

1 Christopher C. Moscone, SBN 170250
Jordan M. Otis, SBN 276274
2 MOSCONE EMBLIDGE & OTIS LLP
220 Montgomery Street, Suite 2100
3 San Francisco, CA 94104
Tel. (415) 362-3599
4 Fax: (415) 362-2006

5 Attorneys for Plaintiff
LAURENCE VINOUCUR
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

9 LAURENCE VINOUCUR,
10 Plaintiff,
11 v.
12 FEDERAL CARTRIDGE COMPANY,
13 Defendants.
14

Case No.: CGC-15-546420

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT FEDERAL
CARTRIDGE COMPANY**

(Health & Safety Code § 25249.5 *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 Federal Cartridge Company (“Federal”), with Vinocur and Federal each
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Vinocur is a resident of the State of California who represents that he seeks to promote
8 awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating
9 harmful substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Vinocur alleges that Federal employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Vinocur alleges that Federal manufactured, imported, sold and/or distributed
16 for sale in California, hearing protection with Vinyl/PVC components containing Di(2-
17 ethylhexyl)phthalate (“DEHP”) without providing the clear and reasonable health hazard warnings
18 required by Proposition 65.

19 1.4.2 Vinocur alleges that exposure to DEHP occurs via ingestion from hand to
20 mouth transfer and via dermal contact with hearing protection with Vinyl/PVC components.

21 **1.5 Product Description**

22 The category of products covered by this Consent Judgment is Champion-branded ear
23 muffs, including, but not limited to, Champion Eyes & Ears Ballistic Eyes & Ears Combo, #40704,
24 UPC #0 76683 40704 7, Passive Ear Muff Black #40970, Slim Passive Ear Muff Black #40971,
25 Slim Passive Ear Muff, Pink #40972, Electronic Ear Muff Pink #40975, Passive Ear Muff &
26 Ballistic Glasses Combo Black #40622, Passive Ear Muff & Ballistic Glasses Combo Pink
27 #40624), and Champion Eyes & Ears Electronic Earmuffs, #40974, UPC #0 76683 40974 4 (the
28 category of products is referred to hereinafter as the “Products”).

1 **1.6 Notices of Violation**

2 On October 24, 2014, Vinocur served Alliant Techsystems Operations LLC (“ATO”) and
3 certain requisite public enforcement agencies with 60-Day Notices of Violation (the “Initial
4 Notice”) alleging that ATO violated Proposition 65 when it failed to warn customers, consumers,
5 and workers in California that the Products expose users to DEHP. Based on representations that
6 Federal and downstream entities, and not ATO, was responsible for all sales of the Products, on
7 March 13, 2015, Vinocur served Federal, ATO and certain requisite public enforcement agencies
8 with Supplemental 60-Day Notices of Violation (the “Supplemental Notice”) alleging that Federal
9 violated Proposition 65 when it failed to warn customers, consumers, and workers in California that
10 the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has
11 commenced and is diligently prosecuting the allegations set forth in the Notice or the Supplemental
12 Notice.

13 **1.7 Complaint**

14 On June 17, 2015, Vinocur commenced the instant action (“Complaint”), the operative
15 pleading in this action, naming Federal as a defendant, and asserting a cause of action for the
16 alleged violations of Proposition 65 that are the subject of the Supplemental Notice.

17 **1.8 No Admission**

18 Federal denies the material, factual, and legal allegations contained in the Initial Notice,
19 Supplemental Notice and Complaint and maintains that all of the products it has manufactured, sold
20 or distributed for sale in California, including the Products, have been and are in compliance with
21 all laws. Nothing in this Consent Judgment shall be construed as an admission by Federal of any
22 fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
23 Consent Judgment constitute or be construed as an admission by Federal of any fact, finding,
24 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or
25 otherwise affect Federal’s obligations, responsibilities, and duties under this Consent Judgment.

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over Federal as to the allegations contained in the Complaint, that venue is proper in the

1 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
2 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section
3 664.6.

4 **1.10 Effective Date**

5 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
6 this Consent Judgment is approved by the Court.

7 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

8 **2.1 Reformulated Products**

9 Commencing on the Effective Date, and continuing thereafter, Federal shall only purchase
10 for sale, manufacture for sale, or distribute for sale in California “Reformulated Products” or
11 Products affixed with warning labels as described in paragraph 2.2 below. “Reformulated
12 Products” shall mean Products that contain no more than 1000 parts per million (“ppm”) (0.1%) of
13 DEHP in any material, component, or constituent of a Product, when analyzed by an independent
14 laboratory accredited by NVLAP (National Volunteer Laboratory Accreditation Program),
15 American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board
16 (ANAB) – ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS),
17 Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), or
18 International Laboratory Accreditation Cooperation(ILAC) (such laboratory referred to as an
19 “Accredited Lab”) pursuant to EPA testing methodologies 3580 and 8270C, or equivalent
20 methodologies utilized by such Accredited Laboratory or federal or state agencies to determine the
21 presence, or measure the amount, of DEHP in a solid substance (such methodologies referred to as
22 “Approved Methodologies”).

23 **2.2 Warnings**

24 Commencing on the Effective Date, Federal shall ensure that any and all of its Products that
25 are not Reformulated Products as defined in paragraph 2.1 herein, that are or may in the future be
26 manufactured and delivered to Federal’s inventory that Federal reasonably believes may be sold or
27 distributed for sale in California, shall contain one of the following clear and reasonable warnings
28 placed on the packaging for the Product:

1 **WARNING:** This product contains chemicals known to the State of California to
2 cause cancer and birth defects and other reproductive harm.

3 or

4 **WARNING:** This product contains chemicals known to the State of California to
5 cause cancer and birth defects (and other reproductive harm).

6 Each warning in the preceding sentence shall be prominently placed with such conspicuousness as
7 compared with other words, statements, designs, or devices as to render it likely to be read and
8 understood by an ordinary individual under customary conditions before purchase, and each such
9 warning shall be provided in a manner such that the consumer or user understands to which specific
10 Product the warning applies, so as to minimize the risk of consumer confusion.

11 Notwithstanding anything to the contrary herein, all Products that were manufactured prior
12 to the Effective Date, and that contain the following warning placed on the packaging for the
13 Product shall be deemed in compliance with this paragraph 2.2: “WARNING: this product contains
14 chemicals known to the state of California to cause cancer and/or birth defects or other reproductive
15 harm.”

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

18 In settlement of all the claims referred to in this Consent Judgment, Federal shall pay the
19 sum of \$10,000 as civil penalties. All civil penalty payments will be allocated in accordance with
20 California Health & Safety Code section 25249.12(c)(1) and (d), with 75% of the funds remitted to
21 the California Office of Environmental Health Hazard Assessment (“OEHHA”), and 25% of the
22 penalty remitted to “Laurence Vinocur, Client Trust Account.” The civil penalty payment shall be
23 delivered on the date due as set forth above at the addresses provided below. Federal shall be liable
24 for payment of simple interest at a rate of 10% for all amounts due and owing that are not received
25 within two business days of the date they are due, if any.

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1 **3.1.1 Initial Civil Penalty**

2 Within five (5) days of the date this Consent Judgment is entered by the Court, Federal shall
3 make an initial civil penalty payment of \$7,000 (\$5,250 payable to OEHHA, and \$1,750 payable to
4 Vinocur).

5 **3.1.2 Second Civil Penalty**

6 Within thirty (30) days of the date this Consent Judgment is entered by the Court, Federal
7 shall make a second civil penalty payment of \$3,000 (\$2,250 payable to OEHHA, and \$750 payable
8 to Vinocur).

9 **3.1.3 Partial Penalty Waivers**

10 Pursuant to title 11 California Code of Regulations, section 3203(c), the second civil penalty
11 payment of \$3,000 shall be waived if, no later than thirty (30) days after the Effective Date, an
12 officer of Federal provides Vinocur with written certification that, as of July 1, 2015, Federal has
13 complied with the provisions Section 2.2 hereof. The option to make the certifications required
14 under this Section 3.1.3 in lieu of making the second civil penalty payment required by this Section
15 3.1.3 is a material term, and time is of the essence.

16 **3.2 Reimbursement of Fees and Costs**

17 The Parties acknowledge that Vinocur and his counsel have maintained a policy of
18 providing settling defendants the option of resolving Proposition 65 disputes without reaching terms
19 on the amount of fees and costs to be reimbursed, thereby leaving the fee issue to be resolved
20 separately from the material terms of the settlement agreement. In this case, Federal agreed to
21 resolve Vinocur's outstanding fees and costs at the same time as the other material terms and to
22 have them included as part of this Consent Judgment. Under general contract principles and the
23 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for
24 all work performed through the mutual execution of this agreement, including the fees and costs
25 incurred as a result of investigating, bringing this matter to Federal's attention, negotiating a
26 settlement in the public interest, and seeking court approval of the same, Federal agrees to pay
27 Vinocur, within five (5) days of the Court's approval and entry of this Consent Judgment, fees and
28 costs in the amount of \$40,000 payable to Moscone Emblidge & Otis LLP.

1 **3.3 Payment Procedures**

2 **3.3.1 Payment Addresses.**

3 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
4 3.1 and 3.2 shall be delivered to the following address:

5 Moscone Emblidge & Otis LLP
6 Attn: Proposition 65 Coordinator
7 220 Montgomery Street, Suite 2100
8 San Francisco, CA 94104

9 (b) All payments owed to OEHHA, pursuant to Section 4.1, shall be
10 delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the following addresses, as
11 appropriate:

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 P.O. Box 4010
17 Sacramento, CA 95812-4010

18 For Non-United States Postal Service Delivery or Courier:

19 Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 1001 I Street
23 Sacramento, CA 95814

24 **3.3.2 Proof of Payment to OEHHA.** A copy of the check payable to OEHHA
25 shall be mailed, simultaneous with payment, to Moscone Emblidge & Otis at the address set forth in
26 Section 3.3.1(a) above.

27 **3.3.3 Tax Documentation.** Federal shall provide a separate 1099 form for each
28 payment required by this Consent Judgment to: (a) Vinocur, whose address and tax identification
number shall be furnished upon request after this Consent Judgment has been fully executed by the
Parties; (b) “California Office of Environmental Health Hazard Assessment”; and (c) Moscone
Emblidge & Otis LLP, and deliver such form to the payee at the payment addresses provided in
Section 3.3.1, above.

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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Vinocur's Release of Proposition 65 Claims**

3 Vinocur, acting on his own behalf and in the public interest, releases Federal and ATO, their
4 respective former and current parents, subsidiaries, shareholders, affiliated entities under common
5 ownership, directors, officers, agents, employees, attorneys, independent sales representatives,
6 partners, licensors, and each entity which directly or indirectly distributes or sells Products
7 manufactured, imported, distributed, or sold by Federal, including, but not limited to, downstream
8 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and
9 each of their successors and assigns (collectively, "Releasees"), from all claims alleging violations
10 of Proposition 65 based on unwarned exposures to DEHP in the Products manufactured, distributed
11 or sold by Federal prior to the Effective Date. Compliance with the terms of this Consent Judgment
12 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products,
13 as set forth in the Notice.

14 **4.2 Vinocur's Individual Releases of Claims**

15 Vinocur, in his individual capacity only and *not* in any representative capacity, provides a
16 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
17 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
18 liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or
19 unsuspected, limited to and arising out of alleged or actual exposures to DEHP in Products
20 manufactured, imported, distributed, or sold by Federal prior to the Effective Date.

21 **4.3 Waiver of California Civil Code Section 1542**

22 Vinocur in his individual capacity only and *not* in any representative capacity expressly
23 waives any benefits that California Civil Code section 1542 or any other laws, legal decisions,
24 and/or legal principles of similar effect might provide to it now or in the future, and agrees that the
25 releases described in paragraphs 4.1, and 4.2, above, are general and extend to all claims, whether
26 or not claimed or suspected by Vinocur. California Civil Code section 1542 (to the extent such
27 section is applicable) reads as follows:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**

1 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
2 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
3 **OR HER SETTLEMENT WITH THE DEBTOR.**

4 Vinocur certifies that he has read the provisions of California Civil Code section 1542, and that the
5 effect and import of those provisions have been explained to him. Vinocur further acknowledges
6 and agrees that this waiver of rights under California Civil Code section 1542 (or any other laws,
7 legal decisions, legal principles of similar effect might provide to it now or in the future) has been
8 separately bargained for and is an essential and material term of this Agreement and, without such
9 waiver, this Agreement would not have been entered into. Vinocur understands that the facts with
10 respect to which this Consent Judgment are given may hereafter prove to be different from the facts
11 now known or believed by him, and he hereby accepts and assumes the risk thereof and agrees that
12 this Consent Judgment shall be and shall remain, in all respects, effective and not subject to
13 termination or rescission by reason of any such difference in facts. Vinocur understands and
14 acknowledges the significance and consequence of such specific waiver of unknown claims and
15 hereby assumes full responsibility for any injuries, damages, losses or liabilities that it may
16 hereinafter incur or discover from the waiver of these unknown claims.

17 **5. COURT APPROVAL**

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

28 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course

1 of action to take, then the case shall proceed in its normal course on the Court’s trial calendar. If
2 the Court’s approval is ultimately overturned by an appellate court, the Parties shall meet and
3 confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly
4 agree on a course of action to take, then the case shall proceed in its normal course on the Court’s
5 trial calendar.

6 **6. SEVERABILITY**

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

10 **7. GOVERNING LAW**

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

18 **8. NOTICE**

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

23 To Federal: To Vinocur:
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1 Attn: Jeff Ehrich
2 Associate General Counsel
3 Vista Outdoor Inc.
4 1 Vista Way | Anoka, MN 55303

Attn: Proposition 65 Coordinator
Moscone Emblidge & Otis LLP
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

5 With a copy to:

6 Jay W. Connolly
7 Seyfarth Shaw LLP
8 560 Mission Street, 31st Floor
9 San Francisco, California 94105-2930

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

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

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

16 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

17 Vinocur and his counsel agree to comply with the reporting form requirements referenced in
18 California Health and Safety Code section 25249.7(f).

19 **11. MODIFICATION**

20 This Consent Judgment may be modified only by written agreement of the Parties and upon
21 entry of a modified Consent Judgment by the Court thereon.

22 **12. AUTHORIZATION**

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

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AGREED TO:



Plaintiff Laurence Vinocur

AGREED TO:



Defendant Federal Cartridge Company

Dated: 7/10/15

Dated: 7/8/2015