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5 Attorneys for Plaintiff  
LAURENCE VINOUCUR

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION  
8

9 LAURENCE VINOUCUR,  
10 Plaintiff,  
11 v.  
12 SHEDRAIN CORPORATION, and DOES  
1 -100, inclusive,  
13 Defendants.  
14

Case No. CGC-15-543700

**[PROPOSED] CONSENT JUDGMENT**

16 **1. INTRODUCTION**

17 **1.1 Parties**

18 The parties to this Consent Judgment (“Consent Judgment”) are Plaintiff Laurence  
19 Vinocur (“Vinocur”) on the one hand, and Defendant ShedRain Corporation (“ShedRain”) on the  
20 other hand (each a “Party” and collectively “Parties”).

21 **1.2 Plaintiff**

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

25 **1.3 Defendant**

26 ShedRain employs ten or more persons, and each is a person in the course of doing  
27 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
28 and Safety Code section 25249.6, *et seq.* (“Proposition 65”).

1           1.4     General Allegations

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

7           1.5     Product Description

8           The products that are covered by this Consent Judgment are vinyl/PVC ponchos  
9 containing DEHP that are sold or offered for sale in California by ShedRain, including, but not  
10 limited to, RainEssentials by ShedRain Adult Sport Utility Poncho, #8236, UPC #0 91806  
11 15251 2, hereinafter the “Products.”

12          1.6     Notice of Violation

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

18          1.7     Complaint

19          On January 16, 2015, Vinocur filed the instant action against ShedRain for the alleged  
20 violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

21          1.8     No Admission

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

1 Section shall not, however, diminish or otherwise affect ShedRain’s obligations, responsibilities,  
2 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 by the  
12 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 no later than the Effective Date, ShedRain 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, ShedRain shall pay \$7,500 in civil penalties. Each penalty payment shall be allocated  
25 according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty  
26 amount remitted to the California Office of Environmental Health Hazard Assessment and the  
27 remaining 25% of each penalty payment remitted to Vinocur.



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 ShedRain, its parents,  
23 subsidiaries, affiliated entities under common ownership or control, directors, officers,  
24 employees, and attorneys (“Releasees”); and each entity to whom it directly or indirectly  
25 distributes or sells Covered Products, and any distributors, wholesalers, customers, retailers,  
26 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant  
27 Releasees”), from all claims for violations of Proposition 65 based on exposures to DEHP from  
28 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

1 sold by Defendants before the Effective Date. Defendants' and Releasees' compliance with this  
2 Consent Judgment constitute compliance 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 ShedRain, Releasees, and Downstream Defendant Releasees which shall be  
6 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
7 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
8 Vinocur of any nature, character or kind, whether known or unknown, suspected or unsuspected,  
9 arising out of alleged or actual unwarned exposures to DEHP from the Covered Products.

10 **5.3 Mutual Release**

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

16 Vinocur, in his individual capacity only and not in his representative capacity, also  
17 waives any and all claims against ShedRain and its attorneys and other representatives, for any  
18 and all actions taken or statements made (or those that could have been taken or made) by  
19 ShedRain and its attorneys and other representatives, whether in the course of investigating  
20 claims, otherwise seeking to defend against allegations pertaining to Proposition 65 in this  
21 matter, or with respect to the Covered Products.

22 **6. NOTICES**

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

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1 For Vinocur:

2 Moscone Emblidge & Otis LLP  
3 Attn: Proposition 65 Coordinator  
4 220 Montgomery Street, Suite 220  
San Francisco, CA 94104

5 For ShedRain:

6 Jeffrey Blauer, President  
7 ShedRain Corporation  
8 8303 NE Killingsworth Street  
Portland, OR 97238

9 With copies to:

10 Deanne L. Miller  
11 Morgan, Lewis & Bockius LLP  
12 300 South Grand Avenue, 22nd Floor  
Los Angeles, CA 90071-3132

13 and

14 Robyn Ridler Aoyagi  
15 Tonkon Torp LLP  
16 888 S.W. Fifth Avenue, Suite 1600  
Portland, Oregon 97204

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

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

20 7.1 Vinocur agrees to comply with the reporting form requirements referenced in  
21 Health and Safety Code section 25249.7(f).

22 7.2 The Parties further acknowledge that, pursuant to Health and Safety Code  
23 § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the settlement,  
24 which motion Vinocur shall draft and file, and ShedRain shall join. Vinocur and ShedRain  
25 agree to mutually employ their best efforts to support the entry of this agreement as a Consent  
26 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. If  
27 any third party objection to the noticed motion is filed, Vinocur and ShedRain shall work  
28 together to file a joint reply and appear at any hearing before the Court. This provision is a

1 material component of the Consent Judgment and shall be treated as such in the event of a  
2 breach.

3 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent  
4 Judgment and any and all prior agreements between the parties as to the Notices or Complaint  
5 referenced herein shall terminate and become null and void, and the action shall revert to the  
6 status that existed prior to the execution date of this Consent Judgment; (b) no term of this  
7 Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or  
8 aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be  
9 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the  
10 parties agree to meet and confer to determine whether to modify the terms of the Consent  
11 Judgment and to resubmit it for approval.

12 **8. ENFORCEMENT**

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

15 **9. SEVERABILITY**

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

19 **10. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of  
21 California and apply within the State of California. In the event that Proposition 65 is repealed,  
22 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the  
23 provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of  
24 any such repeal or preemption or rendered inapplicable by reason of law generally as to the  
25 Products, then ShedRain shall provide written notice to Vinocur of any asserted change in law,  
26 and, if Vinocur agrees, ShedRain shall have no further obligations pursuant to this Consent  
27 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this  
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1 Consent Judgment shall be interpreted to relieve ShedRain from any obligation to comply with  
2 any pertinent state or federal toxics control law.

3 **11. DRAFTING**

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

14 **12. MODIFICATION**

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

18 **13. COUNTERPARTS**

19 13.1 This Consent Judgment may be executed in counterparts and by facsimile or  
20 portable document format (PDF) signature, each of which shall be deemed an original, and all  
21 of which, when taken together, shall constitute one and the same document.

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**14. AUTHORIZATION**

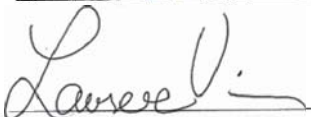
Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to agree to the terms and conditions of this Consent Judgment, to enter into and execute the Consent Judgment on behalf of the Party represented, and to legally bind that Party, and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

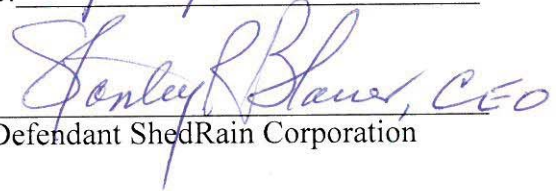
AGREED TO:

AGREED TO:

Date: 7/20/15

Date: 7/20/15

By:   
Plaintiff Laurence Vinocur

By:   
Defendant ShedRain Corporation