

Laralei Paras, State Bar No. 203319  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

Attorneys for Plaintiff  
LAURENCE VINOCUR

Rocky C. Tsai, State Bar No. 221452  
ROPES & GRAY LLP  
Three Embarcadero Center  
San Francisco, CA 94111-4006  
Telephone: (415) 315-6300  
Facsimile: (415) 315-6350

Attorneys for Defendant  
CREATIVE CO-OP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR,

Plaintiff,

v.

CREATIVE CO-OP, INC.,

Defendant.

Case No. CGC17561544

**[PROPOSED] CONSENT JUDGMENT**

Cal. Health & Safety Code § 25249.6 et seq. and  
Cal. Code Civ. Proc. § 664.6

## 1. **INTRODUCTION**

### **1.1 Parties**

This Consent Judgment is entered into by and between plaintiff Laurence Vinocur (“Vinocur”) and defendant Creative Co-op, Inc. (“Creative Co-Op”), with Vinocur and Creative Co-Op each individually referred to as a “Party” and collectively as the “Parties.”

### **1.2 Plaintiff**

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

### **1.3 Defendant**

Creative Co-Op employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### **1.4 General Allegations**

Vinocur alleges that Creative Co-op has manufactured, imported, distributed, shipped, sold and/or offered for sale in the State of California ceramic jars with exterior decorations containing lead and juice glasses/votive holders with exterior decorations containing lead above the allowable state limits without the requisite Proposition 65 warning. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

### **1.5 Product Description**

The products covered by this Consent Judgment are defined as (a) Creative Co-Op ceramic jars with exterior decorations, such as decals, containing lead including, but not limited to, *Creative Co-Op 3”H Ceramic Jars w Bamboo Lid & Floral Decal Black/White, Item #DA6027, UPC #8 07472 89954 1*, and (b) Creative Co-Op juice glasses/votive holders with exterior decorations, such as decals, containing lead including, but not limited to, *Creative Co-Op 4”H Glass Juice Glass/Votive Holders w Decal, 4 Styles, Item #DA4914A, UPC #8 07472 82975 3*, that are manufactured, imported, distributed, shipped, sold and/or offered for sale in California (hereinafter the “Products.”).

1           **1.6     Notice of Violation**

2           On June 29, 2017, Vinocur served Creative Co-Op and the requisite public enforcement  
3 agencies with a “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice  
4 of alleged violations of Proposition 65 based on Creative Co-Op’s alleged failure to warn its  
5 customers and consumers that its Products expose users in the State of California to lead. To the best  
6 of the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

7           **1.7     Complaint**

8           On September 26, 2017, Vinocur filed the instant action (“Complaint”), naming Creative Co-  
9 Op as a defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject  
10 of the Notice.

11          **1.8     No Admission**

12          Creative Co-Op denies all factual and legal allegations contained in Vinocur’s Notice, and  
13 Complaint, and it maintains that all of the products that it has sold and/or offered for sale in the State  
14 of California, including the Products, have been and are in compliance with all federal, state, or local  
15 laws. Nothing in this Consent Judgment shall be construed as an admission by Creative Co-Op of  
16 any fact, finding, conclusion of law, issue of law or violation of law, nor shall compliance with this  
17 Consent Judgment constitute or be construed as an admission by Creative Co-Op of any fact, finding,  
18 conclusion of law, issue of law or violation of law. However, this Section shall not diminish or  
19 otherwise affect Creative Co-Op’s obligations, responsibilities and duties under this Consent  
20 Judgment.

21          **1.9     Consent to Jurisdiction**

22          For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Creative Co-Op as to the allegations contained in the Complaint, that venue is  
24 proper in the City and County of San Francisco, and that the Court has jurisdiction to enter and  
25 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil  
26 Procedure § 664.6.

27        ///

28        ///

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
3 the Court approves this Consent Judgment.

4   **2. INJUNCTIVE RELIEF: REFORMULATION STANDARD**

5           **2.1 Reformulated Products**

6           Commencing on the Effective Date and continuing thereafter, all Products manufactured,  
7 imported, distributed, shipped, sold or offered for sale in California shall be “Reformulated  
8 Products.” For purposes of this Consent Judgment, Reformulated Products are Products that contain  
9 (a) no more than to 100 parts per million (“ppm”) lead and (b) to the extent there are exterior  
10 decorations in the Lip and Rim Area, defined as the upper 20 millimeters of Creative Co-Op juice  
11 glasses/votive holders with exterior decorations, “No Detectable” (defined as no more than 4 ppm)  
12 lead in the Lip and Rim Area when analyzed pursuant to U.S. Environmental Protection Agency  
13 testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state  
14 agencies for the purpose of determining lead content in a solid substance. Compliance with the terms  
15 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
16 lead from the Products.

17   **3. MONETARY SETTLEMENT TERMS**

18           **3.1 Civil Penalty Payment**

19           Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
20 this Consent Judgment, Creative Co-Op shall pay a total civil penalty in the amount of \$7,500 within  
21 ten (10) days of the Effective Date by issuing two separate checks payable as follows: (a) “OEHHA”  
22 in the amount of \$5,625; and (b) “Laurence Vinocur Client Trust Account” in the amount of \$1,875.  
23 The civil penalty payment will be allocated in accordance with California Health & Safety Code §  
24 25249.12(c)(1) & (d), with Vinocur remitting 75% of the funds to the California Office of  
25 Environmental Health Hazard Assessment (“OEHHA”) and retaining the remaining 25% of the  
26 penalty. Creative Co-op shall be liable for payment of interest, at a rate of 10% simple interest, for  
27 all amounts due and owing under this Section that are not received within two (2) business days of  
28 the due date.

1           **3.2     Representations**

2           Creative Co-op represents that the sales data and other information concerning its Products  
3 sales information, knowledge of lead, prior reformulation and/or warning efforts, that it provided to  
4 Vinocur in negotiating this Consent Judgment was truthful to its knowledge at the time of execution  
5 of this Consent Judgment and a material factor upon which Vinocur relied to determine the amount of  
6 the civil penalty assessed pursuant to Health & Safety Code § 25249.7.

7           **3.3     Reimbursement of Attorney's Fees and Costs**

8           The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without  
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
10 issue to be resolved after the material terms of this Consent Judgment had been settled. Vinocur then  
11 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
12 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
13 Vinocur and his counsel under general contract principles and the private attorney general doctrine  
14 codified at California Code of Civil Procedure § 1021.5, for all work performed through court  
15 approval of this Consent Judgment. Creative Co-op shall pay \$27,500 for fees and costs incurred as a  
16 result of investigating, bringing this matter to Creative Co-op's attention, and negotiating a settlement  
17 in the public interest. Creative Co-op shall tender a check payable to "The Chanler Group," within  
18 ten (10) days of the Effective Date. Creative Co-op shall be liable for payment of interest, at a rate of  
19 10% simple interest, for all amounts due and owing under this Section that are not received within  
20 two (2) business days of the due date.

21           **3.4     Payment Procedures**

22           All payments pursuant to Sections 3.1 and 3.3 shall be delivered to the following payment  
23 address:                   The Chanler Group  
24                               Attn: Proposition 65 Controller  
25                               2560 Ninth Street  
26                               Parker Plaza, Suite 214  
27                               Berkeley, CA 94710

28           **4.     RELEASE OF ALL CLAIMS**

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

          Vinocur, acting on his own behalf and in his representative capacity as an enforcer of the

1 public interest on behalf of the people of California, releases Creative Co-Op and its parents,  
2 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
3 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the  
4 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,  
5 franchisers, resellers, cooperative members, licensors and licensees (“Downstream Releasees”) for  
6 any claims, actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,  
7 claims, liabilities, demands, or violations of any nature, character or kind, whether known or  
8 unknown, suspected or unsuspected, arising under Proposition 65 for alleged or actual exposures to  
9 lead from Products manufactured, distributed, shipped, sold and/or offered for sale prior to the  
10 Effective Date, as set forth in the Notice.

#### 11 **4.2 Vinocur’s Individual Release of Claims**

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

#### 19 **4.3 Creative Co-Op’s Release of Vinocur**

20 Creative Co-Op, on its own behalf, and on behalf of its past and current agents,  
21 representatives, attorneys, successors, and assignees, hereby releases any and all claims against  
22 Vinocur and his attorneys and other representatives, for any and all actions taken or statements made  
23 by Vinocur and his attorneys and other representatives, whether in the course of investigating claims,  
24 otherwise 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, for any reason, it is not approved and entered by the Court within one year after it  
28 has been fully executed by the Parties.

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 and/or lead, then Creative Co-  
9     op shall provide written notice to Vinocur of any asserted change in the law, and shall have no further  
10    obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
11    so affected.

12    **8. NOTICES**

13            Unless specified herein, all correspondence and notices required to be provided pursuant to  
14    this Consent Judgment shall be sent by: (i) first-class, registered or certified mail, return receipt  
15    requested; or (ii) overnight courier on any party by the other party at the following addresses:

16    For Creative Co-Op:

17            Adam Schrier, President  
18            Creative Co-Op, Inc.  
19            6000 Freeport Avenue, Suite 101  
              Memphis, TN 38141

20            with a copy to:

21            Rocky C. Tsai, State Bar No. 221452  
22            ROPES & GRAY LLP  
              Three Embarcadero Center  
              San Francisco, CA 94111-4006

              For Vinocur:

              The Chanler Group  
              Attention: Prop 65 Coordinator  
              2560 Ninth Street  
              Parker Plaza Suite 214  
              Berkeley CA, 94710

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

25    **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

1 **10. POST EXECUTION ACTIVITIES**

2 Vinocur agrees to comply with the reporting form requirements referenced in California  
3 Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and  
4 Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent  
5 Judgment. Vinocur and Creative Co-Op agree to support the entry of judgment pursuant to terms of  
6 this Consent Judgment, and to obtain judicial approval of this Consent Judgment in a timely manner.

7 **11. MODIFICATION**

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

11 **12. AUTHORIZATION**

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

15 **AGREED TO:**

**AGREED TO:**

16  
17 Date: 9/29/2017

Date: 10/5/17

18  
19 By: 

20 LAURENCE VINO CUR

By: 

Adam Schrier, President  
CREATIVE CO-OP, INC.