

1 **1. INTRODUCTION**

2 **1.1 Laurence Vinocur, and Poetry Corporation**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur” or “Plaintiff”) and defendant Poetry Corporation. (“Poetry” or “Defendant”), with
5 Vinocur and poetry 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
8 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Poetry Corporation**

11 Vinocur alleges that Poetry employs ten or more persons and is a person in the course of
12 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 Poetry has manufactured, imported, distributed and/or sold vinyl/PVC
16 belts with di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of California without the
17 requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical
18 known to the State of California to cause reproductive harm.

19 **1.5 Notice of Violation**

20 Vinocur served Poetry and various public enforcement agencies with a document entitled
21 “60-Day Notice of Violation”, dated March 13, 2015, alleging that Poetry violated Proposition 65
22 by failing to warn consumers that vinyl/PVC belts including, but not limited to, the *Poetry*
23 *Romper with Belt, S/#498682, #2964986211*, exposed users in California to DEHP (“Notice”). To
24 the best of the parties’ knowledge, no public enforcer has prosecuted the allegations set forth in
25 the Notice.

26 **1.6 Complaint**

27 On July 5, 2015, Vinocur filed a complaint in the Superior Court in and for the County of
28 Alameda against Poetry and Does 1 through 150, *Vinocur v. Poetry Corporation, et al.*, Case No.

1 CIV1502071 (“Complaint” or “Action”), alleging violations of California Health & Safety Code
2 § 25249.6, based on the alleged unwarned exposures to DEHP contained in certain vinyl/PVC
3 belts sold by Poetry 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. Poetry denies the material, factual
8 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. Poetry does not admit any
12 facts, conclusions, issues or violations of law including, but not limited to, any facts, conclusion of
13 law, issue of law, or violation of law suggesting or demonstrating any violations of Proposition 65
14 or any other statutory, common law or equitable requirements relating to DEHP in Covered
15 Products, such being specifically denied by Poetry. Nothing in this Consent Judgment shall be
16 construed as an admission by Poetry of any fact, conclusion of law, issue of law, or violation of
17 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
18 by Poetry of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
19 Judgment shall prejudice, waive or impair any right, remedy, argument or defense Poetry may
20 have in this or any other future legal proceedings. This Consent Judgment is the product of
21 negotiation and compromise and is accepted by Poetry for purposes of settling, compromising,
22 and resolving issues disputed in this action. However, this Section shall not diminish or otherwise
23 affect the obligations, responsibilities and duties of Poetry under this Consent Judgment.

24 **1.8 Consent to Jurisdiction**

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

1 **2. DEFINITIONS**

2 **2.1** “Covered Product[s]” means vinyl/PVC belts containing DEHP, including, but not
3 limited to, *Poetry Romper with Belt, S/#498682, #2964986211*, which are manufactured,
4 imported, sold and/or distributed for sale in California by Poetry.

5 **2.2** For purposes of this Consent Judgment, the term “Execution Date” shall mean the
6 date that this Consent Judgment is signed on behalf of all Parties.

7 **2.3** For purposes of this Consent Judgment, the term “Effective Date” shall mean the
8 date that this Consent Judgment is entered by the Court.

9 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

10 **3.1 Reformulation Commitment and Standards**

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

17 **3.2 Sales of Existing Inventory with Warnings**

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

25 **3.3 Reformulated Products are Deemed to Comply**

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

1 **4. MONETARY PAYMENTS**

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

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, Poetry shall
10 issue a check payable to “Call & Jensen Client Trust Account” in the amount of \$2,000. 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
14 issue a check to “The Chanler Group in Trust for Laurence Vinocur” in the amount of \$2,000.

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

16 Poetry shall pay a final civil penalty in the amount \$5,000 on or before March 30, 2016.
17 However, the final civil penalty shall be waived in its entirety, if, on or before March 15, 2016, an
18 Officer of Poetry certifies in writing that as of January 30, 2016, all Covered Products distributed,
19 shipped, sold and/or offered for sale in California are Reformulated Products as defined by
20 Section 3.1, and that Poetry will continue to distribute, ship, sell and offer for sale in California
21 only Reformulated Products in the future. The certification in lieu of paying the final civil penalty
22 provided by this Section is a material term, and time is of the essence. Unless waived, Poetry
23 shall issue a check for its final civil penalty payment to “The Chanler Group in Trust for Laurence
24 Vinocur.”

25 **4.3 Reimbursement of Plaintiff’s Fees and Costs**

26 The Parties reached an accord on the compensation due to Vinocur and his counsel under
27 general contract principles and the private attorney general doctrine codified at California Code of
28 Civil Procedure section 1021.5, for all work performed through the mutual execution of this

1 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
2 Poetry's attention, negotiating a settlement in the public interest, and obtaining court approval of
3 the same. Under these legal principles, Poetry shall pay the amount of \$25,000 to reimburse
4 Plaintiff's fees and costs incurred investigating, litigating and enforcing this matter, including the
5 fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
6 approval of this Consent Judgment in the public interest. Within five (5) business days of the
7 Execution Date, Poetry shall issue a check payable to "Call & Jensen Client Trust Account" in the
8 amount of \$25,000 to be held in trust by Call & Jensen for The Chanler Group. Call & Jensen
9 shall provide The Chanler Group with written confirmation within five (5) days of receipt that the
10 funds have been deposited in the Call & Jensen trust account. Within five (5) calendar days of the
11 Effective Date, Call & Jensen shall issue a check for \$25,000 payable to "The Chanler Group."

12 **4.4 Payment Procedures**

13 All payments to be made to Vinocur and his counsel pursuant to this agreement, shall be
14 delivered to the following payment address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

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

26 **5. CLAIMS COVERED AND RELEASED**

27 **5.1 Vinocur's Release of Poetry**

28 In consideration of the promises and agreements contained herein and for the payments to
be made pursuant to Section 4, above, Vinocur, acting on behalf of himself, his past and current
agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general

1 public pursuant to Health & Safety Code § 25249.7(d), hereby releases Poetry, its parents,
2 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
3 attorneys, shareholders (“Defendant Releasees”), and all of its downstream distributors,
4 wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, and any
5 other person or entity to whom they directly or indirectly distribute or sell Covered Products
6 (“Downstream Defendant Releasees”), from any and all claims, including, without limitation, all
7 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
8 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
9 fees, and attorneys’ fees) of any nature whatsoever, fixed or contingent (collectively “Claims”)
10 related to any alleged or actual violation of Proposition 65 that has been or could have been
11 asserted by Vinocur in the public interest in his Notice and Complaint regarding the alleged failure
12 to warn about exposure to DEHP in Covered Products manufactured, distributed, or sold by
13 Poetry as set forth in the Notice prior to the Effective Date, and hereby waives all rights to
14 institute or participate in, directly or indirectly, any such Claims, against poetry, Defendant
15 Releasees, and Downstream Defendant Releasees.

16 **5.2 Vinocur’s Waiver of Section 1542**

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

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
28 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.

1 Vinocur, in his individual capacity only and *not* in his representative capacity, expressly
2 waives and relinquishes any and all rights and benefits which he may have under, or which may be
3 conferred on his by the provisions of Section 1542 of the California Civil Code as well as under
4 any other state or federal statute or common law principle of similar effect, to the fullest extent
5 that he may lawfully waive such rights or benefits pertaining to the released matters. In
6 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
7 complete release notwithstanding the discovery or existence of any such additional or different
8 claims or facts arising out of the released matters.

9 The Parties further understand and agree that this release shall not extend upstream to any
10 entities who sold the Covered Products or Additional Products or any component parts thereof to
11 poetry.

12 **5.3 Poetry's Release and Waiver of Section 1542**

13 Poetry waives any and all Claims against Vinocur, his attorneys, and his representatives
14 for any and all actions taken or statements made by Vinocur and his attorneys and his
15 representatives, whether in the course of investigating claims or otherwise seeking enforcement of
16 Proposition 65 against them in this matter, and/or with respect to the Covered Products.

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

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
26 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.

27 Poetry expressly waives and relinquishes any and all rights and benefits which it may have under,
28 or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code,

1 as well as under any other state or federal statute or common law principle of similar effect, to the
2 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.
3 In furtherance of such intention, the release hereby given shall be and remain in effect as a full and
4 complete release notwithstanding the discovery or existence of any such additional or different
5 claims or facts arising out of the released matters.

6 **6. COURT APPROVAL**

7 **6.1 Waiver of Trial**

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

11 **6.2 Court Approval Required**

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

25 **7. MISCELLANEOUS**

26 **7.1 Governing Law**

27 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California, and shall apply only to Covered Products and Additional Products offered for sale in

1 the State of California. In the event that Proposition 65 is repealed or is otherwise rendered
2 inapplicable by reason of law generally, or as to the Covered Products and Additional Products,
3 then Poetry may provide written notice to Vinocur of any asserted change in the law, and shall
4 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
5 that, the Covered Products or Additional Products are so affected.

6 **7.2 Contract Interpretation**

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

16 **8. NOTICES**

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

21 To Poetry:

22 Matt Orr, Esq.
23 Call & Jensen
24 610 Newport Center Drive
Newport Beach, CA 92660

25 To Vinocur:

26 Proposition 65 Coordinator
27 The Chanler Group
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

3 **9. MODIFICATION**

4 **9.1 Modification**

5 This Consent Judgment may be modified by written agreement of the Parties and upon
6 entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a
7 modified Consent Judgment by the court.

8 **9.2 Subsequent Legislation**

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

14 **9.3 Notice; Meet and Confer**

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

18 **10. ENTIRE AGREEMENT**

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

27 ///

28 ///

1 **11. RETENTION OF JURISDICTION**

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

5 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

9 **13. AUTHORIZATION**

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

13 **AGREED TO:**

14 Date: 2/16/16

15
16 By: 
17 LAURENCE VINO CUR

AGREED TO:

Date: 2/25/14

18
19 By: 
20 POETRY CORPORATION

21
22
23
24
25
26
27
28