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9 LAURENCE VINOUCUR

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13 LAURENCE VINOUCUR,
14 Plaintiff.

15 v.

16 SPORT SQUAD, LLC, SEARS HOLDINGS
17 CORPORATION, WAL-MART STORES,
18 INC.; and DOES 1-150, inclusive,
19 Defendants.

Case No. RG15790459

[PROPOSED] CONSENT JUDGMENT

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

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CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and defendant Sport Squad LLC (“Sport Squad”), with Vinocur and Sport Squad each
5 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 Sport Squad 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, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC racquet cases containing
20 DEHP, including, but not limited to, the *Joola Spirit Set, UPC #4 002560 548332* and *Joola Spirit*
21 *Set, UPC #4 002560 591567* that Sport Squad has manufactured, or distributed or sold and which
22 have been sold or offered for sale to California consumers (collectively, “Products”).

23 **1.6 Notice of Violation**

24 On March 13, 2015, Vinocur served Sport Squad and the requisite public enforcement
25 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Sport Squad violated
26 Proposition 65 when it failed to warn its customers and consumers in, California that the Products
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1 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 On July 13, 2015, Vinocur served Sport Squad and the requisite public enforcement
4 agencies with a Supplemental 60-Day Notice of Violation ("Supplemental Notice"), alleging that
5 Sport Squad violated Proposition 65 when it failed to warn its customers and consumers in,
6 California that the Products expose users to DEHP. To the best of the Parties' knowledge, no
7 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set
8 forth in the Notice.

9 **1.7 Complaint**

10 On October 21, 2015, Vinocur commenced the instant action, naming Sport Squad, among
11 others, as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

12 **1.8 No Admission**

13 Sport Squad denies the material, factual, and legal allegations contained in the Notice and
14 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
15 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
16 Judgment shall be construed as an admission against interest by Sport Squad of any fact, finding,
17 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
18 Judgment constitute or be construed as an admission against interest by Sport Squad of any fact,
19 finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
20 diminish or otherwise affect Sport Squad's obligations, responsibilities, and duties under this
21 Consent Judgment. Excepting compliance with this Consent Judgment, nothing in this Consent
22 Judgment shall preclude Sport Squad from asserting any and all applicable defenses available to it
23 in any future proceeding by any person under Proposition 65 or otherwise.

24 **1.9 Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Sport Squad as to the allegations contained in the Complaint, that venue is proper
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1 in the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of
2 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
5 Vinocur serves notice on Sport Squad that the Court has granted the motion for approval of this
6 Consent Judgment contemplated by Section 5, including any and all tentative rulings that are not
7 contested.

8 **2. INJUNCTIVE SETTLEMENT TERMS**

9 Commencing on the Effective Date, and continuing thereafter, Sport Squad shall only (i)
10 manufacture for sale in California, or (ii) distribute for sale in California, Reformulated Products.
11 For purposes of this Consent Judgment "Reformulated Products" are defined as Products with a
12 maximum DEHP concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to
13 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other
14 methodologies utilized by state or federal agencies for the purpose of determining DEHP content in
15 a solid substance.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

18 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
19 claims referred to in this Consent Judgment, Sport Squad shall pay \$2,500.00 in civil penalties in
20 accordance with this Section. The civil penalty payment will be allocated in accordance with
21 California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the
22 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25%
23 of the penalty remitted to Vinocur. Sport Squad shall provide its payment in a single check made
24 payable to "Lawrence Vinocur, Client Trust Account", to be delivered to the address provided in
25 Section 3.4, below. Vinocur's counsel shall be responsible for remitting Sport Squad's penalty
26 payment under this Consent Judgment to OEHHA within five (5) business days of receipt.

27 **3.1.1 Sales Data**

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1 Sport Squad acknowledges that the sales data and related information it provided to
2 Vinocur in the form of a draft Declaration on October 9, 2015 was a material factor upon which
3 Vinocur has relied to determine the amount of civil penalties assessed pursuant to Health & Safety
4 Code § 25249.7 in this Consent Judgment. To the best of Sport Squad's knowledge the sales data
5 and related information provided to Vinocur on October 9, 2015 is full and complete, and is a true
6 and accurate reflection of any and all sales of the Products in California and known to Sports Squad
7 during the periods set forth in the draft Declaration.

8 If, within nine (9) months of the Effective Date, Vinocur discovers and presents to Sport
9 Squad evidence that unreformulated Product has been sold or distributed by Sport Squad in sales
10 volumes materially different than those identified by Sport Squad in the draft Declaration during the
11 terms set forth in the draft Declaration, then Sport Squad may be liable for an additional penalty
12 amount as well as additional attorney's fees expended by Vinocur in the public interest. Vinocur
13 represents and warrants that as of the execution date of this Consent Judgment by Vinocur, Vinocur
14 has no such evidence. In the event Vinocur believes there is clear and convincing evidence that the
15 Product has been sold or distributed by Sport Squad in sales volumes materially different than those
16 identified by Sport Squad as set forth above, Vinocur shall provide Sport Squad with all of the
17 supporting evidence and a written demand for additional penalties and attorney fees under this
18 Section. After service of such demand, Vinocur and Sport Squad shall have thirty (30) days to meet
19 and confer in good faith regarding the demand and, if any payment is agreed upon by the parties,
20 Sport Squad shall submit such payment to Vinocur in accordance with the method of payment of
21 penalties identified in this Section 3 within fifteen (15) days of the date of agreement. The thirty
22 (30) day period can be extended upon written agreement of the parties. Should the meet and confer
23 period end without any resolution between the Parties,, Vinocur shall be entitled to file a formal
24 legal claim bringing such claims as Vinocur elects to pursue and the prevailing party shall be
25 entitled to all reasonable attorney fees and costs relating to that action.

26 3.2 Reimbursement of Attorneys' Fees and Costs

27 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
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1 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
2 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
3 the other settlement terms had been finalized, Sport Squad expressed a desire to resolve Vinocur's
4 fees and costs. The Parties then negotiated a resolution of the compensation due to Vinocur and
5 his counsel under general contract principles and the private attorney general doctrine codified at
6 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
7 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs
8 on appeal, if any, Sport Squad shall reimburse Vinocur and his counsel \$42,000.00. Sport Squad's
9 payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The
10 Chanler Group." The reimbursement shall cover all fees and costs incurred by Vinocur
11 investigating, bringing this matter to Sport Squad's attention, litigating, and negotiating a
12 settlement of the matter in the public interest. Vinocur shall cooperate in the processing of the
13 payments by providing upon request W-9, account number, and any related information necessary
14 for timely processing of the civil penalty and reimbursement payments.

15 **3.3 Payment Timing**

16 Sport Squad shall deliver all payments required by this Consent Judgment to The Chanler
17 Group within five (5) business days of the Effective Date, provided Vinocur timely has provided
18 any necessary information Sport Squad requested for processing of the payments.

19 **3.4 Payment Address**

20 All payments required by this Consent Judgment shall be delivered to the following
21 address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710.

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Vinocur's Release of Proposition 65 Claims**

1 Vinocur, acting on his own behalf and in the public interest, releases Sport Squad and its
2 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
3 and attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
4 Products including, but not limited to, their downstream distributors, wholesalers, customers,
5 retailers (including Sears Holdings Corporation, and Wal-Mart Stores, Inc. and Walmart.com USA
6 LLC and their respective affiliates, subsidiaries and marketplace retailers), franchisers, cooperative
7 members, licensors and licensees (“Downstream Releasees”) for any violations arising under
8 Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported,
9 distributed or sold by Sport Squad or by any Releasee or Downstream Releasee prior to the
10 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with
11 Proposition 65 by Sport Squad and its Releasees and Downstream Releasees with respect to the
12 alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or
13 distributed for sale by Sport Squad or any Releasee on and after the Effective Date. For the
14 avoidance of doubt, the release of claims in this Section 4.1 covers and extends to all Products
15 Sport Squad manufactured, or distributed or sold prior to the Effective Date, regardless of the date
16 such Products are sold to California consumers.

17 **4.2 Vinocur’s Individual Release of Claims**

18 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides
19 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
20 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
21 attorneys’ fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
22 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
23 exposures to DEHP in Products manufactured, imported, distributed or sold by Sport Squad before
24 the Effective Date.

25 **4.3 Sport Squad’s Release of Vinocur**

26 Sport Squad, on its own behalf and on behalf of its past and current agents, representatives,
27 attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his
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1 attorneys and other representatives, for any and all actions taken or statements made by Vinocur
2 and his attorneys and other representatives in the course of investigating claims, seeking to enforce
3 Proposition 65 against it in this matter, or with respect to the Products, up through the Effective
4 Date.

5 **5. COURT APPROVAL**

6 This Consent Judgment is not effective until it is approved and entered by the Court and
7 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
8 after it has been fully executed by the Parties, or by such time as the Parties have agreed in writing
9 to extend this period. The Parties acknowledge that, pursuant to California Health and Safety Code
10 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
11 which motion Vinocur shall draft and file. Sport Squad agrees to support entry of an order
12 approving this Consent Judgment.

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

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

25 **8. NOTICE**

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

3 To Sport Squad:
4 Richard Lee, Chief Executive Officer
5 Sport Squad, LLC
6 15800 Crabbs Branch Way, Suite 250
7 Rockville, MD 20855

To Vinocur:
Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

7 with a copy to:
8 Judith M. Praitis, Esq.
9 Sidley Austin, LLP
10 555 West 5th Street, 39th Floor
11 Los Angeles, California 90013

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

14 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

19 Vinocur and his counsel agree to comply with the reporting form requirements referenced in
20 California Health and Safety Code section 25249.7(f).

21 **11. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
23 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
24 any party and the entry of a modified Consent Judgment by the Court thereon. Any motion to
25 modify shall be served on the Office of the Attorney General. The Parties shall meet and confer in
26 good faith prior to one Party seeking a modification.

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1 **12. DISPUTE RESOLUTION**

2 If either Party determines at a future date that a violation of this Consent Judgment has
3 occurred, such Party shall provide notice to the other Party. Prior to bringing any action to enforce
4 any requirement of this Consent Judgment, the Party alleging a violation shall provide the other
5 Party with written notice of the grounds for such allegation together with credible supporting
6 information as well as a demand for the relief sought. The Parties shall then meet and confer
7 regarding in an attempt to resolve the matter informally within a period not less than thirty (30)
8 days in an effort to resolve the allegations or alleged breach, if any. Should such attempts at
9 informal resolution fail, the Party alleging a violation may seek the proposed relief or other relief
10 authorized by law.

11 **13. AUTHORIZATION**

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

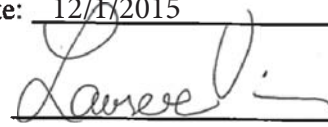
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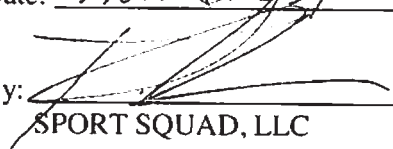
17 **AGREED TO:**

AGREED TO:

18 Date: 12/1/2015

Date: November 23, 2015

19
20 By: 
LAURENCE VINOUCUR

By: 
SPORT SQUAD, LLC

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