

1 Clifford Chanler, State Bar No. 135534
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 E-mail: ctuttle@chanler.com

6 Attorneys for Plaintiff
7 LAURENCE VINOUCUR

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

13 LAURENCE VINOUCUR,

14 Plaintiff,

15 v.

16 JACOB ASH HOLDINGS, INC., *et al.*,

17 Defendants.

Case No. CGC17556627

[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 Jacob Ash Holdings, Inc. (“Jacob Ash”), with Vinocur and Jacob Ash each
5 individually 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Jacob Ash employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Jacob Ash imports, sells, or distributes for sale in California, gloves 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 gloves with vinyl/PVC
21 components containing DEHP that are imported, sold, or distributed for sale in California by Jacob
22 Ash, including, but not limited to, the *Hot Shot Gloves, Style: 25-615-IOM-LY, UPC #0 43552 01615*
23 *0.*

24 **1.6 Notice of Violation**

25 On September 29, 2016, Vinocur served Jacob Ash, and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”) alleging that Jacob Ash violated Proposition
27 65 by failing to warn its customers and consumers in California of the health hazards associated with
28

1 exposures to DEHP from the Products. No public enforcer has commenced and is diligently
2 prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On January 23, 2017, Vinocur filed the instant action (“Complaint”), naming Jacob Ash as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Jacob Ash denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Jacob Ash’s obligations, responsibilities, and duties under
15 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 Jacob Ash as to the allegations in the Complaint, that venue is proper in the County
19 of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
24 approval of this Consent Judgment.

25 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

27 Commencing on the Effective Date and continuing thereafter, Jacob Ash shall only
28 manufacture for sale, purchase for sale, or import for sale in California, Products that are either: (a)

1 Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by Jacob
2 Ash with a clear and reasonable warning pursuant to Section 2.3.

3 **2.2 Reformulation Standard**

4 For the purposes of this Consent Judgment, "Reformulated Products" are defined as Products
5 that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed
6 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
7 methodology utilized by federal or state government agencies for the purpose of determining DEHP
8 content in a solid substance.

9 **2.3 Clear and Reasonable Warning**

10 Commencing on the Effective Date and continuing thereafter, for any Products offered for
11 sale in California by Jacob Ash that are not Reformulated Products, Jacob Ash agrees to only offer
12 such Products for sale with a clear and reasonable warning in accordance with this Section. Jacob
13 Ash further agrees that any warning used will be prominently placed in relation to the Product with
14 such conspicuousness when compared with other words, statements, designs, or devices as to render
15 it likely to be read and understood by an ordinary individual under customary conditions of purchase
16 or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products
17 satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying
18 labeling or packaging sold in California containing the following statement:

19
20 **WARNING:** This product can expose you to chemicals
21 including DEHP, which is known to the
22 State of California to cause cancer and birth defects
or other reproductive harm.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Civil Penalty Payments**

25 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
26 this Consent Judgment, Jacob Ash shall pay \$2,500 in civil penalties. The civil penalty payment shall
27 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
28 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment

1 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Vinocur. Jacob Ash shall
2 provide its payment in two checks for the following amount made payable to (a) “OEHHA” in the
3 amount of \$1,875; and (b) “Laurence Vinocur Trust Account” in the amount of \$625. Vinocur’s
4 counsel shall be responsible for remitting Jacob Ash’s payment under this Consent Judgment to
5 OEHHA.

6 **3.2 Reimbursement of Attorney’s Fees and Costs**

7 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
9 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
10 other settlement terms had been finalized, the Parties negotiated the compensation due to Vinocur and
11 his counsel under general contract principles and the private attorney general doctrine codified at
12 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
13 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
14 on appeal, if any. Under these legal principles, Jacob Ash shall pay \$24,000 for all fees and costs
15 incurred by Vinocur investigating, bringing this matter to Jacob Ash’s attention, litigating and
16 negotiating a settlement in the public interest.

17 **3.3 Payment Timing; Payments Held in Trust**

18 All payments due under this agreement shall be delivered within two (2) weeks of the date
19 that this Consent Judgment is fully executed by the Parties, and held by Jacob Ash’s counsel until the
20 Court grants the motion for approval of this Consent Judgment. Jacob Ash’s counsel shall confirm
21 receipt of settlement funds in writing to Leeman’s counsel and, thereafter, hold the amounts paid until
22 the Effective Date. Within five days of the Effective Date, Jacob Ash’s counsel shall tender the civil
23 penalty payment and attorneys’ fee and costs reimbursements required by Sections 3.1 and 3.2.

24 **3.4 Payment Address**

25 All payments required by this Consent Judgment shall be delivered to:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Vinocur’s Public Release of Proposition 65 Claims**

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

12 **4.2 Vinocur’s Individual Release of Claims**

13 Vinocur, in his individual capacity only and *not* in any representative capacity, also provides a
14 release to Jacob Ash, Releasees, and Downstream Releasees, which shall be effective as a full and
15 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
16 attorneys’ fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
17 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
18 exposures to DEHP in Products sold or distributed for sale by Jacob Ash before the Effective Date.

19 **4.3 Jacob Ash’s Release of Vinocur**

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

25 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

12 **8. NOTICE**

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

16 For Jacob Ash:
17 Frank Smith, President
18 Jacob Ash Holdings, Inc.
19 301 Munson Avenue
20 Mc Kees Rocks, PA 15136

Copy to Counsel:
 Sandra Edwards, Esq.
 Farella Braun & Martel LLP
 Russ Building
 235 Montgomery Street
 San Francisco, CA 94104

21 For Vinocur:
22 Proposition 65 Coordinator
23 The Chanler Group
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710-2565

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

29 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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,
5 which motion Moore shall draft and file. In furtherance of obtaining such approval, the Parties agree
6 to mutually employ their best efforts, and those of their counsel, to support the entry of this
7 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
8 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
9 approval, responding to any objection that any third-party may file or lodge, and appearing at the
10 hearing before the Court if so requested.

11 **11. MODIFICATION**

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

15 **12. AUTHORIZATION**

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

18 **AGREED TO:**

19 Date: 7/5/2017

20
21 By: 
22 LAURENCE VINOUCUR

18 **AGREED TO:**

19 Date: 6-29-17

20
21 By: 
22 Frank Smith, President
JACOB ASH HOLDINGS, INC.