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11 Attorneys for Plaintiff  
12 LAURENCE VINOCUR

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16 LAURENCE VINOCUR,

17 Plaintiff,

18 v.

19 M. EAGLES TOOL WAREHOUSE, INC.; S &  
20 G TOOL-AID CORP.; *et al.*,

21 Defendants.

Case No. CGC-18-568572

**[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 M. Eagles Tool Warehouse, Inc. (“M. Eagles”) doing business as S & G Tool-Aid  
5 Corp. (registered in New Jersey as an alternate name for M. Eagles), with Vinocur and M. Eagles  
6 each individually referred to as a “Party” and, collectively, as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Vinocur alleges that M. Eagles manufactures, imports, sells, or distributes for sale in  
17 California circuit testers with vinyl/PVC components containing di(2-ethylhexyl)phthalate  
18 (“DEHP”), as described with particularity in Paragraph 1.5, without first providing the exposure  
19 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known  
20 to cause birth defects or other reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are circuit testers with vinyl/PVC  
23 components containing DEHP that are manufactured, imported, sold or distributed for sale, in  
24 California, by M. Eagles, specifically limited to the *Tool Aid Extra Long, Heavy Duty Circuit Tester*  
25 *with Retractable Wire, #27250, UPC # 6 38570 27250 5*, hereinafter, the “Products.”

26 **1.6 Notice of Violation**

27 On March 21, 2018, Vinocur served M. Eagles, S & G Tool-Aid Corp., the California  
28 Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation

1 alleging that M. Eagles violated Proposition 65 by failing to warn its customers and consumers in  
2 California of the health hazards associated with exposures to DEHP from the Products. To the best of  
3 the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to  
4 enforce the violations alleged in the Notices.

### 5 **1.7 Complaint**

6 On July 31, 2018, Vinocur filed the instant action ("Complaint"), naming M. Eagles as a  
7 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the  
8 Notice.

### 9 **1.8 No Admission**

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

### 18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over M. Eagles as to the allegations in the Complaint, that venue is proper in the County  
21 of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this  
22 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

### 23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" means the date on which  
25 the Court grants the motion for approval of the Consent Judgment contemplated by Section 5.

## 26 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

27 Commencing on the Effective Date and continuing thereafter, M. Eagles shall only  
28 manufacture for sale, import for sale, sell or distribute for sale, in California, Products that are either:


1 (a) Reformulated Products, as defined in Section 2.1, below; or (b) Products bearing a clear and  
2 reasonable health hazard warning, pursuant to Sections 2.2 and 2.3.

3 **2.1 Reformulated Products Defined**

4 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products  
5 containing DEHP in maximum concentrations of less than 0.1 percent (1,000 parts per million) in any  
6 accessible component (i.e., any component that may be touched during a reasonably foreseeable use)  
7 when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally  
8 accrediting organization. For purposes of compliance with this reformulation standard, testing  
9 samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”)  
10 methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency  
11 (“EPA”) methodology 8270D, or other equivalent methodologies utilized by federal or state agencies  
12 for the purpose of determining DEHP content in a solid substance.

13 **2.2 Clear and Reasonable Warnings**

14 Commencing on the Effective Date and continuing thereafter, M. Eagles shall provide clear  
15 and reasonable warnings as set forth in this Section for all Products manufactured, imported, sold or  
16 distributed for sale, in California, that do not qualify as Reformulated Products. Each warning shall  
17 be prominently placed with such conspicuousness as compared with other words, statements, designs,  
18 or devices as to render it likely to be read and understood by an ordinary individual under customary  
19 conditions *before* purchase or use. Each warning shall be provided in a manner such that the  
20 consumer or user understands to which *specific* Product the warning applies, so as to minimize the  
21 risk of consumer confusion. For purposes of this Consent Judgment, a clear and reasonable warning  
22 displayed or transmitted according the above criteria, and containing the following statement, shall  
23 satisfy these requirements:

24  **WARNING:** This product can expose you to chemicals, including  
25 DEHP, which is known to the State of California to cause birth  
26 defects or other reproductive harm. For more information go to  
27 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)  
28

1 Or, if placed directly on a Product or the Product’s packaging and/or labeling, M. Eagles  
2 may use the following short-form warning statement, provided it appears in a type size no smaller  
3 than the largest type size used for other consumer information on the Product’s label and in no case  
4 smaller than 6-point type:

5  **WARNING:** Reproductive Harm-  
6 [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product)

7 For purposes of this Consent Judgment, “Product Label” means a display of written, printed  
8 or graphic material that is printed on or affixed to a Product or its immediate container or wrapper.  
9 M. Eagles may also comply with the warning requirements specified by Title 27 California Code of  
10 Regulations, Article 6 “Clear and Reasonable Warnings” (§§ 25600 – 25607.31), as amended from  
11 time to time.

### 12 **2.3 Internet Product Warnings**

13 In the event M. Eagles directly sells Products via an internet site operated or controlled by M.  
14 Eagles to customers located in California, the warning requirements of this Section shall be satisfied  
15 if, prior to purchase: (a) one of the foregoing warnings, described in Section 2.2, appears on the same  
16 page, in the same type size or larger than the Product description text, as the Product; (b) a warning  
17 appears on the same web page as the price for the Product, in the same type size or larger than the  
18 Product description text; (c) a warning appears on one or more web pages displayed to the consumer  
19 prior to purchase, in the same type size or larger than the Product description text; or (d) a hyperlink,  
20 clearly marked “WARNING,” appears on the Product display page, in type large enough so that the  
21 consumer does not have to search for it, and a prominently placed warning appears elsewhere, such  
22 as on the Product description page, in a manner that clearly associates it with the Product to which the  
23 warning applies, prior to checkout or purchase. M. Eagles may alternatively comply with this  
24 Section by providing clear and reasonable warnings in accordance with Title 27 California Code of  
25 Regulations, Article 6 “Clear and Reasonable Warnings” (§§ 25600 – 25607.31), as amended from  
26 time to time.

1           **3.       MONETARY SETTLEMENT TERMS**

2           **3.1      Civil Penalty Payments**

3           Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to in  
4 the Notice, Complaint, and this Consent Judgment, M. Eagles shall pay \$1,500 in civil penalties. The  
5 civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)  
6 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of  
7 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%)  
8 of the penalty retained by Vinocur. M. Eagles shall provide its payment in two checks as follows: (1)  
9 a check made payable to OEHHA in the amount of \$1,125; and (2) a check made payable to  
10 “Laurence Vinocur, Client Trust Account” in the amount of \$375. Vinocur’s counsel shall be  
11 responsible for delivering OEHHA’s portion of any penalty payment(s) made under this Consent  
12 Judgment. Upon request by M. Eagles, Vinocur shall promptly provide any requested W-9 forms in  
13 advance of the payment deadline.

14           **3.2      Reimbursement of Attorney’s Fees and Costs**

15           The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without  
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
17 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
18 other settlement terms were finalized, the Parties negotiated the compensation due to Vinocur and his  
19 counsel under general contract principles and the private attorney general doctrine, codified at  
20 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of  
21 this Consent Judgment, and court approval of the same, but exclusive of fees and costs on appeal, if  
22 any. Under these legal principles, M. Eagles shall pay \$12,000 for all fees and costs incurred by  
23 Vinocur in investigating, bringing this matter to M. Eagles’ attention, litigating and negotiating a  
24 settlement in the public interest. M. Eagles shall provide its payment in a check payable to “The  
25 Chanler Group” and delivered to the address in Section 3.4. Upon request by M. Eagles, Vinocur  
26 shall promptly provide any requested W-9 forms in advance of the payment deadline.

27           **3.3      Payment Timing**

28           Within ten (10) calendar days of the Court’s approval of this Consent Judgment, M. Eagles’

1 shall deliver the civil penalty and attorneys' fee reimbursement payments to Vinocur's counsel at the  
2 address in Section 3.4, supra.

3 **3.4 Payment Address**

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

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Vinocur's Public Release of Proposition 65 Claims**

10 Vinocur, acting on his own behalf and in the public interest, releases M. Eagles and its  
11 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
12 and attorneys ("Releasees"), and each entity to whom M. Eagles directly or indirectly distributes or  
13 sells the Products including, without limitation, its downstream customers, distributors, wholesalers,  
14 and retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to  
15 the failure to warn about exposures to DEHP from Products sold or distributed for sale by M.  
16 Eagles prior to the Effective Date, as set forth in the Notice.

17 **4.2 Vinocur's Individual Release of Claims**

18 Vinocur, in his individual capacity only and *not* in any representative capacity, also provides a  
19 release to M. Eagles, Releasees, and Downstream Releasees, which shall be effective as a full and  
20 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
21 attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character  
22 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
23 exposures to DEHP in Products sold or distributed for sale by M. Eagles prior to the Effective Date.  
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
25 with respect to exposures to DEHP from Products sold or distributed for sale by M. Eagles after the  
26 Effective Date.

1           **4.3 M. Eagles' Release of Vinocur**

2           M. Eagles, on its own behalf, and on behalf of its past and current agents, representatives,  
3 attorneys, successors, and assignees, hereby waives any and all claims against Vinocur, and his  
4 attorneys and other representatives, for any and all actions taken or statements made by Vinocur,  
5 and his attorneys and other representatives, whether in the course of investigating claims, otherwise  
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7           **5. COURT APPROVAL**

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

11          **6. SEVERABILITY**

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

15          **7. GOVERNING LAW**

16          The terms of this Consent Judgment shall be governed by the laws of the state of California  
17 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
18 rendered inapplicable by reason of law generally or as to the Products, then M. Eagles may provide  
19 written notice to Vinocur of any asserted change in the law, and shall have no further injunctive  
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
21 so affected.

22          **8. NOTICE**

23          Unless specified herein, all correspondence and notice required by this Consent Judgment  
24 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
25 return receipt requested; or (iii) a recognized overnight courier to the following addresses:  
26  
27  
28



1 For M. Eagles:

2 Brad Gering, Plant Manager  
3 M. Eagles Tool Warehouse, Inc.  
4 178 Sherman Ave, #192  
5 Newark, NJ 07114

6 With a copy to:

7 Tom Boer, Esq.  
8 Hunton Andrews Kurth LLP  
9 50 California Street, Suite 1700  
10 San Francisco, CA 94111

11 For Vinocur:

12 Proposition 65 Coordinator  
13 The Chanler Group  
14 2560 Ninth Street  
15 Parker Plaza, Suite 214  
16 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Vinocur agrees to comply with the reporting form requirements referenced in Health and  
25 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
26 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion  
27 Vinocur shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
28 employ their best efforts, and those of their counsel, to support the entry of this agreement as  
judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this  
Section, “best efforts” shall include, at a minimum, supporting the motion for approval and appearing  
at the hearing before the Court if so requested.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8 **AGREED TO:**

**AGREED TO:**

9  
10 Date: March 14, 2019

Date: March 11, 2019

11 By:   
12 LAURENCE VINO CUR

By:   
BRAD GERING, PLANT MANAGER  
M. EAGLES TOOL WAREHOUSE, INC.