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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 LAURENCE VINOUCUR,

16 Plaintiff,

17 v.

18 MARMON HOLDINGS, INC; et al.,

19 Defendants.

Case No. RG15765559

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Laurence Vinocur and Wells Lamont LLC**

3 This Consent Judgment is entered into by and between Laurence Vinocur (“Vinocur”) and
4 Wells Lamont LLC (“Wells”), with Vinocur and Wells collectively referred to as the “Parties”
5 and each individually referred to as a “Party.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Vinocur alleges that Wells manufactures, distributes, sells, and/or offers for sale in
16 California gloves with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”)
17 without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to California to cause birth defects and other reproductive
19 harm if human exposure exceeds certain thresholds.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as gloves with
22 vinyl/PVC components containing DEHP including, but not limited to, the *Wells Lamont Work*
23 *Gloves, #3210L, UPC #0 53300 05197 5*, which were manufactured, distributed, sold and/or
24 offered for sale in California by Wells, hereinafter referred to as the “Products.”

25 **1.6 Notice of Violation**

26 On or about July 11, 2014, Vinocur served Wells and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Wells was in
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1 violation of Proposition 65 for failing to warn its customers and consumers in California that the
2 Products exposed users to DEHP. To the best of the Parties' knowledge, no public enforcer has
3 commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On or about April 13, 2015, Vinocur, who was and is acting in the interest of the general
6 public in California, filed a first amended complaint ("Complaint" or "Action") in the Superior
7 Court in and for the County of Alameda against Wells and Does 1 through 150, alleging, *inter*
8 *alia*, violations of Proposition 65 based on the alleged exposures to DEHP contained in the
9 Products sold by Wells in the State of California.

10 **1.8 No Admission**

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

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Wells as to the allegations contained in the Complaint, that venue is proper in
23 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
24 this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
27 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards and Commitment**

3 Commencing on the Effective Date and continuing thereafter, Wells shall only
4 manufacture, distribute, ship, sell, or offer to ship for sale in California Products that are
5 “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated Products” shall
6 mean Products that contain no more than 1,000 parts per million (0.1%) DEHP in each Accessible
7 Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or
8 equivalent methodologies utilized by state or federal agencies for the purpose of determining
9 DEHP content in a solid substance. For purposes of this Consent Judgment, “Accessible
10 Components” shall mean a component of a Product that can be touched by a person during
11 normal, intended and foreseeable use of the Product.

12 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

13 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

14 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
15 claims referred to in this Consent Judgment, Wells shall pay \$54,000 in civil penalties in
16 accordance with this Section. Each penalty payment will be allocated in accordance with
17 California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the
18 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
19 25% of the penalty remitted to Vinocur. Vinocur’s counsel shall be responsible for remitting
20 Wells’ penalty payment(s) under this Consent Judgment to OEHHA.

21 **3.1.1 Initial Civil Penalty.** Within two days of the Effective Date, Wells shall
22 make an initial civil penalty payment of \$18,000. Wells shall provide its payment in a single
23 check made payable to “Laurence Vinocur, Client Trust Account” to be delivered to the address
24 provided in Section 3.4, below.

25 **3.1.2 Final Civil Penalty.** On May 15, 2015, Wells shall make a final civil
26 penalty payment of \$36,000. Pursuant to title 11 California Code of Regulations, section
27 3203(c), Vinocur agrees that the final civil penalty payment shall be waived in its entirety if, no
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1 later than May 1, 2015, an officer of Wells provides Vinocur with an original, signed written
2 certification that all of the Products it ships for sale or distributes for sale in California as of the
3 date if its certification are Reformulated Products, and that Wells will continue to offer only
4 Reformulated Products in California in the future. The option to certify early reformulation in
5 lieu of making the final civil penalty payment otherwise required by this Section is a material
6 term, and time is of the essence. Wells shall deliver its certificate, if any, to Vinocur's counsel at
7 the address provided in Section 3.4, below. In the event that Wells does not timely certify its
8 compliance or make the final civil penalty payment required by this Section, the Parties agree that
9 Vinocur may file a motion or application seeking an order compelling Wells's compliance with
10 this Section. If successful, the Parties further agree that Vinocur shall be entitled to his
11 reasonable attorneys' fees and costs pursuant to general contract principles and Code of Civil
12 Procedure section 664.6.

13 **3.2 Reimbursement of Attorneys' Fees and Costs**

14 The Parties acknowledge that Vincour and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
16 leaving the issue to be resolved after the material terms of the agreement had been settled.
17 Shortly after the other settlement terms had been finalized, Wells expressed a desire to resolve
18 Vinocur's fees and costs. The Parties then negotiated a resolution of the compensation due to
19 Vincour and his counsel under general contract principles and the private attorney general
20 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed
21 through the mutual execution of this agreement and the Court's approval of the same, but
22 exclusive of fees and costs on appeal, if any, Wells shall reimburse Vinocur and his counsel
23 \$38,000. Wells' payment shall be due within two days of the Effective Date, and delivered to
24 the address in Section 3.4 in the form of a check payable to "The Chanler Group." The
25 reimbursement shall cover all fees and costs incurred by Vinocur investigating, bringing this
26 matter to Wells' attention, litigating, and negotiating a settlement of the matter in the public
27 interest.

1 **3.3 Payments Held In Trust**

2 With the exception of the final civil penalty payment required by Section 3.1.2, Wells
3 shall deliver all payments required by this Consent Judgment to its counsel within one week
4 of the date that this agreement is fully executed by the Parties. Wells' counsel shall confirm
5 receipt of settlement funds in writing to Vinocur's counsel and, thereafter, hold the amounts
6 paid in trust until such time as the Court grants the motion for approval of the Parties'
7 settlement contemplated by Section 5. Within two days of the Effective Date, Wells' counsel
8 shall deliver all settlement payments it has held in trust to Vinocur's counsel at the address
9 provided in Section 3.4. In the event the final civil penalty payment required by Section
10 3.1.2 becomes due prior to the Effective Date, Wells shall deliver the final civil penalty
11 payment to its attorney to be held in trust until, and disbursed within two days after, the
12 Effective Date.

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to the following
15 address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Vinocur's Public Release of Proposition 65 Claims**

23 Vinocur acting on his own behalf and in the public interest releases Wells, its parents,
24 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
25 attorneys, and each entity to whom Wells directly or indirectly distributes or sells Products,
26 including but not limited to downstream distributors, wholesalers, customers, retailers,
27 franchisees, cooperative members, licensors, and licensees ("Releasees") from all claims for
28 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the

1 Products. Compliance with the terms of this Consent Judgment constitutes compliance with
2 Proposition 65 with respect to exposures to DEHP from the Products.

3 **4.2 Vinocur's Individual Release of Claims**

4 Vinocur also, in his individual capacity only and *not* in his representative capacity,
5 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
6 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
7 claims, liabilities and demands of Vinocur of any nature, character or kind, whether known or
8 unknown, suspected or unsuspected, limited to and arising out of any violation of Proposition 65
9 regarding the failure to warn about exposure to DEHP in the Products manufactured, distributed,
10 sold and/or offered for sale by Releasees.

11 **4.3 Wells' Release of Vinocur**

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

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one
21 year after it has been fully executed by all Parties. Vinocur and Wells agree to support the entry
22 of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
23 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
24 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
25 motion Vinocur shall draft and file and Wells shall support, appearing at the hearing if so
26 requested. If any third-party objection to the motion is filed, Vinocur and Wells agree to work
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1 together to file a reply and appear at any hearing. This provision is a material component of the
2 Consent Judgment and shall be treated as such in the event of a breach.

3 **6. SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any provision is Vinocur by a
5 court to be unenforceable, the validity of the enforceable provisions remaining shall not be
6 adversely affected.

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of
9 California and apply within the State of California. In the event that Proposition 65 is repealed,
10 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
11 then Wells may provide Vinocur with written notice of any asserted change in the law, and shall
12 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
13 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to
14 relieve Wells from its obligation to comply with any pertinent state or federal law or regulation.

15 **8. NOTICES**

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

20 To Wells:	To Vinocur:
21 Keith Swan, CEO	Proposition 65 Coordinator
22 Wells Lamont LLC	The Chanler Group
23 6640 West Touhy Ave.	2560 Ninth Street
24 Niles, IL 60714	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

25 With a copy to:

26 George Gigounas, Esq.
27 DLA Piper LLP (US)
28 555 Mission Street, Suite 2400
San Francisco, CA 94105

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

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4 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

5 This Consent Judgment may be executed in counterparts and by facsimile or portable
6 document format (".pdf") signature, each of which shall be deemed an original, and all of which,
7 when taken together, shall constitute one and the same document. A facsimile or .pdf signature
8 shall be as valid as the original.

9 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

12 **11. MODIFICATION**

13 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
14 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
15 of any Party and entry of a modified Consent Judgment by the Court.

16 **12. ENTIRE AGREEMENT**

17 This Consent Judgment contains the sole and entire agreement and understanding of the
18 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, and understandings related hereto. No representations, oral or
20 otherwise, express or implied, other than those contained herein have been made by any Party
21 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
22 deemed to exist or to bind any of the Parties.
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13. AUTHORIZATION

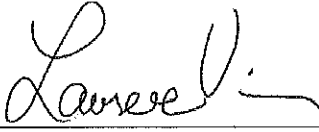
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: April 16, 2015

Date: 4/22/2015

By: 
Laurence Vinocur

By: 
Keith Swan, CEO
Wells Lamont LLC