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12 Attorneys for Defendant
13 WHOLESAL E INTERIORS INC.

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF MARIN
17 UNLIMITED CIVIL JURISDICTION
18

19 LAURENCE VINO CUR,
20 Plaintiff,
21 v.
22 WHOLESAL E INTERIORS INC.; *et al.*,
23 Defendants.

Case No. CIV1804491

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Laurence Vinocur (“Vinocur”) and
4 Wholesale Interiors Inc. (“Wholesale”), with Vinocur and Wholesale each individually referred to as
5 a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Wholesale 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, California Health and
13 Safety Code § 25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Wholesale manufactured, imported, distributed, and/or sold in the State
16 of California ottomans with vinyl/PVC upholstery that contains di(2-ethylhexyl) phthalate
17 (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to
18 cause birth defects or other reproductive harm. Vinocur alleges that Wholesale failed to provide
19 consumers and other individuals exposed to DEHP from the ottomans with vinyl/PVC upholstery it
20 sold in California with a clear and reasonable health hazard warning regarding the reproductive
21 toxicity of DEHP, as required by Proposition 65.

22 **1.5 Product Description**

23 For purposes of this Consent Judgment “Products” are defined as ottomans with vinyl/PVC
24 upholstery containing DEHP that are manufactured, sold or distributed for sale in or into California
25 by Wholesale including, but not limited to, the *Baxton Studio Ottomans, Dark Brown, Model: XB-*
26 *01, UPC# 8 47321 00463 4.*

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1 **1.6 Notice of Violation**

2 On February 14, 2018, Vinocur served Wholesale Interiors Inc., the California Attorney
3 General, and all other requisite public enforcers with a document titled, “60-Day Notice of
4 Violation” (“Notice”), alleging that Wholesale violated Proposition 65 by failing to warn its
5 customers and consumers in California of the health risks associated with exposures to DEHP from
6 the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce
7 the violations alleged in the Notice.

8 **1.7 Complaint**

9 On December 14, 2018, Vinocur commenced the instant action (“Complaint”), naming
10 Wholesale as one of the defendants for the alleged violations of Proposition 65 that are the subject of
11 the Notice.

12 **1.8 No Admission**

13 Wholesale denies the material, factual, and legal allegations in the Notice and Complaint, and
14 maintains that all products that it has manufactured, imported, stored, distributed, shipped, sold
15 and/or offered for sale in California, including the Products, have been, and are, in compliance with
16 all laws. Nothing in this Consent Judgment shall be construed as, nor shall compliance with this
17 Consent Judgment constitute or be construed as, an admission by Wholesale of any allegation, fact,
18 finding, conclusion, issue of law, or violation of law, such being specifically denied by Wholesale.
19 This Section shall not, however, diminish or otherwise affect Wholesale’s obligations,
20 responsibilities, and duties under this Consent Judgment.

21 **1.9 Jurisdiction**

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

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
28 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Commitment to Reformulate**

3 Commencing no later than the Effective Date and continuing thereafter, all Products
4 manufactured, distributed, or sold by Wholesale and offered for sale in California shall meet the
5 standard for “Reformulated Products” set forth by Section 2.2, below.

6 **2.2 Reformulation Standard**

7 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products
8 containing DEHP, butyl benzyl phthalate (“BBP”), di-n-butyl (“DBP”), di-isodecyl phthalate
9 (“DIDP”), diisononyl phthalate (“DINP”), and di-n-hexyl phthalate (“DnHP”) each in concentrations
10 of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a
11 laboratory accredited by the State of California, a federal agency, or a nationally recognized
12 accrediting organization. For purposes of compliance with this reformulation standard, testing
13 samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”)
14 methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency
15 (“EPA”) methodology 8270C, or other methodologies utilized by federal or state government
16 agencies to determine phthalate content in a solid substance.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Civil Penalty Payments**

19 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
20 in the Notice, Complaint, and this Consent Judgment, Wholesale agrees to pay \$7,500 in civil
21 penalties. The penalty payment will be allocated in accordance with California Health and Safety
22 Code § 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of
23 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
24 amount retained by Vinocur. Within five (5) days of the Effective Date, Wholesale shall deliver its
25 payment as follows: (a) a check in the amount of \$5,625 made payable to “OEHHA”; and (b) a
26 check in the amount of \$1,875 made payable to “Laurence Vinocur Client Trust Account.”
27 Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment
28 made under this Section 3.1.

1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 The Parties reached an accord on the compensation due to Vinocur and his counsel under
3 general contract principles and the private attorney general doctrine codified at Code of Civil
4 Procedure § 1021.5 for all work performed in this matter. Under these legal principles, Wholesale
5 agrees to pay \$30,000 to Vinocur and his counsel for all fees and costs incurred investigating,
6 bringing this matter to the attention of Wholesale’s management, litigating and negotiating a
7 settlement that provides a significant public benefit. Within five (5) days of the Effective Date,
8 Wholesale’s payment under this Section 3.2 shall be delivered in the form of a check made payable
9 to “The Chanler Group.”

10 **3.3 Payment Address**

11 All payments required by this Consent Judgment shall be delivered to the following address:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Vinocur’s Release of Proposition 65 Claims**

17 Vinocur, acting on his own behalf and in the public interest, releases Wholesale and its
18 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
19 attorneys (collectively, Releasees) and each entity to whom Wholesale directly or indirectly
20 distributes or sells the Products including, but not limited to, its downstream distributors,
21 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
22 (Downstream Releasees) for any violations arising under Proposition 65 for unwarned exposures to
23 DEHP from the Products manufactured, imported, distributed or sold by Wholesale prior to the
24 Effective Date, as set forth in the Notice and Complaint. Compliance with the terms of this Consent
25 Judgment constitutes compliance with Proposition 65 by Wholesale with respect to the alleged or
26 actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for
27 sale by Wholesale after the Effective Date.

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1 **4.2 Vinocur’s Individual Release of Claims**

2 This Consent Judgment is a full, final and binding resolution between Vinocur, as an
3 individual, and *not* on behalf of the public, and Wholesale, of any violation of Proposition 65 that
4 was or could have been asserted by Vinocur, on behalf of himself, his past and current agents,
5 principals, employees, insurers, accountants, entities under his ownership or direction,
6 representatives, attorneys, predecessors, successors, assignees and/or heirs, against Wholesale, its
7 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
8 attorneys, and each entity to whom Wholesale directly or indirectly distributes, ships or sells
9 Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
10 franchisees, cooperative members, and licensees, and their owners, directors, officers, agents,
11 principals, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
12 (Releasees), for any and all claims based on the alleged or actual failure to warn about alleged
13 exposures to DEHP contained in Products manufactured, distributed and/or sold by Wholesale in or
14 into California before the Effective Date, as alleged in the Notice.

15 In further consideration of the promises and agreements herein contained, Vinocur, on his
16 own behalf, and on behalf of his past and current agents, principals, employees, insurers,
17 accountants, entities under his ownership or direction, representatives, attorneys, predecessors,
18 successors, assignees and heirs hereby waives any and all rights that he may have to institute or
19 participate in, directly or indirectly, any form of legal action, and releases all claims against
20 Wholesale and Releasees including, without limitation, all actions and causes of action, suits,
21 liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees,
22 expert fees, and attorneys’ fees for any and all claims arising under Proposition 65, and regarding the
23 alleged or actual failure to warn about exposures to DEHP, BBP, DBP, DIDP, DINP, DnHP in
24 Products manufactured, sold, or distributed for sale before the Effective Date by Wholesale.

25 **4.3 Wholesale’s Release of Vinocur**

26 Wholesale, on its own behalf and on behalf of its past and current agents, representatives,
27 attorneys, successors, and assignees, hereby waives any and all claims against Vinocur, Vinocur’s
28 attorneys, and other representatives, for any and all actions taken or statements made, whether in the

1 course of investigating claims, seeking to enforce Proposition 65 against Wholesale in this matter, or
2 with respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment shall be null and void if, for any reason, it is not approved and
5 entered by the Court within one year after it has been fully executed by all Parties. Vinocur and
6 Wholesale agree to support the entry of this agreement as a judgment, and to obtain the Court's
7 approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to
8 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval
9 of this Consent Judgment, which motion Vinocur shall draft and file. In furtherance of obtaining
10 such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to
11 support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement
12 in a timely manner. For purposes of this section, "best efforts" shall include, at a minimum,
13 supporting the motion for approval, responding to any objection that any third-party may file or
14 lodge, and appearing at the hearing before the Court if so requested.

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
22 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Wholesale
23 may provide Vinocur with written notice of any asserted change in the law, and shall have no further
24 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
25 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Wholesale
26 from its obligation to comply with any pertinent state or federal law or regulation.

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (a) personal delivery, (b) first-class registered or certified mail, return
4 receipt requested; or (c) a recognized overnight courier to any Party by the other at the following
5 addresses:

6 For **Wholesale:**

For **Vinocur:**

7 Haowei Shen, President
8 Wholesale Interiors Inc.
9 991 Supreme Drive
Bensenville, IL 60106

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

10 with a copy of behalf of **Wholesale:**

11 Garth N. Ward, Partner
12 Lewis Brisbois
701 B Street, Suite 1900
San Diego, CA 92101

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

15 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

20 Vinocur and his counsel agree to comply with the reporting form requirements referenced in
21 California Health and Safety Code § 25249.7(f).

22 **11. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the
24 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
26 therein. There are no warranties, representations, or other agreements between the Parties except as
27 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
28 specifically referred to in this Consent Judgment have been made by any Party hereto. No other

1 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
2 exist or to bind any of the Parties hereto.

3 **12. MODIFICATION**

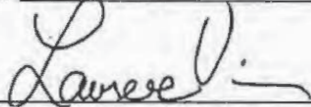
4 This Consent Judgment may be modified only by: (a) a written agreement of the Parties and
5 the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion of
6 any party and the entry of a modified Consent Judgment by the Court thereon.

7 **13. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
10 Consent Judgment.

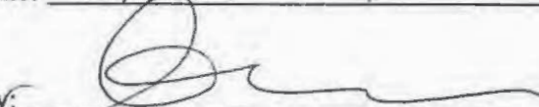
11
12 **AGREED TO:**

13 Date: 1/9/2019

14
15 By: 
16 LAURENCE VINOCUR

12 **AGREED TO:**

13 Date: 01/16/2019

14
15 By: 
16 Haowei Shen, President
17 WHOLESALE INTERIORS INC.