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10 Attorneys for Defendant
LAURA GELLER BEAUTY, LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15
16 LAURENCE VINO CUR,) Case No. CIV1502069
)
17 Plaintiff,) **[PROPOSED]**
) **CONSENT JUDGMENT AS TO**
18 v.) **DEFENDANT LAURA GELLER**
) **BEAUTY, LLC.**
19 LAURA GELLER BEAUTY, LLC; ULTA)
20 SALON, COSMETICS & FRAGRANCE,)
INC.; and DOES 1-150, inclusive,)
21)
22 Defendants.)
)

1 **1. INTRODUCTION**

2 **1.1 Laurence Vinocur and Laura Geller Beauty, LLC**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur” or “Plaintiff”) and defendant Laura Geller Beauty, LLC (“Laura Geller” or
5 “Defendant”), with Vinocur and Laura Geller collectively referred to as the “Parties.”

6 **1.2 Laurence Vinocur**

7 Vinocur is an individual residing in the State of California who seeks to promote awareness
8 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Laura Geller Beauty, LLC.**

11 Vinocur alleges that Laura Geller employs ten or more persons and is a person in the course
12 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Laura Geller has manufactured, imported, distributed and/or sold
16 vinyl/PVC cosmetic bag hand straps with di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of
17 California without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65
18 as a chemical known to the State of California to cause reproductive harm.

19 **1.5 Notice of Violation**

20 On or about March 13, 2015, Vinocur served Laura Geller and various public enforcement
21 agencies with a document entitled “60-Day Notice of Violation,” alleging that Laura Geller violated
22 Proposition 65 by failing to warn consumers that vinyl/PVC cosmetic bag hand straps including, but
23 not limited to, the *Laura Geller Beauty Flawless in a Flash Travel Size Skin-Perfecting Kit, UPC #8*
24 *49154 00318 1*, exposed users in California to DEHP (“Notice”). To the best of the parties’
25 knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

26 **1.6 Complaint**

27 On June 5, 2015, Vinocur filed a complaint in the Superior Court in and for the County of
28 Alameda against Laura Geller and Does 1 through 150, *Vinocur v. Laura Geller Beauty, LLC., et al.*,

1 Case No. CIV1502069, (“Complaint” or “Action”) alleging violations of California Health & Safety
2 Code § 25249.6, based on the alleged unwarned exposures to DEHP contained in certain vinyl/PVC
3 cosmetic bag hand straps sold by Laura Geller in the State of California.

4 **1.7 No Admission**

5 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
6 were raised in either the Notice or Complaint, or that could have been raised in the Notice or
7 Complaint, arising out of the facts or conduct alleged therein. Laura Geller denies the material,
8 factual and legal allegations contained in the Notice and the Complaint, and maintains that it is not a
9 person subject to Proposition 65 and that all of the products it has manufactured, imported,
10 distributed and/or sold in the State of California, including the Covered Products, as defined in
11 Section 2.1 below, have been, and are, in compliance with all laws. Laura Geller does not admit any
12 facts, conclusions, issues or violations of law including, but not limited to, any facts, conclusions,
13 issues or violations of law suggesting or demonstrating any violations of Proposition 65 or any other
14 statutory, common law or equitable requirements relating to DEHP in Covered Products, such being
15 specifically denied by Laura Geller. Compliance with this Consent Judgment shall neither constitute
16 nor be construed as an admission by Laura Geller of any fact, conclusion of law, issue of law, or
17 violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
18 remedy, argument or defense Laura Geller may have in this or any other future legal proceedings.
19 This Consent Judgment is the product of negotiation and compromise and is accepted by Laura
20 Geller for purposes of settling, compromising, and resolving issues disputed in this Action.
21 However, this Section shall not diminish or otherwise affect the obligations, responsibilities and
22 duties of Laura Geller under this Consent Judgment.

23 **1.8 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, Laura Geller stipulates that this Court has
25 jurisdiction over Laura Geller as to the allegations contained in the Complaint, that venue is proper
26 in the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
27 Consent Judgment.

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1 **2. DEFINITIONS**

2 **2.1** “Covered Product[s]” means vinyl/PVC cosmetic bag hand straps containing DEHP,
3 including, but not limited to, *Laura Geller Beauty Flawless in a Flash Travel Size Skin-Perfecting*
4 *Kit, UPC #8 49154 00318 1*, which are manufactured, imported, sold and/or distributed for sale in
5 California by Laura Geller.

6 **2.2** For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
7 that this Consent Judgment is entered by the Court.

8 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNING**

9 **3.1 Reformulation Commitment and Standards**

10 By March 30, 2016, all Covered Products Laura Geller manufactures or imports for
11 distribution or sale in California shall contain less than or equal to 1,000 parts per million (“ppm”) of
12 DEHP, when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing
13 methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies
14 for the purpose of determining DEHP content in a solid substance (“Reformulated Products”).

15 **3.2 Sales of Existing Inventory of Covered Products with Warnings.**

16 Nothing in this Consent Judgment shall preclude Laura Geller from fulfilling customer
17 orders, shipping, and/or selling in California its existing inventory of Covered Products. Any
18 Covered Products received by Laura Geller prior to March 30, 2016, that do not qualify as
19 Reformulated Products, and that Laura Geller sells, ships, distributes or offers for sale in California,
20 shall be accompanied by a clear and reasonable warning, which reads: **“WARNING:** This product
21 contains a chemical known to the State of California to cause cancer and birth defects (or other
22 reproductive harm).” (hereinafter, “interim warnings”).

23 **3.3 Reformulated Products are Deemed Compliant**

24 Reformulated Products shall be deemed to comply with Proposition 65 as it relates to the
25 presence of DEHP, in the Covered Products and shall be exempt from any Proposition 65 warning
26 requirements regarding exposure to DEHP.

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1 **4. MONETARY PAYMENTS**

2 In settlement of all the claims referred to in this Consent Judgment, Laura Geller has been
3 assessed a total of \$15,000 in civil penalties in accordance with this Section. Each penalty payment
4 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with
5 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
6 (“OEHHA”) and the remaining 25% of the penalty remitted to Vinocur, as set forth in Sections 4.1
7 and 4.2 below.

8 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

9 Within five (5) business days of mutual execution of this Consent Judgment, Laura Geller
10 shall issue a check payable to “Call & Jenson Client Trust Account” in the amount of \$5,000. Call
11 & Jensen shall provide The Chanler Group with written confirmation within five (5) days of receipt
12 of the funds received pursuant to this paragraph that said funds have been deposited in the Call &
13 Jensen trust account. Within five (5) calendar days of the Effective Date, Call & Jensen shall issue a
14 check payable to “The Chanler Group in Trust for Laurence Vinocur” in the amount of \$5,000.

15 **4.2 Final Civil Penalty Pursuant to Health & Safety Code § 25249.7(b)**

16 Laura Geller shall pay a final civil penalty in the amount \$10,000 on or before the Effective
17 Date. However, the final civil penalty shall be waived in its entirety, if, on or before the Effective
18 Date, an officer of Laura Geller certifies that as of January 30, 2016, all Covered Products
19 distributed, shipped, sold and/or offered for sale in California are Reformulated Products as defined
20 by Section 3.1, and that Laura Geller will continue to distribute, ship, sell and offer for sale in
21 California only Reformulated Products in the future. The option to certify to product reformulation
22 in lieu of making the final civil penalty payment required by this Section is a material term, and time
23 is of the essence. Unless waived, Laura Geller shall issue a check for its final civil penalty payment
24 to “Call & Jenson Client Trust Account” in the amount of \$10,000. Call & Jensen shall provide The
25 Chanler Group with written confirmation within five (5) days of receipt of the funds received
26 pursuant to this paragraph that said funds have been deposited in the Call & Jensen trust account.
27 Within five (5) calendar days of the Effective Date, Call & Jensen shall issue a check payable to
28 “The Chanler Group in Trust for Laurence Vinocur” in the amount of \$10,000.

1 **4.3 Reimbursement of Plaintiff’s Fees and Costs**

2 The Parties reached an accord on the compensation due to Vinocur and his counsel under
3 general contract principles and the private attorney general doctrine codified at California Code of
4 Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement,
5 including the fees and costs incurred as a result of investigating, bringing this matter to Laura
6 Geller’s attention, negotiating a settlement in the public interest, and obtaining court approval of the
7 same. Under these legal principles, Laura Geller shall pay the amount of \$35,000 to reimburse
8 Plaintiff’s fees and costs incurred investigating, litigating and enforcing this matter, including the
9 fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s
10 approval of this Consent Judgment in the public interest. Within five (5) business days of the
11 Execution Date, Laura Geller shall issue a check payable to “Call & Jensen Client Trust Account” in
12 the amount of \$35,000 to be held in trust by Call & Jensen for The Chanler Group. Call & Jensen
13 shall provide The Chanler Group with written confirmation within five (5) days of receipt that the
14 funds have been deposited in the Call & Jensen trust account. Within five (5) days of the Effective
15 Date, Call & Jensen shall issue a check for \$35,000 payable to “The Chanler Group.”

16 **4.4 Payment Procedures**

17 All payments owed by Laura Geller to Vinocur and his counsel pursuant to this agreement,
18 shall be delivered to the following payment address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 If for any reason this Consent Judgment is not entered by the Court within nine (9) months of
25 the Execution Date, Plaintiff shall meet and confer with Laura Geller about mutually agreeable steps
26 the parties can take for entry of the Consent Judgment. If such steps cannot be agreed upon between
27 the Parties, Plaintiff shall promptly return to Laura Geller any and all monies paid by Laura Geller
28 herein under Sections 4.1, 4.2 (if not waived) and 4.3 to Vinocur and The Chanler Group upon Laura
Geller’s written request.

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1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Vinocur’s Release of Laura Geller**

3 In consideration of the promises and agreements contained herein and for the payments to be
4 made pursuant to Section 4, above, Vinocur, acting on behalf of himself, his past and current agents,
5 representatives, attorneys, successors, and/or assignees, and in the interest of the general public
6 pursuant to Health & Safety Code § 25249.7(d), hereby releases Laura Geller, its parents,
7 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
8 attorneys, shareholders (“Defendant Releasees”), and all of its downstream distributors, wholesalers,
9 customers, retailers, franchisees, cooperative members, licensors, licensees, and any other person or
10 entity to whom they directly or indirectly distribute or sell Covered Products including Ulta Salon,
11 Cosmetics & Fragrance, Inc. (“Downstream Defendant Releasees”), from any and all claims,
12 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
13 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited
14 to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, fixed or contingent
15 related to any alleged or actual violation of Proposition 65 that has been or could have been asserted
16 by Vinocur in the public interest in his Notice and Complaint regarding the alleged failure to warn
17 about exposure to DEHP in Covered Products manufactured, distributed, or sold by Laura Geller
18 prior to March 30, 2016 (collectively referred to herein as “Claims”), and hereby waives all rights to
19 institute or participate in, directly or indirectly, any such Claims, against Laura Geller, Defendant
20 Releasees, and Downstream Defendant Releasees.

21 **5.2 Vinocur’s Waiver of Section 1542**

22 Vinocur also, in his individual capacity only and *not* in his representative capacity, provides a
23 general release herein to Laura Geller, Defendant Releasees, and Downstream Defendant Releasees
24 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
25 action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands
26 of Vinocur of any nature, character or kind, known or unknown, suspected or unsuspected, arising
27 out of alleged exposure to, or failure to warn of, DEHP under Proposition 65 with respect to the
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1 Covered Products manufactured, distributed or sold by March 30, 2016. Vinocur acknowledges that
2 he is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

8 Vinocur, in his individual capacity only and *not* in his representative capacity, expressly
9 waives and relinquishes any and all rights and benefits which he may have under, or which may be
10 conferred on his by the provisions of Section 1542 of the California Civil Code as well as under any
11 other state or federal statute or common law principle of similar effect, to the fullest extent that he
12 may lawfully waive such rights or benefits pertaining to the matters released in Section 5.1
13 hereinabove (the “Released Matters”). In furtherance of such intention, the release hereby given
14 shall be and remain in effect as a full and complete release notwithstanding the discovery or
15 existence of any such additional or different claims or facts arising out of the Released Matters.

16 The Parties further understand and agree that this release shall not extend upstream to any
17 entities who sold the Covered Products or any component parts thereof to Laura Geller.

18 **5.3 Laura Geller’s Release and Waiver of Section 1542**

19 Laura Geller waives any and all Claims against Vinocur, his attorneys, and his
20 representatives for any and all actions taken or statements made by Vinocur and his attorneys and his
21 representatives, whether in the course of investigating claims or otherwise seeking enforcement of
22 Proposition 65 against them in this matter, and/or with respect to the Covered Products.

23 Laura Geller also provides a general release herein which shall be effective as a full and final
24 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
25 attorneys’ fees, damages, losses, claims, liabilities and demands of Laura Geller of any nature,
26 character or kind, known or unknown, suspected or unsuspected, related to exposure to DEHP in the
27 Covered Products manufactured, distributed, or sold by Laura Geller by the Effective Date, so long
28 as the Consent Judgment is entered by the Court, Laura Geller acknowledges that it is familiar with
Section 1542 of the California Civil Code, which provides as follows:

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

6 Laura Geller expressly waives and relinquishes any and all rights and benefits which it may have
7 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil
8 Code, as well as under any other state or federal statute or common law principle of similar effect, to
9 the fullest extent that it may lawfully waive such rights or benefits pertaining to the Released
10 Matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a
11 full and complete release notwithstanding the discovery or existence of any such additional or
12 different claims or facts arising out of the Released Matters.

13 **6. COURT APPROVAL**

14 **6.1 Waiver of Trial**

15 By this Consent Judgment and upon its approval, the Parties waive their right to a trial on the
16 merits, and waive their rights to initiate appellate review of this Consent Judgment, and of any and
17 all interim rulings, including all pleading, procedural, and discovery orders.

18 **6.2 Court Approval Required**

19 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
20 noticed motion is required to obtain judicial approval of this Consent Judgment, which Vinocur shall
21 file. The Parties agree to mutually employ their and their respective counsel's best efforts to support
22 the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by
23 the Court in a timely manner. If this Consent Judgment is not approved by the Court within nine (9)
24 months of complete execution by the parties, then: (a) this Consent Judgment and any and all prior
25 agreements between the Parties shall terminate and become null and void, and the action shall revert
26 to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this
27 Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect
28 of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible
in evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to

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1 meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit
2 it for approval.

3 **7. MISCELLANEOUS**

4 **7.1 Governing Law**

5 The terms of this Consent Judgment shall be governed by the laws of the State of California,
6 and shall apply only to Covered Products offered for sale in the State of California. In the event that
7 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to
8 the Covered Products, then Laura Geller may provide written notice to Vinocur of any asserted
9 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
10 respect to, and to the extent that, the Covered Products are so affected.

11 **7.2 Contract Interpretation**

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

21 **8. NOTICES**

22 Unless specified herein, all correspondence and notices required to be provided pursuant to
23 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
24 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
25 other Party at the following addresses:

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<p>1 To Laura Geller:</p> <p>2 Matthew R. Orr, Esq. Call & Jensen 3 610 Newport Center Drive Suite 700 4 Newport Beach, CA 92660</p> <p>5 With a copy to:</p> <p>6 Lisa Bond, Esq. 7 Richards Watson Gershon 355 South Grand Avenue 8 Suite 4000 Los Angeles, CA 90071</p>	<p>To Vinocur:</p> <p>Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565</p>
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10 Any Party, from time to time, may specify in writing to the other Party a change of address to
11 which all notices and other communications shall be sent.

12 **9. MODIFICATION**

13 **9.1 Modification**

14 This Consent Judgment may be modified by written agreement of the Parties and upon entry
15 of a modified Consent Judgment by the Court, or by motion of any Party and entry of a modified
16 Consent Judgment by the Court.

17 **9.2 Subsequent Legislation**

18 If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the
19 DEHP content of Covered Products sold in California hereunder, any Party shall be entitled to
20 request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment for
21 good cause shown, to the extent that the new level provided by the CPSIA allows for a different
22 amount of DEHP in children’s toys.

23 **9.3 Notice; Meet and Confer**

24 Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall first
25 attempt in good faith to meet and confer with the other Party for a period of 30 days prior to filing a
26 motion to modify the Consent Judgment.

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1 **10. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No
5 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
6 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of
7 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
8 hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in
9 writing between the Parties.

10 **11. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to implement or modify the Consent
12 Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof,
13 under California Code of Civil Procedure § 664.6.

14 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile or portable
16 document format (pdf), each of which shall be deemed an original, and all of which, when taken
17 together, shall constitute one and the same document.

18 **13. 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.

22 **AGREED TO:**

23 Date: 6/22/2016

24
25 By: 
26 LAURENCE VINOCUR

AGREED TO:

Date: 07-11-2016

27 By: 
28 LAURA GELLER BEAUTY, LLC