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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
UNLIMITED CIVIL JURISDICTION

13 LAURENCE VINO CUR,

14 Plaintiff,

15 v.

16 FLIR SYSTEMS, INC., *et al.*,

17 Defendants.

Case No. 16CIV00791

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 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 FLIR Systems, Inc. (“FLIR”), with Vinocur and FLIR each individually referred to
5 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 FLIR employs ten or more individuals 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 FLIR imports, sells, or distributes for sale in California multimeters with
16 vinyl/PVC components that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the
17 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment “Products” are defined as multimeters with vinyl/PVC
21 components containing DEHP that are imported, sold, or distributed for sale in California by FLIR,
22 including, but not limited to, the *Extech Instruments A Flir Company Mini Analog MultiMeter,*
23 *#38073, UPC #7 93950 38073 4.*

24 **1.6 Notice of Violation**

25 On April 27, 2016, Vinocur served FLIR, and the requisite public enforcement agencies with
26 a 60-Day Notice of Violation (“Notice”) alleging that FLIR violated Proposition 65 by failing to warn
27 its customers and consumers in California of the health hazards associated with exposures to DEHP
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1 from the Products. No public enforcer has commenced and is diligently prosecuting an action to
2 enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On August 5, 2016, Vinocur filed the instant action. Thereafter, on August 9, 2016 Vinocur
5 filed the First Amended Complaint (“Complaint”), the operative pleading in this action, naming FLIR
6 as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the
7 subject of the Notice.

8 **1.8 No Admission**

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

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over FLIR as to the allegations in the Complaint, that venue is proper in the County of
20 San Mateo, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Court grants the motion for approval of the Consent Judgment contemplated by Section 5.

25 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

26 Commencing on the Effective Date and continuing thereafter, FLIR agrees to only
27 manufacture for sale, import for sale, or purchase for sale in California, Reformulated
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1 Products. For purposes of this Consent Judgment, "Reformulated Products" are defined as Products
2 containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible
3 component (i.e., any component that may be touched during a reasonably foreseeable use) when
4 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
5 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of
6 determining DEHP content in a solid substance.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
10 referred to in the Notice, Complaint, and this Consent Judgment, FLIR shall pay civil penalties in
11 accordance with this Section 3.1. Each civil penalty payment shall be allocated according to Health
12 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
13 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
14 twenty-five percent (25%) of the penalty retained by Vinocur. Vinocur's counsel shall be responsible
15 for delivering OEHHA's portion of any penalty payment(s) made under this Consent Judgment.

16 **3.1.1 Initial Civil Penalty**

17 FLIR shall make an initial civil penalty payment of \$4,000. FLIR shall provide its payment in
18 a two checks for the following amounts made payable to (a) "OEHHA" in the amount of \$3,000; and
19 (b) "Laurence Vinocur, Client Trust Account" in the amount of \$1,000.

20 **3.1.2 Final Civil Penalty**

21 On April 15, 2017, FLIR shall make a final civil penalty payment of \$9,000. Pursuant to title
22 11 California Code of Regulations section 3203(c), Vinocur agrees that the final civil penalty
23 payment shall be waived in its entirety if, no later than April 1, 2017, an officer of FLIR provides
24 Vinocur with a signed declaration certifying that, as of the date of the declaration, all of the Products
25 FLIR is shipping for sale, or distributing for sale in California, are Reformulated Products, and that
26 FLIR will continue to offer only Reformulated Products in California in the future. Unless waived
27 FLIR shall provide its payment in two checks for the following amounts made payable to (a)
28 "OEHHA" in the amount of \$6,750; and (b) "Laurence Vinocur, Client Trust Account" in the amount

1 of \$2,250. The option to certify to complete reformulation in lieu of making the final civil penalty
2 payment required by this Section is a material term, and time is of the essence.

3 **3.2 Reimbursement of Attorney's Fees and Costs**

4 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
6 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
7 other settlement terms had been finalized, the Parties negotiated the compensation due to Vinocur and
8 his counsel under general contract principles and the private attorney general doctrine codified at
9 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
10 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
11 on appeal, if any. Under these legal principles, FLIR shall pay \$31,000 for all fees and costs incurred
12 by Vinocur investigating, bringing this matter to FLIR's attention, litigating and negotiating a
13 settlement in the public interest.

14 **3.3 Payment Timing; Payments Held in Trust**

15 All payments due under this Consent Judgment shall be held in trust until such time as the
16 Court approves the Parties' settlement. Within fifteen days of the date that this Consent Judgment is
17 fully executed by the Parties, with the exception of the final civil penalty payment required by
18 Section 3.1.2, all payments shall be delivered to FLIR's counsel and held in trust until the Effective
19 Date. FLIR's counsel shall provide Vinocur's counsel with written confirmation upon its receipt of
20 the settlement payments. Within five days of the Effective Date, FLIR's counsel shall deliver the
21 initial civil penalty and attorneys' fee reimbursement payments to Vinocur's counsel. In the event
22 that the final civil penalty payment required by subsection 3.1.2 has not been waived and becomes
23 due prior to the Effective Date, the penalty payment shall be tendered to FLIR's counsel when due,
24 held in trust until, and disbursed within five days after, the Effective Date.

25 **3.4 Payment Address**

26 All payments required by this Consent Judgment shall be delivered to:
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1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Vinocur's Public Release of Proposition 65 Claims**

8 Vinocur, acting on his own behalf and in the public interest, Vinocur releases FLIR and its
9 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
10 and attorneys ("Releasees"), and each entity to whom FLIR directly or indirectly distributes or sells
11 the Products including, without limitation, its downstream customers, distributors, wholesalers, and
12 retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the
13 failure to warn about exposures to DEHP from Products sold or distributed for sale by FLIR prior to
14 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
15 constitutes compliance with Proposition 65 with respect to exposures to DEHP from Products sold
16 or distributed for sale by FLIR after the Effective Date.

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

18 Vinocur, in his individual capacity only and *not* in any representative capacity, also provides a
19 release to FLIR, Releasees, and Downstream Releasees, which shall be effective as a full and final
20 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 sold or distributed for sale by FLIR before the Effective Date.

24 **4.3 FLIR's Release of Vinocur**

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

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if it is not approved and entered by the Court within one year after it has been fully
4 executed by the Parties, or by such additional time as the Parties may agree in writing.

5 **6. REPRESENTATIONS REGARDING SALES**

6 FLIR represents that the sales data for the Products and other information it provided to
7 Vinocur is truthful to the best of its knowledge and a material factor upon which Vinocur has relied
8 to negotiate the civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
9 Judgment.

10 **7. SEVERABILITY**

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

14 **8. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the state of California
16 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
17 rendered inapplicable by reason of law generally or as to the Products, then FLIR may provide
18 written notice to Vinocur of any asserted change in the law, and shall have no further injunctive
19 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
20 so affected.

21 **9. NOTICE**

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

25 For FLIR:

with a copy to:

26 Andrew Teich, President
27 FLIR Systems, Inc.
27 27700 SW Parkway Avenue
28 Wilsonville, OR 97070

William F. Tarantino, Esq.
Morrison Foerster
425 Market Street
San Francisco, CA 94105-2482

1 For Vinocur:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
12 same document.

13 **11. POST EXECUTION ACTIVITIES**

14 Vinocur agrees to comply with the reporting form requirements referenced in Health and
15 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
16 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
17 which motion Moore shall draft and file. In furtherance of obtaining such approval, the Parties agree
18 to mutually employ their best efforts, and those of their counsel, to support the entry of this
19 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
20 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
21 approval, responding to any objection that any third-party may file or lodge, and appearing at the
22 hearing before the Court if so requested.

23 **12. MODIFICATION**

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

The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.


AGREED TO:

AGREED TO:

Date: 12/1/2016

Date: 11/30/16

By: 
LAURENCE VINOUCUR

By: 
Todd M. DuChene
Senior Vice President, General Counsel
& Secretary

FLIR SYSTEMS, INC.