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9 LAURENCE VINOUCUR

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 LAURENCE VINOUCUR,

13 Plaintiff,

14 v.

15 GINSEY INDUSTRIES, INC., and DOES
16 1 -100, inclusive,

17 Defendants.

Case No. CGC-15-545019

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT GINSEY INDUSTRIES,
INC.**

(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 (“Plaintiff”) and defendant Ginsey Industries, Inc. (“Defendant”), with Plaintiff and Defendant each
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Defendant 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 and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that Defendant manufactured, imported, sold and/or
16 distributed for sale in California, toilet seats 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 Plaintiff alleges that exposure to DEHP occurs via ingestion from hand to
20 mouth transfer and via dermal contact with toilet seats with Vinyl/PVC components.

21 **1.5 Product Description**

22 The category of products covered by this Consent Judgment is toilet seats with Vinyl/PVC
23 components including, but not limited to, Classique Fashion Soft Seats, SKU#879972, UPC #0
24 47968 01590 5 (hereinafter “Products”).

25 **1.6 Notices of Violation**

26 On October 24, 2014, Plaintiff served Defendant and certain requisite public enforcement
27 agencies with 60-Day Notices of Violation (“Notice”) alleging that Defendant violated Proposition
28 65 when it failed to warn customers, consumers, and workers in California that the Products expose

1 users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On March 30, 2015, Plaintiff commenced the instant action ("Complaint"), the operative
5 pleading in this action, naming the Defendant as a defendant, and asserting a cause of action for the
6 alleged violations of Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

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

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
19 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
20 of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section
21 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
24 this Consent Judgment is approved by the Court.

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

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date, and continuing thereafter, Defendant shall only
28 purchase for sale, manufacture for sale, or distribute for sale in California "Reformulated Products"

1 and/or Products affixed with warning labels as described in paragraph 2.2 below. “Reformulated
2 Products” shall mean Products that contain no more than 1000 parts per million (“ppm”) (0.1%) of
3 DEHP in any material, component, or constituent of a Product, when analyzed by an independent
4 laboratory accredited by NVLAP (National Volunteer Laboratory Accreditation Program),
5 American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board
6 (ANAB) – ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS),
7 Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), or
8 International Laboratory Accreditation Cooperation(ILAC) (such laboratory referred to as an
9 “Accredited Lab”) pursuant to EPA testing methodologies 3580 and 8270C, or equivalent
10 methodologies utilized by such Accredited Laboratory or federal or state agencies to determine the
11 presence, or measure the amount, of DEHP in a solid substance (such methodologies referred to as
12 “Approved Methodologies”).

13 2.2 WARNINGS

14 Further, commencing on the Effective Date, Defendant shall ensure that any and all of its
15 Products that are not Reformulated Products as defined in paragraph 2.1, *supra*, that are in, or may
16 in the future be manufactured and delivered to, Defendant’s inventory that Defendant reasonably
17 believes may be sold or distributed for sale in California, shall contain the following clear and
18 reasonable warning placed on the packaging for the Product: “**WARNING:** This product contains a
19 chemical known to the State of California to cause cancer and birth defects and other reproductive
20 harm.” Each warning in the preceding sentence shall be prominently placed with such
21 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
22 to be read and understood by an ordinary individual under customary conditions before purchase,
23 and each such warning shall be provided in a manner such that the consumer or user understands to
24 which specific Product the warning applies, so as to minimize the risk of consumer confusion.

25 **3. MONETARY SETTLEMENT TERMS**

26 3.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

27 In settlement of all the claims referred to in this Consent Judgment, Defendants shall pay the
28 sum of \$4,000 as civil penalties within ten (10) business days of the date this Consent Judgment is

1 entered by the Court. The civil penalty payment will be allocated in accordance with California
2 Health & Safety Code section 25249.12(c)(1) and (d), with 75% of the funds (or \$3,000) remitted to
3 the California Office of Environmental Health Hazard Assessment (“OEHHA”), 25% of the penalty
4 (or \$1,000) remitted to “Laurence Vinocur, Client Trust Account.” The civil penalty payment shall
5 be delivered on the date due as set forth above at the addresses provided below. Defendant shall be
6 liable for payment of simple interest at a rate of 10% for all amounts due and owing that are not
7 received within two business days of the date they are due, if any.

8 3.2 Representations and Warranties

9 3.2.1 Defendant represents that the data and information concerning sales and knowledge of
10 DEHP presence provided to Plaintiff were true and accurate based on their knowledge and are
11 material factors upon which Plaintiff relied to determine the amount of civil penalties assessed
12 pursuant to Health and Safety Code section 25249.7(b). Defendant further represents that its
13 Products have been properly reformulated, and/or are otherwise the subject of appropriate warning
14 efforts, and that such representations are true and accurate based on Defendant’s knowledge and are
15 material factors upon which Plaintiff relied to determine the amount of civil penalties assessed
16 pursuant to Health and Safety Code section 25249.7(b). The Parties agree that they are not relying
17 on any representations or warranties made by one another in entering into this Consent Judgment,
18 other than those contained in this Consent Judgment.

19 3.2.2. If, within nine months of the Effective Date, Plaintiff discovers and presents to
20 Defendants, evidence demonstrating that the preceding representation and warranty was materially
21 inaccurate, then Defendant shall have 30 days to meet and confer regarding Plaintiff’s contention.
22 Should this 30 day period pass without any resolution between Plaintiff and Defendant, Plaintiff
23 shall be entitled to exercise whatever legal rights are available to it; Defendant reserves all defenses
24 respecting this matter. Plaintiff’s rights under this paragraph 3.2.2 expire at the end of such nine-
25 month period.

26 3.3 Reimbursement of Fees and Costs

27 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
28 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee

1 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
2 other settlement terms had been finalized, Defendant expressed a desire to resolve Plaintiff's
3 outstanding fees and costs. Under general contract principles and the private attorney general
4 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
5 through the mutual execution of this agreement, including the fees and costs incurred as a result of
6 investigating, bringing this matter to Defendant's attention, negotiating a settlement in the public
7 interest, and seeking court approval of the same, Defendant agrees to pay Plaintiff, within ten (10)
8 business days of the Court's approval and entry of this Consent Judgment, fees and costs in the
9 amount of \$32,500 payable to Moscone Emblidge & Otis LLP.

10 **3.4 Payment Procedures**

11 **3.4.1 Payment Addresses.**

12 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
13 3.1 and 3.3 shall be delivered to the following address:

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

16 (b) All payments owed to OEHHA, pursuant to Section 4.1, shall be
17 delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as
18 appropriate:

19 For United States Postal Service Delivery:

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

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

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

1 3.4.2 **Proof of Payment to OEHHA.** A copy of the check payable to OEHHA
2 shall be mailed, simultaneous with payment, to Moscone Emblidge & Otis at the address set forth in
3 Section 3.3.1(a) above.

4 3.4.3 **Tax Documentation.** Defendant shall provide a separate 1099 form for each
5 payment required by this Consent Judgment to: (a) Plaintiff, whose address and tax identification
6 number shall be furnished upon request after this Consent Judgment has been fully executed by the
7 Parties; (b) “California Office of Environmental Health Hazard Assessment”; and (c) Moscone
8 Emblidge & Otis LLP, and deliver such form to the payee at the payment addresses provided in
9 Section 3.4.1, above.

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Plaintiff’s Release of Proposition 65 Claims**

12 Plaintiff, acting on his own behalf and in the public interest, releases Defendant, its parents,
13 subsidiaries, shareholders, affiliated entities under common ownership, directors, officers, agents,
14 employees, attorneys, independent sales representatives, partners, licensors, and each entity which
15 directly or indirectly distributes or sells the Products, including, but not limited, to downstream
16 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and
17 each of their successors and assigns (collectively, “Releasees”), from all claims alleging violations
18 of Proposition 65 based on unwarned exposures to DEHP in the Products manufactured, distributed
19 or sold by Defendant prior to the Effective Date. Compliance with the terms of this Consent
20 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the
21 Products, as set forth in the Notice.

22 **4.2 Plaintiff’s Individual Releases of Claims**

23 Plaintiff, in his individual capacity only and *not* in any representative capacity, provides a
24 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
25 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
26 liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or
27 unsuspected, limited to and arising out of alleged or actual exposures to DEHP in Products
28 manufactured, imported, distributed, or sold by Defendant prior to the Effective Date.

1 4.3 **Waiver of California Civil Code Section 1542**

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

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
9 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
10 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
11 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
12 **OR HER SETTLEMENT WITH THE DEBTOR.**

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

26 **5. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved in its entirety and entered by the
28 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
within one year after it has been fully executed by all Parties. Plaintiff and Defendant agree to
support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent

1 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
2 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this
3 Consent Judgment, which motion Plaintiff shall draft and file and Defendant shall support,
4 appearing at the hearing if so requested. If any third-party objection to the motion is filed, Plaintiff
5 and Defendant agree to work together to file a reply and appear at any hearing. This provision is a
6 material component of the Consent Judgment and shall be treated as such in the event of a breach.

7 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
8 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
9 of action to take, then the case shall proceed in its normal course on the Court's trial calendar. If
10 the Court's approval is ultimately overturned by an appellate court, the Parties shall meet and
11 confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly
12 agree on a course of action to take, then the case shall proceed in its normal course on the Court's
13 trial calendar.

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California.
20 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
21 reason of law generally, or as to the Products, then Defendant may provide Plaintiff with notice of
22 any asserted change in the law, and shall have no further obligations pursuant to this Consent
23 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this
24 Consent Judgment shall be interpreted to relieve Defendant from its obligation to comply with any
25 pertinent state or federal law or regulation.

26 **8. NOTICE**

27 Unless specified herein, all correspondence and notices required to be provided pursuant to
28 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class

1 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any
2 Party by the other at the following addresses:

3 To Defendant:	To Plaintiff:
4 Jeffrey Goldman	Attn: Proposition 65 Coordinator
5 Pepper Hamilton LLP	Moscone Emblidge & Otis LLP
6 4 Park Plaza, Suite 1200	220 Montgomery Street, Suite 2100
Irvine, CA 92614	San Francisco, CA 94104

7
8 With a copy to:
9 AnnMarie Sanford
10 Pepper Hamilton LLP
11 4000 Town Center, Suite 1800
Southfield, Michigan 48075-1505

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

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

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

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

19 Plaintiff and his counsel agree to comply with the reporting form requirements referenced in
20 California Health and Safety Code section 25249.7(f).

21 **11. MODIFICATION**

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

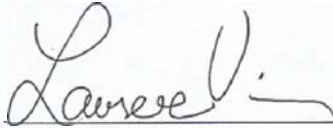
24 **12. AUTHORIZATION**

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

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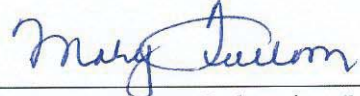
AGREED TO:



Plaintiff Laurence Vinocur

Dated: April 13, 2015

AGREED TO:



Defendant Ginsey Industries, Inc.
MARY FULLAM, SR. VICE PRESIDENT

Dated: April 9, 2015