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

LAURENCE VINOUCUR,
Plaintiff,
v.
ULTIMATE SURVIVAL TECHNOLOGIES,
INC.; *et al.*,
Defendants.

Case No. CIV1600531
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Laurence Vinocur (“Vinocur”) and
4 Ultimate Survival Technologies, Inc. (“Ultimate”), with Vinocur and Ultimate each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Ultimate 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 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Ultimate manufactures, imports, sells, or distributes for sale in
16 California, vinyl/PVC lantern handles containing di(2-ethylhexyl)phthalate (“DEHP”), without first
17 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 Ultimate’s products that are covered by this Consent Judgment are defined as all vinyl/PVC
21 lantern handles containing DEHP including, without limitation, the *UST 30-Day LED Lantern, #20-
22 PL20C3D, UPC #8 12713 01446 1*, which are manufactured, imported, distributed, sold and/or
23 offered for sale by Ultimate in the State of California, hereinafter the “Product[s].”

24 **1.6 Notice of Violation**

25 On March 13, 2015, Vinocur served Ultimate, others, and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Ultimate violated Proposition
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1 65 when they failed to warn their customers and consumers in California that vinyl/PVC lantern
2 handles expose users to DEHP.

3 **1.7 Complaint**

4 On or about February 10, 2016, Vinocur filed the instant action (“Complaint”), naming
5 Ultimate as defendant for its alleged violations of Health and Safety Code section 25249.6 that are
6 the subject of the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Ultimate as to the allegations in the Complaint, that venue is proper in the County of
19 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date that this
23 Consent Judgment is approved by the Court, including any unopposed tentative rulings.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Ultimate shall only purchase
27 for sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated
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1 Products,” or Products that are sold with a clear and reasonable warning pursuant to Section 2.2
2 below. For purposes of this Consent Judgment, “Reformulated Products” are products that contain
3 DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to
4 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other
5 methodology utilized by federal or state agencies for the purpose of determining the DEHP content in
6 a solid substance.

7 **2.2 Product Warnings**

8 Commencing on the Effective Date, Ultimate shall provide clear and reasonable warnings for
9 all Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have
10 warnings and that do not qualify as Reformulated Products. Each warning shall be prominently
11 placed with such conspicuousness as compared with other words, statements, designs, or devices as
12 to render it likely to be read and understood by an ordinary individual under customary conditions
13 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
14 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
15 confusion.

16 **(a) Retail Store Sales.**

17 **(i) Product Labeling.** Ultimate shall affix a warning to the packaging,
18 labeling, or directly on each Product packaging provided for sale in retail outlets in California that
19 states:

20 **WARNING:** This product contains a chemical known
21 to the State of California to cause birth defects and
other reproductive harms.

22 **(ii) Point-of-Sale Warnings.** Alternatively, Ultimate may provide warning signs
23 in the form below to its customers in California with instructions to post the warnings in close
24 proximity to the point of display of the Products. Such instruction sent to Ultimate customers shall
25 be sent by certified mail, return receipt requested.

26 **WARNING:** This product contains a chemical known
27 to the State of California to cause birth defects
28 and other reproductive harms.

1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
3 shall be used:¹

4
5 **WARNING:** The following products contain a chemical known
6 to the State of California to cause birth defects and other
7 reproductive harms:

8 *[list products for which warning is required]*

9 **(b) Mail Order Catalog and Internet Sales.** In the event that Ultimate sells Products via
10 mail order catalog and/or the internet, to customers located in California, after the Effective Date, that
11 are not Reformulated Products, Ultimate shall provide warnings for such Products sold via mail order
12 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
13 internet shall identify the *specific* Product to which the warning applies as further specified in
14 Sections 2.2(b)(i) and (ii).

15 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog
16 shall be in the same type size or larger than the Product description text within the catalog. The
17 following warning shall be provided on the same page and in the same location as the display and/or
18 description of the Product:

19 **WARNING:** This product contains a chemical known
20 to the State of California to cause birth defects and
21 other reproductive harms.

22 Where it is impracticable to provide the warning on the same page and in the same location as
23 the display and/or description of the Product, Ultimate may utilize a designated symbol to cross
24 reference the applicable warning and shall define the term “designated symbol” with the following

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27 ¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product
28 are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not
reasonably determine which of the two products is subject to the warning sign.

1 language on the inside of the front cover of the catalog or on the same page as any order form for the
2 Product(s):

3 **WARNING:** Certain products identified with this symbol ▼
4 and offered for sale in this catalog contain
5 a chemical known to the State of California to
6 cause birth defects and other reproductive harms.

7 The designated symbol must appear on the same page and in close proximity to the display
8 and/or description of the Product. On each page where the designated symbol appears, Ultimate must
9 provide a header or footer directing the consumer to the warning language and definition of the
10 designated symbol.

11 **(ii) Internet Website Warning.** A warning shall be given in conjunction with the
12 sale of the Products via the internet, which warning shall appear either: (a) on the same web page on
13 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
14 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
15 during the checkout process. The following warning statement shall be used and shall appear in any
16 of the above instances adjacent to or immediately following the display, description, or price of the
17 Product for which it is given in the same type size or larger than the Product description text:

18 **WARNING:** This product contains a chemical known
19 to the State of California to cause birth defects
20 and other reproductive harms.

21 Alternatively, the designated symbol may appear adjacent to or immediately following the
22 display, description, or price of the Product for which a warning is being given, provided that the
23 following warning statement also appears elsewhere on the same web page, as follows:

24 **WARNING:** This product contains a chemical known
25 to the State of California to cause birth defects and
26 other reproductive harms.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, Ultimate shall pay \$23,000 in civil penalties. Each civil penalty
5 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with
6 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
7 Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Vinocur.

8 **3.1.1 Initial Civil Penalty**

9 Within ten (10) days of the mutual execution of this Consent Judgement, Ultimate
10 shall issue a check for its initial civil penalty payment in the amount of \$3,000 to “Reed Smith LLP,
11 c/o Todd Maiden, Esq.” Reed Smith LLP shall provide The Chanler Group with written confirmation
12 within five days of receipt that the funds have been deposited in a trust account. Within five (5) days
13 of the date the Court approves this Consent Judgment, including any unopposed tentative rulings,
14 Reed Smith LLP shall issue a check for the initial civil penalty payment to “Laurence Vinocur, Client
15 Trust Account.” Vinocur subsequently will direct 75% of the initial civil penalty to OEHHA.

16 **3.1.2 Final Civil Penalty**

17 On or before January 30, 2017, Ultimate shall make a final civil penalty payment of
18 \$20,000. Vinocur agrees that the final civil penalty payment shall be waived in its entirety if, no later
19 than January 15, 2017, an officer of Ultimate provides Vinocur with written certification that it is no
20 longer offering or distributing for sale in California the Products, or is only offering for sale and
21 distributing for sale in California, Reformulated Products as defined in section 2.1, above. The
22 option to certify reformulation in lieu of making the final civil penalty payment required by this
23 Section is a material term and time is of the essence.

24 **3.2 Reimbursement of Fees and Costs**

25 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
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1 other settlement terms had been finalized, Ultimate expressed a desire to resolve Vinocur's fees and
2 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Vinocur
3 and his counsel under general contract principles and the private attorney general doctrine codified at
4 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
5 execution of this Consent Judgment. Ultimate shall, within ten (10) days of the mutual execution of
6 this Consent Judgment, issue a check payable to "Reed Smith LLP, c/o Todd Maiden" in the amount
7 of fees and costs of \$27,500 to be held in trust by Reed Smith LLP for The Chanler Group. Reed
8 Smith LLP shall provide The Chanler Group with written confirmation within five days of receipt
9 that the funds have been deposited in a trust account. Within five (5) days of the date the Court
10 approves this Consent Judgment, including any unopposed tentative rulings, Reed Smith LLP shall
11 issue a check payable to "The Chanler Group" to the address found in Section 3.3.1 below.

12 **3.3 Payment Procedures**

13 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
14 this Consent Judgment are to be delivered within ten (10) days of the mutual execution of this
15 Consent Judgment, to Reed Smith LLP, and released to The Chanler Group and Vinocur within five
16 (5) days of the date the Court approves this Consent Judgment, including any unopposed tentative
17 rulings, according to the following subsections.

18 **3.3.1 Payment Address**

19 All payments and tax documentation for OEHHA, Vinocur, and his counsel shall be
20 delivered to:

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

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Vinocur's Public Release of Proposition 65 Claims**

27 Vinocur, acting on his own behalf and in the public interest, releases Ultimate and its
28 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,

1 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
2 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
3 franchisers, cooperative members, licensors, and licensees, including, but not limited to, Sports
4 Chalet, LLC, (“Downstream Releasees”) for violations arising under Proposition 65 for unwarned
5 exposures to DEHP from the Products sold by Ultimate prior to the Effective Date, as set forth in
6 the Notice.

7 **4.2 Vinocur’s Individual Release of Claims**

8 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides a
9 release to Ultimate, Releasees, and Downstream Releasees which shall be effective as a full and final
10 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
11 attorneys’ fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
12 or kind, arising out of alleged or actual exposures from the Products sold or distributed for sale by
13 Ultimate before the Effective Date.

14 **4.3 Ultimate’s Release of Vinocur**

15 Ultimate, on its own behalf, and on behalf of its past and current agents, representatives,
16 attorneys, successors, and assignees, hereby waives any and all claims against Vinocur and his
17 attorneys and other representatives, for any and all actions taken or statements made by Vinocur and
18 his attorneys and other representatives, whether in the course of investigating claims, otherwise
19 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

20 **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and shall
22 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
23 has been fully executed by the Parties.

24 **6. SEVERABILITY**

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

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ultimate may
5 provide written notice to Vinocur of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Ultimate from any
8 obligation to comply with any pertinent state or federal toxics control laws.

9 **8. NOTICE**

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

13 For Ultimate:

14 Todd Maiden, Esq.
15 Reed Smith, LLP
16 101 2nd Street, Suite 1800
 San Francisco, California 94105

17 For Vinocur:

18 The Chanler Group
19 Attn: Proposition 65 Coordinator
20 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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1 **10. POST EXECUTION ACTIVITIES**

2 Vinocur agrees to comply with the reporting form requirements referenced in Health and
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
4 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
5 furtherance of obtaining such approval, Vinocur and Ultimate agree to mutually employ their best
6 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
7 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
8 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
9 and supporting the motion for judicial approval.

10 **11. MODIFICATION**

11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
12 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
13 Party, and the entry of a modified consent judgment by the Court.

14 **12. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment and have read, understood,
16 and agree to all of the terms and conditions contained herein.

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AGREED TO:

AGREED TO:

Date: 5/24/2016

Date: _____

By: 
LAURENCE VINO CUR

By: _____
Marty Schwartz, Executive Vice President
Ultimate Survival Technologies, Inc.

1 **10. POST EXECUTION ACTIVITIES**

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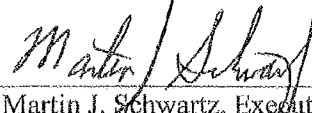
AGREED TO:

AGREED TO:

Date: _____

Date: June 10, 2016

By: _____
LAURENCE VINO CUR

By: 
Martin J. Schwartz, Executive Vice President
Ultimate Survival Technologies, Inc.