

1 Christopher C. Moscone, State Bar No. 170250
2 Laurence D. Haveson, State Bar No. 152631
3 MOSCONE EMBLIDGE & OTIS LLP
4 220 Montgomery Street, Suite 2100
5 San Francisco, CA 94104
6 Telephone: (415) 362-3599
7 Facsimile: (415) 362-2006

8 Attorneys for Plaintiff
9 LAURENCE VINOCUR

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 MONO-SYSTEMS, INC., and DOES 1 -
16 100, inclusive,

17 Defendants.

Case No. CGC-15-544818

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1 **Parties**

3 The parties to this Consent Judgment (“Consent Judgment”) are Plaintiff Laurence
4 Vinocur (“Vinocur”) on the one hand, and Defendant Mono-Systems, Inc. (“Mono-Systems”) on
5 the other hand (each individually referred to as a “Party” and collectively as “Parties”). The
6 Parties enter into this Consent Judgment as a full and final settlement of all claims that were
7 raised in the Notice and Complaint, or that could have been raised in the Notice and Complaint,
8 arising out of the facts or conduct alleged therein.

9 1.2 **Plaintiff**

10 Vinocur is an individual residing in the State of California who seeks to promote
11 awareness of exposures to toxic chemicals and to improve human health by reducing or
12 eliminating hazardous substances contained in consumer products.

13 1.3 **Defendant**

14 Vinocur alleges that Mono-Systems employs ten or more persons and is a person in the
15 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
16 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

17 1.4 **General Allegations**

18 Vinocur alleges that Mono-Systems manufactures, distributes, imports, sells and/or offers
19 for sale in California vinyl/PVC cord protectors containing di(2-ethylhexyl)phthalate (“DEHP”).
20 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to
21 cause birth defects or other reproductive harm. Vinocur alleges that Mono-Systems violated
22 Proposition 65 by failing to provide Proposition 65 warnings for alleged exposures to DEHP
23 caused by the vinyl/PVC cord protectors that Mono-Systems manufactures, distributes, imports,
24 sells and/or offers for sale.

25 1.5 **Product Description**

26 The products that are covered by this Consent Judgment are vinyl/PVC cord protectors
27 containing DEHP that are manufactured, imported or distributed for sale in California or sold or
28

1 offered for sale in California by Mono-Systems, including, but not limited to, *FlexiRings*,
2 *FL5020-B*, UPC #6 00170 02462 4, hereinafter the “Products.”

3 1.6 **Notice of Violation**

4 On October 24, 2014, Vinocur served Mono-Systems and certain public prosecutors with
5 a “60-Day Notice of Violation” (“Notice”) alleging that Mono-Systems violated Proposition 65
6 when it failed to warn its customers and consumers in California that the Products expose users
7 to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is
8 diligently prosecuting the allegations set forth in the Notice.

9 1.7 **Complaint**

10 On March 19, 2015, Vinocur filed the instant action (“Complaint”) against Mono-
11 Systems for the alleged violations of Health and Safety Code section 25249.6 that are the subject
12 of the Notice.

13 1.8 **No Admission**

14 Mono-Systems denies the material, factual, and legal allegations contained in the Notice
15 and Complaint, and maintains that all of the products that it has manufactured, imported,
16 distributed, sold or offered for sale in California, including the Products, have been, and are, in
17 compliance with all laws, and are completely safe for their intended use. Nothing in this Consent
18 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law,
19 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
20 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
21 Section shall not, however, diminish or otherwise affect Mono-Systems’s obligations,
22 responsibilities, and duties under this Consent Judgment.

23 1.9 **Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Mono-Systems as to the allegations in the Complaint, that venue is proper in
26 San Francisco County and that this Court has jurisdiction to enter and enforce the provisions of
27 this Consent Judgment.

1 1.10 **Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date the
3 Court enters this Consent Judgment.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 2.1 **Reformulation Standard**

6 Commencing no later than the Effective Date, Mono-Systems shall only manufacture,
7 distribute, purchase or import for sale, sell, and/or offer for sale in California, Reformulated
8 Products. For purposes of this Consent Judgment, “Reformulated Products” are Products whose
9 accessible components contain less than 0.1 percent (1,000 parts per million (“ppm”)) DEHP
10 when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and
11 8270C, or equivalent methodologies utilized by federal or California state agencies for the
12 purpose of determining DEHP content in a solid substance.

13 **3. PAYMENTS**

14 3.1 **Payments Pursuant to Health and Safety Code § 25249.7(b)**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), Mono-Systems shall pay
16 \$1,500 in civil penalties. Each penalty payment shall be allocated according to Health and
17 Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the
18 California Office of Environmental Health Hazard Assessment and the remaining 25% of the
19 penalty paid to Vinocur, as follows: Within five (5) business days of the Effective Date, Mono-
20 Systems shall provide its civil penalty payment in two checks for the following amounts made
21 payable to: (a) “Office of Environmental Health Hazard Assessment” in the amount of \$1,125;
22 and (b) “Laurence Vinocur” in the amount of \$375.

23 3.2 **Reimbursement of Attorneys’ Fees and Costs**

24 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
26 leaving the issue to be resolved after the material terms of this Consent Judgment had been
27 settled. Shortly after all other settlement terms had been finalized, Mono-Systems expressed a
28 desire to resolve Vinocur’s fees and costs. The Parties then attempted to (and did) reach an

1 accord on the compensation due Vinocur and his counsel under general contract principles and
2 the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all
3 costs, and all attorney's fees and any other work performed in this matter through the Court's
4 approval of this Consent Judgment. Pursuant to this Consent Judgment, within five (5) business
5 days of the Effective Date, Mono-Systems agrees to pay \$12,500 by check made payable to
6 Moscone Emblidge & Otis LLP for the fees and costs incurred by Vinocur and his counsel
7 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to
8 be incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment
9 in the public interest.

10 **3.3 Payment Procedures**

11 Payments required under this Section 3 shall be delivered as follows:.

12 **3.3.1 Payment Addresses**

13 (a) All payments to Vinocur and Moscone Emblidge & Otis LLP shall
14 be delivered to the following address:

15 Moscone Emblidge & Otis LLP
16 Attn: Proposition 65 Coordinator
17 220 Montgomery Street, Suite 220
18 San Francisco, CA 94104

19 All payments to OEHHA (EIN: 68-0284486) shall be delivered directly to
20 OEHHA (Memo line "Prop 65 Penalties") at the following addresses, as appropriate:

21 For United States Postal Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Non-U.S. Postal Delivery or Courier:

28 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

1 (b) A copy of the check(s) payable to OEHHA shall also be mailed to
2 Moscone Emblidge & Otis LLP at the payment address provided in section 3.3.1(a), as proof of
3 payment to OEHHA.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Public Release of Proposition 65 Claims**

6 In consideration of the promises and commitments herein contained, Vinocur, on his own
7 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or
8 assignees, and in the public interest, hereby waives and releases Mono-Systems, its parents,
9 subsidiaries, affiliated entities under common ownership or control, directors, officers,
10 employees, and attorneys (“Releasees”); and each entity to whom it directly or indirectly
11 distributes or sells Products, including but not limited to its downstream distributors,
12 wholesalers, customers, retailers (including without limitation Lowe’s), franchisees, cooperative
13 members, licensors, and licensees (“Downstream Defendant Releasees”), from all claims for
14 violations or alleged violations of Proposition 65 asserted in the public interest in his Notice and
15 Complaint based on alleged exposures to DEHP from the Products manufactured, imported,
16 distributed, or sold through the Effective Date. This waiver and release is limited to those claims
17 arising under Proposition 65 for unwarned exposures to DEHP from Covered Products
18 manufactured, imported, distributed, sold or offered by sale by Mono-Systems, Releasees and
19 Downstream Defendant Releasees before the Effective Date. Defendants’ and Releasees’
20 compliance with this Consent Judgment constitutes compliance with Proposition 65.

21 **4.2 Private Release in Plaintiff’s Individual, Non-representative Capacity**

22 Vinocur, in his individual capacity only and *not* in his representative capacity, on behalf
23 of himself, and his past and current agents, representatives, attorneys, successors, and/or
24 assignees, also provides a release to Mono-Systems, the Releasees, and Downstream Defendant
25 Releasees, which shall be effective as a full and final accord and satisfaction, as a bar to all
26 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
27 liabilities and demands of Vinocur of any nature, character or kind, whether known or unknown,
28 suspected or unsuspected, relating to the Products manufactured, imported, distributed, sold or

1 offered for sale by Mono-Systems up through the Effective Date. Vinocur acknowledges that he
2 is familiar with Section 1542 of the California Civil Code, which provides as follows:

3
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
7 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
8 OR HER SETTLEMENT WITH THE DEBTOR.

9 Vinocur, in his individual capacity only and *not* in his representative capacity, on
10 behalf of himself and his past and current agents, representatives, attorneys, successors,
11 and/or assignees, expressly waives and relinquishes any and all rights and benefits which
12 he may have under, or which may be conferred on him by the provisions of Section 1542
13 of the California Civil Code as well as under any other state or federal statute or common
14 law principle of similar effect, to the fullest extent that he may lawfully waive such rights
15 or benefits pertaining to the released matters.

16 4.3 **Mono-Systems's Release of Vinocur**

17 Mono-Systems waives any and all claims against Vinocur and his attorneys and other
18 representatives, for any and all actions taken or statements made (or those that could have been
19 taken or made) by Vinocur and his attorneys and other representatives, whether in the course of
20 investigating claims, otherwise seeking enforcement of Proposition 65 against it in this matter, or
21 with respect to the Products. Mono-Systems acknowledges that it is familiar with Section 1542
22 of the California Civil Code, which provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
26 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
27 OR HER SETTLEMENT WITH THE DEBTOR.

28 Mono-Systems, on behalf of itself and its past and current agents, representatives,
attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and
benefits which it may have under, or which may be conferred on it by the provisions of Section
1542 of the California Civil Code as well as under any other state or federal statute or common

1 law principle of similar effect, to the fullest extent that it may lawfully waive such rights or
2 benefits pertaining to the released matters.

3 4.4 **No Upstream Release for Leco Plastics Inc.**

4 The Parties understand and agree that this release shall not extend upstream to Leco
5 Plastics Inc., or act as a bar to Plaintiff's enforcement of Proposition 65 against Leco Plastics,
6 Inc. related to the Products, or DEHP in the Products, or as to any other claim.

7 **5. NOTICES**

8 When any Party is entitled to receive any correspondence or notice under this Consent
9 Judgment, the correspondence and/or notice shall be in writing and sent by: (a) first class,
10 registered or certified mail, return receipt requested; (b) personal delivery; or (c) a recognized
11 overnight courier at the following addresses:

12 For Vinocur:

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

16 For Mono-Systems:

17 Jordan Handler, President
18 Mono-Systems, Inc.
4 International Drive, Suite 280
19 Rye Brook, NY 10573

20 With a copy to:

21 James Robert Maxwell
22 Rogers Joseph O'Donnell
311 California Street
San Francisco, CA 94104

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

25 **6. POST EXECUTION ACTIVITIES AND COURT APPROVAL**

26 6.1 Vinocur agrees to comply with the reporting form requirements referenced in
27 Health and Safety Code section 25249.7(f).
28

1 6.2 The Parties further acknowledge that, pursuant to Health and Safety Code
2 § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent
3 Judgment. Vinocur and his counsel have sole responsibility for preparing and filing the motion
4 to approve this Consent Judgment. In furtherance of obtaining such approval, Vinocur and
5 Mono-Systems agree to mutually employ their best efforts, and that of their counsel, to support
6 the entry of this agreement as a Consent Judgment and obtain approval of the Consent
7 Judgment by the Court in a timely manner. If any third party objection to the noticed motion is
8 filed, Vinocur and Mono-Systems shall work together to file a joint reply and appear at any
9 hearing before the Court. This provision is a material component of the Consent Judgment and
10 shall be treated as such in the event of a breach.

11 6.3 This Consent Judgment is not effective until it is approved and entered by the
12 Court. If this Consent Judgment is not approved by the Court within one year after it has been
13 fully executed by the Parties, (a) this Consent Judgment and any and all prior agreements
14 between the Parties as to the Notice or Complaint referenced herein shall terminate and become
15 null and void, and the action shall revert to the status that existed prior to the execution date of
16 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
17 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
18 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
19 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
20 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

21 **7. ENFORCEMENT**

22 Any Party may, by motion or application for an order to show cause before this Court,
23 enforce the terms and conditions contained in this Consent Judgment.

24 **8. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
26 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
27 provisions remaining shall not be adversely affected.
28

1 **9. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed,
4 preempted or is otherwise rendered inapplicable by reason of law generally, or as to the
5 Products, or if any of the provisions of this Consent Judgment are rendered inapplicable or no
6 longer require as a result of any such repeal or preemption or rendered inapplicable by reason of
7 law generally, or as to the Products, then Mono-Systems shall provide written notice to Vinocur
8 of any asserted change in law, and, if Vinocur agrees, Mono-Systems shall have no further
9 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
10 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Mono-
11 Systems from any obligation to comply with any pertinent state or federal toxics control law.

12 **10. DRAFTING**

13 The Parties, including their counsel, have participated and cooperated in the drafting and
14 preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts
15 of the Parties. This Consent Judgment was subject to revision and modification by the Parties
16 and has been accepted and approved as to its final form by all Parties and their counsel.
17 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
18 interpreted against any Party as a result of the manner of the preparation of this Consent
19 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction
20 providing that ambiguities are to be resolved against the drafting Party should not be employed
21 in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive
22 California Civil Code Section 1654.

23 **11. MODIFICATION**

24 This Consent Judgment may be modified only as follows: (1) by written agreement of
25 the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a
26 successful motion of any Party and entry of a modified consent judgment by the Court.
27
28

1 **12. COUNTERPARTS; FACSIMILE SIGNATURE**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (PDF) signature, each of which shall be deemed an original, and all of which,
4 when taken together, shall constitute one and the same document.

5 **13. AUTHORIZATION**

6 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
7 the Party he or she represents to agree to the terms and conditions of this Consent Judgment, to
8 enter into and execute the Consent Judgment on behalf of the Party represented, and to legally
9 bind that Party. The undersigned certify that they have read, understood, and agree to all of the
10 terms and conditions of this Consent Judgment.

11 AGREED TO:

AGREED TO:

12
13 Date: 8/22/2016

Date: 8/18/16

14
15 By: 
Plaintiff Laurence Vinocur

16
17 By: 
Defendant Mond Systems, Inc.