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6 Attorneys for Plaintiff  
7 LAURENCE VINOCUR

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR MARIN COUNTY  
11 UNLIMITED CIVIL JURISDICTION  
12

13 LAURENCE VINOCUR,

14 Plaintiff,

15 v.

16 NEET PRODUCTS INTERNATIONAL INC.;  
17 *et al.*,

18 Defendants.  
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Case No. CIV1703887

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.5 *et seq.*, and  
Cal. Code Civ. Proc. § 664.6)

1       **1. INTRODUCTION**

2               **1.1 Parties**

3               This Consent Judgment is entered by and between plaintiff Laurence Vinocur (“Vinocur”),  
4               and defendant Neet Products, Inc. (“Neet Products”) with Vinocur and Neet Products 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              Vinocur alleges that Neet Products employs ten or more individuals and is a “person in the  
12              course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of  
13              1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14              **1.4 General Allegations**

15              Vinocur alleges that Neet Products sells and distributes for sale in California, vinyl/PVC  
16              quivers containing di(2-ethylhexyl) phthalate (“DEHP”), and that it does so without first providing a  
17              warning in violation of Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical  
18              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 vinyl/PVC quivers  
21              containing DEHP that are sold or distributed for sale in California by Neet Products including, but  
22              not limited to, *Target Quiver, N-613, #06100, UPC No. 0 46821 06100 4* identified in Vinocur’s  
23              Notice.

24              **1.6 Notice of Violation**

25              On June 29, 2017, Vinocur served Neet Products, Neet Products’s customer, Bass Pro, LLP  
26              (“Bass Pro”) the California Attorney General, and all other requisite public enforcers with a 60-Day  
27              Notice of Violation (“Notice”). The Notice alleges that Neet Products and Bass Pro violated  
28              Proposition 65 by failing to warn their customers and consumers in California of the health risks



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

### 3 **1.7 Complaint**

4 On October 19, 2017, Vinocur filed the instant action ("Complaint"), naming Neet Products  
5 as a defendant for the alleged violations that are the subject of the Notice.

### 6 **1.8 No Admission**

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

### 15 **1.9 Jurisdiction**

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

### 20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" means the date on which  
22 the motion for approval contemplated by Section 6, below, is granted by the Court, including any  
23 unopposed tentative ruling granting approval.

## 24 **2. INJUNCTIVE RELIEF**

### 25 **2.1 Commitment to Provide Reformulated Products or Warnings**

26 Commencing on the Effective Date, and continuing thereafter, Neet Products agrees to sell or  
27 distribute for sale in California only either (a) "Reformulated Products," as defined by Section 2.2, or  
28 (b) Products sold with a clear and reasonable warning pursuant to Section 2.3.

## 2.2 Reformulated Products Defined

For purposes of this Consent Judgment, Reformulated Products are defined as Products containing no more than 1,000 parts per million DEHP content (0.1%) in any component analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies used by state or federal agencies to determine DEHP content in a solid substance.

## 2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, for all Products that do not meet the definition of Reformulated Products established by Section 2.2, Neet Products shall provide clear and reasonable warnings in accordance with this Section 2.3, or title 27 California Code of Regulations section 25600 et seq., as amended from time to time. Neet Products further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Consent Judgment, a warning for the Products displayed or transmitted according to the above criteria that is affixed directly to a Product or its accompanying labeling or packaging that contains the following statement shall be deemed clear:



### **WARNING:**

This product can expose you to chemicals, including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

If Neet Products sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description,



price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Neet Products shall pay \$2,000.00 in civil penalties. Neet Products' civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and twenty-five percent (25%) of the funds remitted to Vinocur. Neet Products shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,500.00; and (b) "Laurence Vinocur, Client Trust Account" in the amount of \$500.00. Vinocur's counsel shall be responsible for delivering the penalty payment to OEHHA.

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

The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without reaching terms on the fees and costs to be reimbursed, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, the Parties negotiated a reimbursement of the compensation due Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. Accordingly, Neet Products agrees to pay \$19,000.00 in a check payable to "The Chanler Group" to cover all fees and costs incurred by Vinocur investigating, bringing this matter to Neet Products' attention, litigating and negotiating a settlement in the public interest, and obtaining court approval of the same.

#### **3.3 Payments Held in Trust**

All payments due under this Consent Judgment shall be delivered within fifteen (15) days of the date that this Consent Judgment is fully executed by the Parties, and held in trust by Neet Products' counsel until the Court grants the motion for approval of this Consent Judgment

1 contemplated by Section 6. Neet Products' counsel shall provide Vinocur's counsel with written  
2 notice following its receipt of the settlement funds from Neet Products. Thereafter, Neet Products'  
3 counsel shall hold the funds in trust until, and disburse the payments to Vinocur within five (5) days  
4 after the Effective Date.

### 5 **3.4 Payment Address**

6 All payments under this Consent Judgment shall be delivered to:

7 The Chanler Group  
8 Attn: Proposition 65 Controller  
9 2560 Ninth Street  
10 Parker Plaza, Suite 214  
Berkeley, CA 94710

## 11 **4. CLAIMS COVERED AND RELEASED**

### 12 **4.1 Vinocur's Public Release of Proposition 65 Claims**

13 Vinocur, acting on his own behalf and in the public interest, releases Neet Products and its  
14 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
15 shareholders and attorneys ("Releasees"), and each entity to whom Neet Products directly or  
16 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,  
17 wholesalers, customers (including, without limitation, Bass Pro, LLC and Cabela's, Inc.), retailers,  
18 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any  
19 violation arising under Proposition 65 based on a failure to warn about exposures to DEHP in  
20 Products manufactured, imported, sold, or distributed for sale by Neet Products prior to the  
21 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with  
22 Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in  
23 Products manufactured, imported, sold, or distributed for sale by Neet Products after the Effective  
24 Date.

### 25 **4.2 Vinocur's Individual Release of Claims**

26 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides a  
27 release to Neet Products, Releasees, and Downstream Releasees which shall be effective as a full and  
28 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,



1 attorneys' fees, damages, losses, claims, liabilities, and demands of Vinocur of any nature, character  
2 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
3 exposures to DEHP in Products manufactured, imported, sold, distributed and/or offered for sale by  
4 Neet Products before the Effective Date.

#### 5 **4.3 Neet Products' Release of Vinocur**

6 Neet Products, on its own behalf, and on behalf of its past and current agents, representatives,  
7 attorneys, successors, and assignees, hereby waives all claims against Vinocur and his attorneys and  
8 other representatives, for any action taken or statement made, whether while investigating claims,  
9 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### 10 **5. DISMISSAL OF RETAIL CUSTOMER IN CALIFORNIA**

11 Vinocur agrees that within 15 days of the Effective Date, or Vinocur's receipt of the  
12 settlement payments required by Section 3, whichever is later, he will file a request for dismissal  
13 without prejudice, dismissing Bass Pro, LLC from the action.

#### 14 **6. COURT APPROVAL**

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

#### 18 **7. SEVERABILITY**

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

#### 22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the state of California  
24 and apply within the state of California. If Proposition 65 is repealed, preempted, or otherwise  
25 rendered inapplicable by reason of law generally, or as to the Products, then Neet Products may  
26 provide written notice to Vinocur of any asserted change in the law, and shall have no further  
27 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
28 Products are so affected.

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3 **9. NOTICE**

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

7 For Neet Products:

8 Mark Elliott  
9 Pillsbury Winthrop Shaw Pittman LLP  
725 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017

10 Rebecca Lee  
11 Pillsbury Winthrop Shaw Pittman LLP  
725 South Figueroa Street, Suite 2800  
12 Los Angeles, CA 90017

13 Brenda Eichholz, President  
14 Neet Products, Inc.  
5875 Highway 50  
Sedalia, MO 65301

15 For Vinocur:

16 Proposition 65 Coordinator  
17 The Chanler Group  
2560 Ninth Street  
18 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

21 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **11. POST-EXECUTION ACTIVITIES**

26 Vinocur agrees to comply with the reporting form requirements referenced in Health and  
27 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
28 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent



Judgment, which Vinocur shall draft and file and Neet Products shall support, including appearing at the hearing if so required.

**12. MODIFICATION**

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

**13. AUTHORIZATION**

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

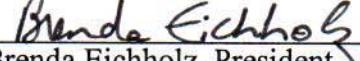
**AGREED TO:**

**AGREED TO:**

Date: 2/23/2018

Date: 2-14-18

By:   
LAURENCE VINO CUR

By:   
Brenda Eichholz, President  
NEET PRODUCTS, INC.