning its size, knowledge
18 of the Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Plaintiff was
19 truthful to its knowledge and a material factor upon which Plaintiff has relied to determine the
20 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
21 Judgment. If, within nine months of the Effective Date, Plaintiff discovers and presents to Cohesion
22 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
23 then Cohesion shall have 30 days to meet and confer regarding the Plaintiff's contention. Should
24 this 30 day period pass without any such resolution between the Plaintiff and Cohesion, Plaintiff
25

26 ¹ For purposes of this Section, the term Exemplar Products shall further include Products for
27 which Plaintiff has, prior to October 31, 2013, provided Cohesion with test results from a NVLAP
28 accredited laboratory showing the presence of TDCPP and/or TCEP at a level in excess of 250 ppm
pursuant to EPA testing methodologies 3545 or 8270C or the presence of DEHP at a level in excess
of 1000 ppm pursuant to EPA testing methodologies 3580A or 8270C.

1 shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for
2 breach of contract.

3 Cohesion further represents that in implementing the requirements set forth in Sections 3.1
4 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
5 reformulation of its Products and Additional Products on a nationwide basis and not employ
6 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
7 goods intended for sale to California Consumers.

8 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

9 If Plaintiff provides notice and appropriate supporting information to Cohesion that levels of
10 TDCPP in excess of the Reformulation Standard have been detected in one or more Products labeled
11 or otherwise marked in an identifiable manner as manufactured or imported after a deadline for
12 meeting the Reformulation Standard has arisen for Cohesion under Sections 3.1 or 3.6 above,
13 Cohesion may elect to pay a stipulated penalty to relieve any further potential liability under
14 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
15 question.² The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000
16 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
17 excess of the Reformulation Standards but under 250 ppm.³ Plaintiff shall further be entitled to
18 reimbursement of their associated expense in an amount not to exceed \$5,000 regardless of the
19 stipulated penalty level. Cohesion under this Section must provide notice and appropriate supporting
20 information relating to the purchase (e.g. vendor name and contact information including
21 representative, purchase order, certification (if any) received from vendor for the exemplar or
22 subcategory of products), test results, and a letter from a company representative or counsel attesting
23 to the information provided, to Plaintiff within 30 calendar days of receiving test results from

24 _____
25 ² This Section shall not be applicable where the vendor in question had previously been
26 found by Cohesion to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
28 penalty for a second exceedance by Cohesion's vendor at a level between 100 and 249 ppm shall
not be available after July 1, 2015.

³ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the full remedies
2 provided pursuant to this Consent Judgment and at law.

3 **4.4 Reimbursement of Fees and Costs**

4 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
6 reimbursement issue to be resolved after the material terms of the agreement had been settled.

7 Shortly after the other settlement terms had been finalized, Cohesion expressed a desire to resolve
8 the fee and cost issue. Cohesion then agreed to pay Plaintiff and his counsel under general contract
9 principles and the private attorney general doctrine codified at California Code of Civil Procedure
10 § 1021.5 for all work performed through the mutual execution of this agreement, including the fees
11 and costs incurred as a result of investigating, bringing this matter to Cohesion's attention,
12 negotiating a settlement in the public interest, and seeking court approval of the same. In addition,
13 the negotiated fee and cost figure expressly includes the anticipated significant amount of time
14 Plaintiff's counsel will incur to monitor various provisions in this agreement over the next two years,
15 with the exception of additional fees that may be incurred in relation to any election by Cohesion
16 pursuant to Section 11. Cohesion more specifically agreed, upon the Court's approval and entry of
17 this Consent Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on Exhibit
18 A. Cohesion further agreed to tender and shall tender its full required payment under this Section to
19 a trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within two
20 business days of the Effective Date. Such funds shall be released from the trust account upon the
21 Court's approval and entry of this Consent Judgment.

22 **4.5 Payment Procedures**

23 **4.5.1 Issuance of Payments.**

24 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
25 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
2 Section 4.1 and 4.3 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of
3 the following addresses, as appropriate:

4 For United States Postal Service Delivery:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

12 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section
14 4.5.1(a) above, as proof of payment to OEHHA.

15 4.5.3 Tax Documentation. Cohesion shall issue a separate 1099 form for each
16 payment required by this Section to: (a) Laurence Vinocur, whose address and tax identification
17 number shall be furnished upon request after this Consent Judgment has been fully executed by the
18 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard
19 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
20 4010, Sacramento, CA 95814, and (c) "The Chanler Group" (EIN: 94-3171522) to the address set
21 forth in Section 4.5.1(a) above.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Plaintiff's Release of Proposition 65 Claims**

24 Plaintiff, acting on his own behalf and in the public interest, releases Cohesion, its parents,
25 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
26 attorneys, and each entity to whom Cohesion directly or indirectly distributes or sells Products,
27 including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees,
28 cooperative members, and licensees, including Fry's Electronics, Inc. (collectively, "Releasees"),

1 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
2 respect to the Products or Additional Products (as defined in Section 11.1 and delineated on a
3 Settling Defendant's Exhibit A).

4 **6. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and shall
6 be null and void if, for any reason, it is not approved in its entirety and entered by the Court within
7 one year after it has been fully executed by all Parties. If the Court does not approve the Consent
8 Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the
9 ruling. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in
10 its normal course on the Court's trial calendar. If the Court's approval is ultimately overturned by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
13 proceed in its normal course on the Court's trial calendar. In the event that this Consent Judgment is
14 entered by the Court and subsequently overturned by any appellate court, any monies that have been
15 provided to OEHHA, Plaintiff or his counsel pursuant to Section 4, above, shall be refunded within
16 15 days of the appellate decision becoming final. If the Court does not approve and enter the
17 Consent Judgment within one year of the Effective Date, any monies that have been provided to
18 OEHHA or held in trust for Plaintiff or his counsel pursuant to Section 4, above, shall be refunded to
19 Cohesion within 15 days.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California.
22 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
23 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
24 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
25 inapplicable by reason of law generally as to the Products, then Cohesion may provide written notice
26 to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant to this
27 Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in
28

1 this Consent Judgment shall be interpreted to relieve Cohesion from any obligation to comply with
2 any pertinent state or federal law or regulation.

3 **8. NOTICES**

4 Unless specified herein, all correspondence and notices required to be provided pursuant to
5 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered
6 or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at
7 the following addresses:

8 To Cohesion:

9 At the address shown on Exhibit A

To Plaintiff:

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

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

15 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

19 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

22 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

23 11.1 In addition to the Products, where Cohesion has identified on Exhibit A additional
24 products that contain Listed Chemicals and that are sold or offered for sale by it in California, or to
25 California Customers, ("Additional Products"), then by no later than October 31, 2013, Cohesion
26 may provide Plaintiff with additional information or representations necessary to enable them to
27 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &
28 Safety Code § 25249.7, that includes the Additional Products. Polyurethane foam or upholstery

1 vinyl supplied, shaped or manufactured for use as a component of a product, such as gaming chairs,
2 is specifically excluded from the definition of Additional Products and shall not be identified by
3 Cohesion on Exhibit A as an Additional Product. Except as agreed upon by Plaintiff, Cohesion shall
4 not include a product, as an Additional Product, that is the subject of an existing 60-day notice
5 issued by Plaintiff or any other private enforcer at the time of execution. After receipt of the
6 required information, Plaintiff agrees to issue a supplemental 60-day notice in compliance with all
7 statutory and regulatory requirements for the Additional Products. Plaintiff will, and in no event
8 later than October 15, 2014, prepare and file an amendment to this Consent Judgment to incorporate
9 the Additional Products within the defined term "Products" and serve a copy thereof and its
10 supporting papers (including the basis for supplemental stipulated penalties, if any) on the Office of
11 the California Attorney General; upon the Court's approval thereof and finding that the supplemental
12 stipulated penalty amount, if any, is reasonable, the Additional Products shall become subject to
13 Section 5.1 in addition to Section 5.2. Cohesion shall, at the time it elects to utilize this Section and
14 tenders the additional information or representations regarding the Additional Products to Plaintiff,
15 tender to The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated penalties
16 and attorneys' fees and costs incurred by Plaintiff in issuing the new notice and engaging in other
17 reasonably related activities, which may be released from the trust as awarded by the Court upon
18 Plaintiff's application. Any fee award associated with the modification of the Consent Judgment to
19 include Additional Products shall not offset any associated supplemental penalty award, if any.
20 (Any tendered funds remaining in the trust thereafter shall be refunded to Cohesion within 15 days).
21 Such payment shall be made to "in trust for The Chanler Group" and delivered as per Section
22 4.5.1(a) above.

23 11.2 Plaintiff and Cohesion agree to support the entry of this agreement as a Consent
24 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
25 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
26 is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft and file.
27 If any third party objection to the noticed motion is filed, Plaintiff and Cohesion shall work together
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1 to file a reply and appear at any hearing before the Court. This provision is a material component of
2 the Consent Judgment and shall be treated as such in the event of a breach.

3 **12. MODIFICATION**


4 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
5 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of
6 any party and entry of a modified Consent Judgment by the Court.

7 **13. AUTHORIZATION**

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


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AGREED TO:



Plaintiff Laurence Vinocur

AGREED TO:



John Colocousis, President
Cohesion Products, LLC

Date: October 10, 2013

Date: October 10, 2013

EXHIBIT A

I. Legal Department
Cohesion Products, LLC
15 Cushing
Irvine, California 92618

II. Names of Releasees (Optional; May be Partial)

Fry's Electronics, Inc.

III. Types of Covered Products Applicable to Cohesion Products, Inc. (Check All That Match 60-Day Notice or Supplemental Notice Received)

Foam-cushioned pads for children and infants to lie on, such as rest mats

Upholstered furniture

Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

Car seats, strollers

Other (specify): padded upholstered gaming chairs

IV. Types of Additional Products Cohesion Elects to Address (if any):

V. Cohesion, Inc.'s Required Settlement Payments

\$20,000 initial payment due on or before the Effective Date;

\$24,000 second payment due on or before January 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iv).

VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

A. Fees and Costs for Cohesion: \$43,000.

B. Additional Fees and Costs:

\$4,000 supplemental fee for Fry's Electronics, Inc. who received a 60-Day Notice of Violation and/or Supplemental 60-Day Notice of Violation partially released by the Consent Judgment;

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VII. Person(s) to receive Notices on behalf of Settling Defendant pursuant to Section 8:

Legal Department
Cohesion Products, LLC
15 Cushing
Irvine, California 92618

Elizabeth V. McNulty, Esq.
Hewitt Wolensky McNulty & Hickson LLP
401 MacArthur Blvd., Suite 300
Newport Beach, Ca. 92660