

1 Clifford Chanler, State Bar No. 135534
Christopher Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 LAURENCE VINO CUR

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

12
13 LAURENCE VINO CUR,
14 Plaintiff,
15 v.
16 AIRGAS, INC., *et al.*,
17 Defendants.

Case No. CGC-17-562298

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

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

3 **1.7 Complaint**

4 On November 3, 2017, Vinocur filed the instant action (“Complaint”), naming Airgas as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice. Trial is scheduled to begin on January 7, 2019.

7 **1.8 No Admission**

8 Airgas 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 Airgas’s obligations, responsibilities, and duties under this
15 Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Airgas as to the allegations in the Complaint, that venue is proper in the County of
19 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
20 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: PRODUCT REFORMULATION AND WARNINGS**

26 **2.1 Commitment to Reformulate or Provide Warnings**

27 Commencing by November 15, 2018 and continuing thereafter, Airgas agrees to only
28 manufacture, import, distribute, sell or offer for sale in California either (a) “Reformulated Products”

1 as defined by subsection 2.2 below; or (b) Products sold and offered for sale with a clear and
2 reasonable warning pursuant to subsection 2.3, below.

3 **2.2 Reformulated Products Defined**

4 **a. DEHP Limits Applicable to Reformulated Products**

5 With respect to their DEHP content, Reformulated Products are defined as Products
6 containing no more than 1,000 parts per million (0.1%) DEHP in any component sampled and
7 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
8 8270C to determine DEHP content in a solid substance.

9 **b. Lead Limits Applicable to Reformulated Products**

10 With respect to their lead content, Reformulated Products are defined as Products that (a)
11 contain no more than 100 parts per million (“ppm”) (0.01%) lead in any accessible component
12 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and
13 6010B; *and* (b) yield a result of no more than 1.0 micrograms of lead when sampled and analyzed
14 pursuant to NIOSH 9100 testing protocol.

15 **c. Additional Methods of Analysis**

16 In addition to the above methodologies used to test for DEHP and/or lead in the Products, the
17 Parties may use equivalent methodologies utilized by state or federal agencies to determine DEHP
18 and/or lead content in a solid substance.

19 **2.3 Clear and Reasonable Warnings**

20 Commencing by November 15, 2018, Airgas shall provide clear and reasonable health hazard
21 warnings for all Products, that are not Reformulated Products, it sells or distributes in California.
22 Airgas agrees that the warning will be prominently placed with such conspicuousness when
23 compared with other words, statements, designs, or devices as to render it likely to be read and
24 understood by an ordinary individual under customary conditions before purchase or use. For
25 purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed
26 to or printed on the packaging, label, tag, or directly to a Product sold in California and containing the
27 following statement:
28

1 other settlement terms had been finalized, the Parties negotiated the compensation due to Vinocur and
2 his counsel under general contract principles and the private attorney general doctrine codified at
3 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
4 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
5 on appeal, if any. Under these legal principles, Airgas shall pay \$43,750 for all fees and costs
6 incurred by Vinocur investigating, bringing this matter to Airgas's attention, litigating and
7 negotiating a settlement in the public interest. Airgas's payment shall be delivered to the address in
8 Section 3.4 in a check payable to "The Chanler Group."

9 **3.3 Payment Timing; Payments Held in Trust**

10 The checks due under Section 3.1 and 3.2 of this Consent Judgment shall be delivered to
11 Vinocur's counsel by overnight mail, with a tracking number, on or before July 10, 2018, which due
12 date is anticipated to occur after the Effective Date. If, for some reason the settlement is not
13 approved, Vinocur and his counsel shall return such funds to Airgas with interest at the prevailing
14 federal funds rate within two business days.

15 **3.4 Payment Address**

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

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

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Vinocur's Public Release of Proposition 65 Claims**

24 Vinocur, acting on his own behalf and in the public interest, releases Airgas and its parents,
25 subsidiaries, affiliates, predecessors, successors, directors, officers, employees, and attorneys
26 ("Releasees"), and each entity to whom Airgas directly or indirectly distributes or sells the Products
27 including, without limitation, its downstream customers, distributors, wholesalers, and retailers
28 ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the failure to
warn about exposures to DEHP and lead from Products sold or distributed for sale by Airgas prior
to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent

1 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP and lead
2 from Products sold or distributed for sale by Airgas after the Effective Date.

3 **4.2 Vinocur's Individual Release of Claims**

4 Vinocur, in his individual capacity only and *not* in any representative capacity, also provides a
5 release to Airgas, Releasees, and Downstream Releasees, which shall be effective as a full and final
6 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
8 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
9 exposures to DEHP and lead, as well as DINP, in Products sold or distributed for sale by Airgas
10 before the Effective Date. Further, Vinocur will not pursue the newly added claims set forth in his
11 April 27, 2018 supplemental notice and those relating to DEHP in vinyl/PVC cords referenced in the
12 June 29, 2017 Notice.

13 **4.3 Airgas's Release of Vinocur**

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

19 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

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

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, or is otherwise
4 rendered inapplicable by reason of law generally or as to the Products, then Airgas may provide
5 written notice to Vinocur of any asserted change in the law, and shall have no further injunctive
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected.

8 **8. NOTICE**

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

12 For Airgas:

13 Airgas USA, LLC
14 259 North Radnor Chester Road, Ste. 100
15 Radnor, PA 19087

16 with a copy to:

17 Brian Ledger, Esq.
18 Gordon Rees Scully Mansukhani, LLP
19 101 W. Broadway Suite 2000
20 San Diego, CA 92101

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 Vinocur shall draft and file. In furtherance of obtaining such approval, the Parties
6 agree 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**

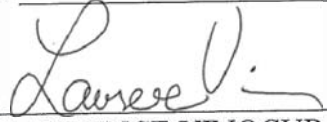
16 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
17 have read, understand, and agree to all of the terms and conditions contained herein.


18 **AGREED TO:**

AGREED TO:

19
20 Date: 5/29/2018

Date: 5/29/18

21
22 By: 
LAURENCE VINO CUR

By: 
David E. Levin
Vice President - Hardgoods
AIRGAS USA, LLC