

Jonathan A. Bornstein, State Bar No. 196345
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
LAURENCE VINOUCUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINOUCUR

Plaintiff,

v.

HARMAN INTERNATIONAL
INDUSTRIES, INCORPORATED; and
DOES 1-150, inclusive,

Defendants.

Case No. RG15777391

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and defendant Harman International Industries, Incorporated (“Harman”), with
5 Vinocur and Harman each referred 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 Harman 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, Health and Safety Code
13 § 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Harman manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC headphone pouches containing di(2-ethylhexyl)phthalate (“DEHP”), and that
17 it does so without providing the health hazard warning that Vinocur alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are headsets with vinyl/PVC headphone
21 pouches containing DEHP including, but not limited to, the *JBL by Harman Tim McGraw In-Ear*
22 *Headphones (Carrying Pouch)*, *TMG21B, FK0009,-024488, UPC # 0 50036 31389 6* (collectively,
23 “Products”).

24 **1.6 Notice of Violation**

25 On March 13, 2015, Vinocur served Harman and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”), alleging that Harman violated Proposition 65 when it
27 failed to warn its customers and consumers in California that the Products expose users to DEHP.

28 ///

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

3 **1.7 Complaint**

4 On July 10, 2015, Vinocur commenced the instant action, naming Harman as a defendant
5 for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Harman as to the allegations contained in the Complaint, that venue is proper in
18 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of
19 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
22 the Court grants the motion for approval of this Consent Judgment, including any tentative rulings
23 not opposed by the Parties.

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 Commencing ninety-days after the Effective Date, and continuing thereafter, Harman shall
26 only manufacture for sale, or purchase for sale in California, Reformulated Products. For purposes
27 of this Consent Judgment, "Reformulated Products" are defined as Products with a maximum
28 DEHP concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.

1 Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies
2 utilized by state or federal agencies for the purpose of determining DEHP content in a solid
3 substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

6 Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all the claims
7 referred to in this Consent Judgment, Harman shall pay \$12,000 in civil penalties in accordance
8 with this Section. Each penalty payment will be allocated in accordance with Health & Safety
9 Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
10 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
11 remitted to Vinocur. Vinocur’s counsel shall be responsible for remitting Harman’s penalty
12 payment(s) under this Consent Judgment to OEHHA.

13 **3.1.1 Initial Civil Penalty.** Within five (5) days after the Effective Date, Harman
14 shall cause an initial civil penalty payment of \$3,000 to be made pursuant to the procedure set forth
15 in Section 3.3. Payment shall be made by a single check made payable to “Laurence Vinocur,
16 Client Trust Account” to be delivered to the address provided in Section 3.4, below.

17 **3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On December
18 15, 2015, Harman shall make a final civil penalty payment of \$9,000. Pursuant to title 11
19 California Code of Regulations, section 3203(c), Vinocur agrees that the final civil penalty payment
20 shall be waived in its entirety if, no later than December 1, 2015, an officer of Harman provides
21 Vinocur with a signed declaration certifying that all of the Products it ships for sale or distributes
22 for sale in California as of the date if its declaration are Reformulated Products, and that Harman
23 will continue to offer only Reformulated Products in California in the future. The option to certify
24 to early reformulation in lieu of making the final civil penalty payment otherwise required by this
25 Section is a material term; time is of the essence.

26 To obtain a waiver of the final civil penalty, Harman must deliver its declaration certifying
27 to reformulation to Vinocur’s counsel at the address provided in Section 3.4, below. In the event
28 that Harman does not timely certify its compliance or make the final civil penalty payment required

1 by this Section, the Parties agree that Vinocur may file a motion or application seeking an order
2 compelling Harman's compliance with this Section. If successful, the Parties further agree that
3 Vinocur shall be entitled to his reasonable attorneys' fees and costs pursuant to general contract
4 principles and Code of Civil Procedure § 1021.5.

5 **3.2 Reimbursement of Attorneys' Fees and Costs**

6 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
9 the other settlement terms had been finalized, Harman expressed a desire to resolve Vinocur's fees
10 and costs. The Parties then negotiated a resolution of the compensation due to Vinocur and his
11 counsel under general contract principles and the private attorney general doctrine codified at Code
12 of Civil Procedure § 1021.5. For all work performed through the mutual execution of this
13 agreement and the Court's approval of the same, but exclusive of fees and costs on appeal, if any,
14 Harman shall reimburse Vinocur and his counsel \$33,000. Harman's payment shall be made
15 within five (5) days after the Effective Date, and be delivered to the address in Section 3.4 in the
16 form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and
17 costs incurred by Vinocur investigating, bringing this matter to Harman's attention, litigating, and
18 negotiating a settlement of the matter in the public interest.

19 **3.3 Payment Timing; Payments Held In Trust**

20 With the exception of the final civil penalty payment required by Section 3.1.2, Harman
21 shall deliver all payments required by this Consent Judgment to its counsel within one week of the
22 date that this agreement is fully executed by the Parties. Harman's counsel shall confirm receipt of
23 settlement funds in writing to Vinocur's counsel and, thereafter, hold the amounts paid in trust until
24 such time as the Court grants the motion for approval of the Parties' settlement contemplated by
25 Section 5. Within five (5) days of the Effective Date, Harman's counsel shall deliver all settlement
26 payments it has held in trust to Vinocur's counsel at the address provided in Section 3.4. In the
27 event the final civil penalty payment required by Section 3.1.2 becomes due prior to the Effective
28 Date, then Harman shall deliver the final civil penalty payment to its attorney to be held in trust

1 until, and disbursed within two days after, the Effective Date.

2 **3.4 Payment Address**

3 All payments required by this Consent Judgment shall be delivered to the following

4 address: The Chanler Group
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Vinocur’s Release of Proposition 65 Claims**

9 Vinocur, acting on his own behalf and in the public interest, releases Harman and its
10 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
11 and attorneys (“Releasees”) and each entity to whom Harman directly or indirectly distributes or
12 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,
13 retailers, franchisers, cooperative members, licensors, licensees and product endorsers
14 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
15 to DEHP from the Products manufactured, imported, distributed or sold by Harman prior to 90 days
16 after the Effective Date (the “Date”), as set forth in the Notice, even if such Products are sold by
17 Downstream Releasees after the Date. Compliance with the terms of this Consent Judgment
18 constitutes compliance with Proposition 65 by Harman with respect to the alleged or actual failure
19 to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by
20 Harman after the Effective Date. This Consent Judgment is a full, final and binding resolution of
21 all claims that were or could have been asserted in this action based on the Notice and Complaint.

22 **4.2 Vinocur’s Individual Release of Claims**

23 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides
24 a release to Harman, Releasees, and Downstream Releasees which shall be effective as a full and
25 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys’ fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
27 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
28

1 exposures to DEHP in Products manufactured, imported, distributed or sold by Harman before the
2 Effective Date.

3 **4.3 Harman's Release of Vinocur**

4 Harman, on its own behalf and on behalf of its past and current agents, representatives,
5 attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his
6 attorneys and other representatives, for any and all actions taken or statements made by Vinocur
7 and his attorneys and other representatives in the course of investigating claims, seeking to enforce
8 Proposition 65 against it in this matter, or with respect to the Products.

9 **4.4 Waiver of Unknown Claims**

10 It is possible that other claims not known to the Parties arising out of the facts alleged in
11 the Notice or the Complaint and relating to the Products will develop or be discovered. Vinocur,
12 in his individual capacity only and *not* in his representative capacity, on one hand, and Harman, on
13 the other hand, acknowledge that this Consent Judgment is expressly intended to cover and
14 include all such claims up through the Effective Date, including all rights of action therefor.
15 Vinocur and Harman acknowledge that the claims released in Sections 4.2 and 4.3 above may
16 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
17 such unknown claims. California Civil Code section 1542 reads as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
20 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.

21 Vinocur, in his individual capacity only and *not* in his representative capacity, on the one hand,
22 and Harman, on the other hand, acknowledge and understand the significance and consequences
23 of this specific waiver of California Civil Code section 1542.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
27 after it has been fully executed by all Parties. In such circumstances, Harman shall have no
28 obligation to make the payments required under Section 3. Vinocur and Harman agree to support

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

8 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

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

20 **8. NOTICE**

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

25 ///

26 ///

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. AUTHORIZATION

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

AGREED TO:



LAURENCE VINOCUR

Dated: August 25, 2015

AGREED TO:



HARMAN INTERNATIONAL
INDUSTRIES, INCORPORATED

By: Todd A. Suko
(Print Name)

Its: EVP, General Counsel
(Title)

Dated: Sept 11, 2015