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9 LAURENCE VINOUCUR

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

12 LAURENCE VINOUCUR.

13 Plaintiff,

14 v.

15 PD LIQUIDATION, INC., and DOES 1 -
16 100, inclusive,

17 Defendants.

18 Case No. CGC-15-544030

19 **[PROPOSED] CONSENT JUDGMENT**

20 **1. INTRODUCTION**

21 **1.1 Parties**

22 The parties to this Consent Judgment (“Consent Judgment”) are Plaintiff Laurence
23 Vinocur (“Vinocur”) on the one hand, and Defendant PD Liquidation, Inc. (“PD Liquidation” or
24 “Defendant”) on the other hand (each a “Party” and collectively “Parties”).

25 **1.2 Plaintiff**

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

1.3 Defendant

PD Liquidation employed ten or more persons and is a person in the course of doing
business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
and Safety Code section 25249.6 et seq. (“Proposition 65”).

1 1.4 **General Allegations**

2 Vinocur alleges that PD Liquidation manufactures, distributes, imports, sells and/or offer
3 for sale in California vinyl/PVC tape products containing di(2-ethylhexyl)phthalate (“DEHP”)
4 without first providing the clear and reasonable warning required by Proposition 65. DEHP is
5 listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth
6 defects or other reproductive harm.

7 1.5 **Product Description**

8 The products that are covered by this Consent Judgment are vinyl/PVC tape products
9 containing DEHP that are sold or offered for sale in California by PD Liquidation, including,
10 but not limited to, PD Neon Tape, #02684488, UPC #6 03912 31697 1, hereinafter the
11 “Products.”

12 1.6 **Notice of Violation**

13 On October 24, 2014, Vinocur served PD Liquidation and certain public prosecutors with
14 a “60-Day Notice of Violation” (“Notice”) alleging that Defendant was in violation of
15 Proposition 65 for failing to warn its customers and consumers in California that the Products
16 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has
17 commenced and is diligently prosecuting the allegations set forth in the Notice.

18 1.7 **Complaint**

19 On February 9, 2015, Vinocur filed the instant action against PD Liquidation for the
20 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

21 1.8 **No Admission**

22 PD Liquidation denies the material, factual, and legal allegations contained in the Notice
23 and Complaint, and maintains that all of the products that it has sold and distributed in
24 California, including the Products, have been, and are, in compliance with all laws. Nothing in
25 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
26 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
27 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
28

1 law. This Section shall not, however, diminish or otherwise affect PD Liquidation’s obligations,
2 responsibilities, and duties under this Consent Judgment.

3 1.9 **Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in San
6 Francisco County and that this Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 “Covered Products” means and is limited to Products containing DEHP sold or
10 distributed for sale in California by Defendant.

11 2.2 “Effective Date” means the date this Consent Judgment is approved and entered
12 by the court.

13 2.3 “Reformulation Standard” means the level of DEHP required under Section 3.1.

14 **3. INJUNCTIVE RELIEF: REFORMULATION**

15 3.1 **Reformulation Standard**

16 Commencing on the Effective Date, PD Liquidation shall not manufacture, distribute,
17 purchase or import for sale, sell, and/or offer for sale in California any Covered Product that
18 contains DEHP in concentrations exceeding 0.1 percent (1,000 parts per million (“ppm”)) when
19 analyzed pursuant to any methodology utilized by federal or California state agencies for the
20 purpose of determining DEHP content in a solid substance.

21 **4. PAYMENTS**

22 4.1 **Payments Pursuant to Health and Safety Code § 25249.7(b)**

23 Pursuant to Health and Safety Code section 25249.7(b)(2), except as provided in Section
24 4.1.2, PD Liquidation shall pay \$9,000 in civil penalties. Each penalty payment shall be
25 allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the
26 penalty amount remitted to the California Office of Environmental Health Hazard Assessment
27 and the remaining 25% of each penalty payment remitted to Vinocur.

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2 **4.1.1 Initial Civil Penalty**

3 PD Liquidation shall pay an initial civil penalty of \$3,000 within five (5)
4 business days of the Effective Date.

5 **4.1.2 Final Civil Penalty; Waiver on Certification of Compliance with**
6 **Section 3.1**

7 On or before July 31, 2015, PD Liquidation shall pay a final civil penalty of \$6,000,
8 except that, the final civil penalty will be waived, in its entirety, if no later than July 31, 2015,
9 PD Liquidation provides Vinocur’s counsel with written certification that as of the date of its
10 certification, all Covered Products manufactured, distributed, purchased or imported for sale in
11 California meet the Reformulation Standard, and that they will continue to only manufacture,
12 distribute, purchase or import Covered Products meeting the Reformulation Standard for sale in
13 California in the future.

14 **4.2 Reimbursement of Attorneys’ Fees and Costs**

15 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
16 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
17 leaving the issue to be resolved after the material terms of the agreement had been settled.
18 Shortly after all other settlement terms had been finalized, PD Liquidation expressed a desire to
19 resolve the fees and costs. The Parties then attempted to (and did) reach an accord on the
20 compensation due Vinocur and his counsel under general contract principles and the private
21 attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work
22 performed in this matter exclusive of fees and costs incurred on appeal, if any. Under these legal
23 principles, within 30 days of the Effective Date, Defendant shall pay \$29,250 for the fees and
24 costs incurred investigating, litigating, and enforcing this matter, including the fees and costs
25 incurred (and to be incurred) drafting, negotiating, and obtaining the Court’s approval of this
26 Consent Judgment in the public interest.

1 4.3 **Payment Procedures.**

2 4.3.1 **Payment Addresses**

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

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

9 (b) **All payments to OEHHA (EIN: 68-0284486) shall be delivered**
10 **directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:**

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

16 With a copy of the check(s) payable to OEHHA mailed to Moscone Emblidge & Otis LLP at the
17 payment address provided in section 4.3.1(a), as proof of payment to OEHHA.

18 **5. CLAIMS COVERED AND RELEASED**

19 **5.1 Public Release of Proposition 65 Claims**

20 In consideration of the promises and commitments herein contained, Vinocur, on his own
21 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or
22 assignees, and in the public interest, hereby waives and releases PD Liquidation, its successor
23 PD Products, LLC, its parents, subsidiaries, affiliated entities under common ownership or
24 control, directors, officers, employees, and attorneys (collectively “Releasees”); and each entity
25 to whom it or PD Products, LLC directly or indirectly distributes or sells Covered Products, and
26 any distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors,
27 and licensees (collectively “Downstream Defendant Releasees”), from all claims for violations of
28 Proposition 65 based on exposures to DEHP from the Covered Products through the Effective
Date. This waiver and release is limited to those claims arising under Proposition 65 for
unwarned exposures to DEHP from Covered Products sold by Defendant before the Effective

1 Date. Defendant's and Releasees' compliance with this Consent Judgment constitute compliance
2 with Proposition 65.

3 **5.2 Private Release in Plaintiff's Individual, Non-representative Capacity**

4 Vinocur, in his individual capacity only and not in his representative capacity, also
5 provides a release to PD Liquidation, Releasees, and Downstream Defendant Releasees which
6 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
7 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
8 demands of Vinocur of any nature, character or kind, whether known or unknown, suspected or
9 unsuspected, arising out of alleged or actual unwarned exposures to DEHP from the Covered
10 Products.

11 **5.3 PD Liquidation's Release of Vinocur**

12 PD Liquidation waives any and all claims against Vinocur and his attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Vinocur and his attorneys and other representatives, whether in the course of
15 investigating claims, otherwise seeking enforcement of Proposition 65 against it in this matter, or
16 with respect to the Covered Products.

17 **6. NOTICES**

18 When any Party is entitled to receive any notice under this Consent Judgment, the notice
19 shall be sent by: (a) first class, registered or certified mail; (b) personal delivery; or (c) a
20 recognized overnight courier on any one Party by the other Party at the following addresses:

21 For Vinocur:

22 Moscone Emblidge & Otis LLP
23 Attn: Proposition 65 Coordinator
24 220 Montgomery Street, Suite 220
San Francisco, CA 94104

25 For PD Liquidation:

26 Robert Feldman, President
27 PD Liquidation, Inc.
28 21350 Lassen Street
Chatsworth, CA 91311

1 With a copy to:

2 Peg Carew Toledo
3 Toledo Don LLP
4 3001 Douglas Blvd., Suite 340
5 Roseville, CA 95661

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

8 **7. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

9 7.1 Vinocur agrees to comply with the reporting form requirements referenced in
10 Health and Safety Code section 25249.7(f).

11 7.2 The Parties further acknowledge that, pursuant to Health and Safety Code
12 § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the settlement, which
13 motion Vinocur shall draft and file, and PD Liquidation shall join. Vinocur and PD Liquidation
14 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
15 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. If any
16 third party objection to the noticed motion is filed, Vinocur and PD Liquidation shall work
17 together to file a joint reply and appear at any hearing before the Court. This provision is a
18 material component of the Consent Judgment and shall be treated as such in the event of a breach.

19 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
20 and any and all prior agreements between the Parties as to the Notice or Complaint referenced
21 herein shall terminate and become null and void, and the action shall revert to the status that
22 existed prior to the execution date of this Consent Judgment; (b) no term of this Consent
23 Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the
24 Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in
25 evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to
26 meet and confer to determine whether to modify the terms of the Consent Judgment and to
27 resubmit it for approval.
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1 **8. ENFORCEMENT**

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

4 **9. SEVERABILITY**

5 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
6 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
7 provisions remaining shall not be adversely affected.

8 **10. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed,
11 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the
12 provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of
13 any such repeal or preemption or rendered inapplicable by reason of law generally as to the
14 Products, then PD Liquidation shall provide written notice to Vinocur of any asserted change in
15 law, and, if Vinocur agrees, PD Liquidation shall have no further obligations pursuant to this
16 Consent Judgment with respect to, and to the extent that, the Products are so affected.

17 **11. DRAFTING**

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

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

5 **13. COUNTERPARTS**

6 13.1 This Consent Judgment may be executed in counterparts and by facsimile or
7 portable document format (PDF) signature, each of which shall be deemed an original, and all of
8 which, when taken together, shall constitute one and the same document.

9 **14. AUTHORIZATION**

10 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
11 Party he or she represents to agree to the terms and conditions of this Consent Judgment, to enter
12 into and execute the Consent Judgment on behalf of the Party represented, and to legally bind
13 that Party, and that he or she has read, understood, and agree to all of the terms and conditions of
14 this Consent Judgment.

15 AGREED TO:

AGREED TO:

16
17 Date: 6/25/15

Date: 6/23/15

18 By: Laurence Vinocur
19 Plaintiff Laurence Vinocur

By: Robert Feldman
Defendant PD Liquidation, Inc.
Robert Feldman, President