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9 LAURENCE VINOCUR

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 LINZER PRODUCTS CORP., and DOES
16 1 -100, inclusive,

17 Defendants.

Case No. CGC 15-544402

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT LINZER PRODUCTS
CORP.**

(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 Linzer Products Corp. (“Linzer”), with Vinocur and Linzer each referred
5 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 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 Linzer 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 Vinocur alleges that Linzer manufactured, imported, sold and/or distributed
16 for sale in California, paint roller grips containing Di(2-ethylhexyl)phthalate (“DEHP”) without
17 providing the clear and reasonable health hazard warnings required by Proposition 65.

18 1.4.2 Vinocur alleges that exposure to DEHP occurs via ingestion from hand to
19 mouth transfer and via dermal contact with paint roller grips.

20 **1.5 Product Description**

21 The category of products covered by this Consent Judgment is paint roller grips including,
22 but not limited to, Project Select Premium Twist 2 Extend, RF 300, UPC #0 77089 30012 3
23 (hereinafter “Products”).

24 **1.6 Notices of Violation**

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

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 February 27, 2015, Vinocur commenced the instant action ("Complaint"), the operative
5 pleading in this action, naming Linzer as a defendant, and asserting a cause of action for the alleged
6 violations of Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

8 Linzer 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 Linzer of any fact, finding, conclusion of law, issue
12 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission by Linzer of any fact, finding, conclusion of law, issue of law, or
14 violation of law. This Section shall not, however, diminish or otherwise affect Linzer's obligations,
15 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 Linzer as to the allegations contained in the Complaint, that venue is proper in the
19 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
20 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, Linzer shall only purchase
28 for sale, manufacture for sale, or distribute for sale in California "Reformulated Products" or

1 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 no later than sixty (60) days after the Effective Date, Linzer shall
15 ensure that any and all of its Products that are not Reformulated Products as defined in paragraph
16 2.1, *supra*, that are in, or may in the future be manufactured and delivered to, Linzer’s inventory
17 that Linzer reasonably believes may be sold or distributed for sale in California, shall contain the
18 following clear and reasonable warning placed on the packaging for the Product: “**WARNING:**
19 This product contains a chemical known to the State of California to cause cancer and birth defects
20 and other reproductive harm.” Each warning in the preceding sentence shall be prominently placed
21 with such conspicuousness as compared with other words, statements, designs, or devices as to
22 render it likely to be read and understood by an ordinary individual under customary conditions
23 before purchase, and each such warning shall be provided in a manner such that the consumer or
24 user understands to which specific Product the warning applies, so as to minimize the risk of
25 consumer confusion.

26 3. MONETARY SETTLEMENT TERMS

27 3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

28

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

9 **3.1.1 Initial Civil Penalty**

10 Within five (5) days of the date this Consent Judgment is entered by the Court, Linzer shall
11 make an initial civil penalty payment of \$6,000 (\$4,500 payable to OEHHA, and \$1,500 payable to
12 Vinocur).

13 **3.1.2 Second Civil Penalty**

14 Within six months of the date this Consent Judgment is entered by the Court, Linzer shall
15 make a second civil penalty payment of \$4,000 (\$3,000 payable to OEHHA, and \$1,000 payable to
16 Vinocur).

17 **3.1.3 Partial Penalty Waivers**

18 Pursuant to title 11 California Code of Regulations, section 3203(c), (a) \$2,000 of the
19 second civil penalty payment shall be waived if, no later than thirty (30) days after the Effective
20 Date, an officer of Linzer provides Vinocur with written certification that, as of that date, Linzer has
21 complied with the provisions Section 2.2 hereof; and (b) an additional \$2,000 of the second civil
22 penalty payment shall be waived if, no later than thirty (30) days after the Effective Date, an officer
23 of Linzer provides Vinocur with written certification that Linzer has sent a letter to all known
24 California retailers that received non-Reformulated Products identifying the non-Reformulated
25 Products and instructing the retailers to either label, destroy or return the non-reformulated products
26 to Linzer to be destroyed. The option to make the certifications required under this Section 3.1.3 in
27 lieu of making the second civil penalty payment required by this Section 3.1.3 is a material term,
28 and time is of the essence.

1 **3.2 Representations and Warranties**

2 3.2.1 Linzer represents that the data and information concerning sales and knowledge of
3 DEHP presence provided to Vinocur were true and accurate based on their knowledge and are
4 material factors upon which Vinocur relied to determine the amount of civil penalties assessed
5 pursuant to Health and Safety Code section 25249.7(b). Linzer further represents that its Products
6 have been properly reformulated, and/or are otherwise the subject of appropriate warning efforts,
7 and that such representations are true and accurate based on Linzer’s knowledge and are material
8 factors upon which Vinocur relied to determine the amount of civil penalties assessed pursuant to
9 Health and Safety Code section 25249.7(b). The Parties agree that they are not relying on any
10 representations or warranties made by one another in entering into this Consent Judgment, other
11 than those contained in this Consent Judgment.

12 3.2.2. If, within nine months of the Effective Date, Vinocur discovers and presents to
13 Linzer, evidence demonstrating that the preceding representation and warranty was materially
14 inaccurate, then Linzer shall have 30 days to meet and confer regarding Vinocur’s contention.
15 Should this 30 day period pass without any resolution between Vinocur and Linzer, Vinocur shall
16 be entitled to exercise whatever legal rights are available to it; Linzer reserves all defenses
17 respecting this matter. Vinocur’s rights under this paragraph 3.2.2 expire at the end of such nine-
18 month period.

19 **3.3 Reimbursement of Fees and Costs**

20 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee
22 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
23 other settlement terms had been finalized, Linzer expressed a desire to resolve Vinocur’s
24 outstanding fees and costs. Under general contract principles and the private attorney general
25 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
26 through the mutual execution of this agreement, including the fees and costs incurred as a result of
27 investigating, bringing this matter to Linzer’s attention, negotiating a settlement in the public
28 interest, and seeking court approval of the same, Linzer agrees to pay Vinocur, within five (5) days

1 of the Court's approval and entry of this Consent Judgment, fees and costs in the amount of
2 \$33,000 payable to Moscone Emblidge & Otis LLP.

3 **3.4 Payment Procedures**

4 **3.4.1 Payment Addresses.**

5 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
6 3.1 and 3.3 shall be delivered to the following address:

7 Moscone Emblidge & Otis LLP
8 Attn: Proposition 65 Coordinator
9 220 Montgomery Street, Suite 2100
10 San Francisco, CA 94104

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

14 For United States Postal Service Delivery:

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

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

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

26 **3.4.2 Proof of Payment to OEHHA.** A copy of the check payable to OEHHA
27 shall be mailed, simultaneous with payment, to Moscone Emblidge & Otis at the address set forth in
28 Section 3.3.1(a) above.

29 **3.4.3 Tax Documentation.** Linzer shall provide a separate 1099 form for each
30 payment required by this Consent Judgment to: (a) Vinocur, whose address and tax identification
31 number shall be furnished upon request after this Consent Judgment has been fully executed by the
32 Parties; (b) "California Office of Environmental Health Hazard Assessment"; and (c) Moscone
33 Emblidge & Otis LLP, and deliver such form to the payee at the payment addresses provided in
34 Section 3.4.1, above.

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

13 **4.2 Vinocur's Individual Releases of Claims**

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

20 **4.3 Waiver of California Civil Code Section 1542**

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

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
28 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved in its entirety and entered by the 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. Vinocur and Linzer agree to support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Vinocur shall draft and file and Linzer shall support, appearing at the hearing if so requested. If any third-party objection to the motion is filed, Vinocur and Linzer agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

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 of action to take, then the case shall proceed in its normal course on the Court's trial calendar. If

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

5 6. **SEVERABILITY**

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

9 7. **GOVERNING LAW**

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

17 8. **NOTICE**

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

22 To Linzer:

To Vinocur:

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

27 With a copy to:

28 Barbara R. Adams

1 Adams Nye Becht LLP
2 222 Kearny Street, Seventh Floor
3 San Francisco, CA 94108-4521
4
5

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

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

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

12 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

15 **11. MODIFICATION**

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

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood, and agree to all of the terms and conditions of this
21 Consent Judgment.
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23 **AGREED TO:**

AGREED TO:

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Laurence V.
Plaintiff Laurence Vinocur

Ronald Ziehl EVP
Defendant Linzer Products Corp.

Dated: 6/19/2015

Dated: 6/18/15