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11 AUDREY KALLANDER

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 CITY AND COUNTY OF SANTA CLARA  
14 UNLIMITED CIVIL JURISDICTION

15 AUDREY KALLANDER,  
16 Plaintiff,

17 v.

18 NINGBO VONTONE STATIONERY CO.  
19 LTD. and DOES 1-150, inclusive,

20 Defendants.  
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Case No. 23CV417176

**[PROPOSED] 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 plaintiff Audrey Kallander  
4 (“Kallander”) and defendant The Ningbo Vontone Stationery Co. Ltd. (“Ningbo Vontone”), with  
5 Kallander and Ningbo Vontone each referred to individually as a “Party” and collectively as the  
6 “Parties.”

7 **1.2 Plaintiff**

8 Kallander is a resident of the State of California who seeks to promote awareness of  
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Kallander alleges that Ningbo Vontone manufactures, sells, and distributes for sale in  
17 California bike locks with PVC components containing di(2-ethylhexyl) phthalate (“DBP”). On  
18 December 2, 2005, the State of California listed DBP as a chemical known to cause birth defects  
19 and other reproductive harm. DBP. Kallander alleges that Ningbo Vontone failed to provide the  
20 health hazard warnings required by Proposition 65 for exposures to DBP.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are specifically defined as, and limited to,  
23 the *Caliber Bike Lock*, UPC: 0 50428 64609 0, manufactured, sold, or distributed for sale in  
24 California by Ningbo Vontone (hereinafter “Covered Products”).

25 **1.6 Notices of Violation**

26 On December 13, 2022, Kallander served CVS Pharmacy, Inc. (“CVS”) and the requisite  
27 public enforcement agencies with a 60-Day Notice of Violation of the Safe Drinking Water and  
28 Toxic Enforcement Act of 1986 (“December Notice”), alleging that the notice recipient violated

1 Proposition 65 by failing to warn customers and consumers in California of the health hazards  
2 associated with exposures to DBP from the Covered Products. Ningbo was subsequently identified  
3 as the manufacturer/supplier of the Covered Products. No public enforcer has commenced or is  
4 diligently prosecuting the allegations set forth in the December Notice.

5 On February 16, 2023, Kallander served Ningbo Vontone and the requisite public  
6 enforcement agencies with a 60-Day Notice of Violation of the Safe Drinking Water and Toxic  
7 Enforcement Act of 1986 (“February Notice”), alleging that the notice recipients violated  
8 Proposition 65 by failing to warn customers and consumers in California of the health hazards  
9 associated with exposures to DBP from the Covered Products. No public enforcer has commenced  
10 or is diligently prosecuting the allegations set forth in the February Notice.

11 The December Notice and February Notice shall hereinafter collectively be referred to as the  
12 “Notices.”

13 **1.7 Complaint**

14 On April 27, 2023, Kallander commenced the instant action, naming Ningbo Vontone as the  
15 defendant for the alleged violations of Proposition 65 related to the Covered Products.

16 **1.8 No Admission**

17 By execution of this Consent Judgment, Ningbo denies any material, factual, and legal  
18 allegations contained in the Notices and Complaint and maintains that all of the products that it has  
19 sold and distributed in California, including the Covered Products, have been, and are, in  
20 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by  
21 Ningbo of any fact, finding, conclusion of law, issue of law, or violation of law. Nothing in this  
22 Consent Judgment, nor compliance with this Consent Judgment, shall constitute or be construed,  
23 considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or  
24 liability by Ningbo, its officers, directors, employees, or parents, subsidiaries or affiliated  
25 corporations, in any administrative or judicial proceeding or litigation in any court, agency, or  
26 forum. Except for the allegations settled and compromised, nothing in this Consent Judgment shall  
27 prejudice, waive, or impair any right, remedy, argument, or defense that the Parties may have  
28 against one another in any other pending legal proceeding as to allegations unrelated to the Notices,

1 Complaint or claims released herein. This Section shall not, however, diminish or otherwise affect  
2 Ningbo Vontone’s obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
5 jurisdiction over Ningbo Vontone as to the allegations contained in the Notices and Complaint, that  
6 venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and  
7 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil  
8 Procedure section 664.6.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
11 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,  
12 including the date of any unopposed tentative ruling approving this Consent Judgment.

13 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

14 **2.1 Reformulation Standards**

15 “Reformulated Products” are defined as those Covered Products containing DBP in  
16 concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.  
17 Environmental Protection Agency testing methodologies 3580A and 8270C, or any other  
18 methodologies utilized by federal or state agencies for the purpose of determining the DBP content  
19 in a solid substance.

20 **2.2 Reformulation/Warning Commitment**

21 Commencing by or before 30 days after the Effective Date, Ningbo Vontone shall not sell or  
22 offer the Covered Products for sale in the State of California unless they are Reformulated Products  
23 pursuant to Section 2.1 or contain a warning as set forth in Section 2.3 below. The Parties agree  
24 and intend that Ningbo Vontone’s compliance with the terms of this Consent Judgment shall  
25 constitute its compliance with Proposition 65 with respect to exposures to DBP from the Covered  
26 Products. There shall be no obligation for Ningbo Vontone to provide a warning for Covered  
27 Products that entered the stream of commerce prior to 30 days after the Effective Date whether or  
28


1 not it is a Reformulated Product, and the Section 4 release applies to all such Covered Products, as  
2 they have been included in the calculation of civil penalties due pursuant to Section 3.1.

### 3 **2.3 Warnings**

4 Commencing by or before 30 days after the Effective Date, all Covered Products Ningbo  
5 Vontone sells and/or distributes for sale in California that do not qualify as Reformulated Products,  
6 shall bear a clear and reasonable warning pursuant to this Section on such Covered Products that  
7 complies with Proposition 65. Ningbo Vontone further agrees that the warning shall be  
8 prominently placed with such conspicuousness when compared with other words, statements,  
9 designs or devices as to render it likely to be read and understood by an ordinary individual under  
10 customary conditions of purchase or use. For purposes of this Consent Judgment, a clear and  
11 reasonable warning for the Covered Products shall consist of a warning affixed directly to the  
12 product or product packaging, label, tag, or on a placard, shelf tag, sign or electronic device or  
13 automatic process for Covered Products sold in California and containing one of the following  
14 statements:

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

16 OR

17  **WARNING:** This product can expose you to chemicals, including Di-n-butyl  
18 Phthalate (DBP), which are known to the State of California to cause birth defects or  
19 other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

20 The above warning statements shall also include a symbol consisting of a black exclamation  
21 point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using  
22 the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the  
23 left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

24 Where a sign or label used to provide a warning includes consumer information about a  
25 Covered Product in a language other than English, the warning must also be provided in that  
26 language in addition to English.

27 In addition to affixing the warning on the Covered Products, if Ningbo Vontone sells  
28 the Covered Products via its own proprietary internet website directly to consumers located in  
California, it shall also provide the foregoing warning either: (a) on the same web page on which a

1 Covered Product is displayed and/or described; (b) on the same page as the price for the Covered  
2 Product; (c) on one or more web pages displayed to a California purchaser prior to completion of  
3 the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow  
4 or white equilateral triangle may appear adjacent to or immediately following the display,  
5 description, price, or checkout listing of the Covered Product, if the warning statement appears  
6 elsewhere on the same web page in a manner that clearly associates it with the product(s) to which  
7 the warning applies. If it has the ability to do so, Ningbo Vontone shall also provide the warning on  
8 the websites of its third-party internet sellers where Ningbo Vontone controls the content of the  
9 product display page. If Ningbo Vontone does not have the ability to post the warning on the  
10 websites of third-party distributors or retail sellers with whom has written agreements to sell the  
11 Covered Products on the internet, Ningbo Vontone shall provide such third-party distributors or  
12 retail sellers with written notice in accordance with Title 27, California Code of Regulations,  
13 Section 25600.2. Third-party internet sellers who receive notice pursuant to 25600.2 and fail to  
14 provide a clear and reasonable Proposition 65 warning pursuant to this section shall not be deemed  
15 in compliance with this Consent Judgment shall not receive any benefit or protection afforded  
16 hereunder.

17 The parties acknowledge that the warnings required by this section are not the exclusive  
18 methods of providing Proposition 65 warnings and agree that Ningbo Vontone may utilize “safe  
19 harbor” warning language and methods of transmission in effect on or after the Effective Date,  
20 applicable to DBP and the Covered Products, without being deemed in breach of this Settlement  
21 Agreement.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Civil Penalty Payment**

24 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of certain  
25 claims alleged in the Notices or referred to in this Consent Judgment, Ningbo Vontone agrees to  
26 pay \$4,600 in civil penalties within five (5) business days of the Effective Date. The penalty  
27 payment will be allocated in accordance with California Health and Safety Code section  
28 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of

1 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty  
2 amount paid to Kallander and delivered to the address in Section 3.3 herein. Ningbo Vontone will  
3 provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$3,450; and (2)  
4 “Audrey Kallander” in the amount of \$1,150.

### 5 **3.2 Attorney’s Fees and Costs**

6 The Parties acknowledge that Kallander and her counsel offered to resolve this dispute  
7 without reaching terms on the amount of fees and costs to be reimbursed to Kallander’s counsel,  
8 thereby leaving the issue to be resolved after the material terms of the agreement had been settled.  
9 Shortly after the other settlement terms had been reached, Ningbo Vontone expressed a desire to  
10 resolve the attorneys’ fees and costs. The Parties reached an accord on the compensation due to  
11 Kallander’s counsel under general contract principles and the private attorney general doctrine  
12 codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under  
13 these legal principles, within five (5) business days of the Effective Date, Ningbo Vontone agrees to  
14 pay \$25,400, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and  
15 costs incurred investigating, bringing this matter to the attention of Ningbo Vontone’s management,  
16 and negotiating a settlement in the public interest, but exclusive of fees and costs on appeal, if any.

### 17 **3.3 Payment Address**

18 All payments under this Consent Judgment shall be delivered to the following address:

19 Voorhees & Bailey, LLP  
20 839 Emerson Street  
21 Palo Alto, CA 94301

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

### 23 **4.1 Kallander’s Release of Proposition 65 Claims**

24 Kallander, acting on her own behalf and in the public interest, releases Ningbo Vontone and  
25 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
26 and attorneys (“Releasees”) and each entity to whom Ningbo Vontone directly or indirectly  
27 distributes or sells the Covered Products including, but not limited to, its downstream distributors,  
28 wholesalers, customers, retailers including CVS, franchisers, cooperative members, licensors and  
licensees, (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned

1 exposures to DBP in the Covered Products manufactured, imported, distributed or sold by Ningbo  
2 Vontone prior to 30 days after the Effective Date, as set forth in the Notices.

3         The Parties further understand and agree that this Section 4.1 release shall not extend  
4 upstream to any entities that manufactured the Covered Products or any component parts thereof, or  
5 any distributors or suppliers who sold the Covered Products or any component parts thereof to  
6 Ningbo Vontone.

#### 7           **4.2     Kallander’s Individual Release of Claims**

8         Kallander, in her individual capacity only and not in her representative capacity, provides a  
9 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
10 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,  
11 liabilities, and demands of Kallander of any nature, character, or kind, whether known or unknown,  
12 suspected or unsuspected, arising out of alleged or actual exposures to DBP in the Covered  
13 Products manufactured, imported, distributed, or sold by Ningbo Vontone and each of its respective  
14 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, or  
15 attorneys, and any of the Downstream Releases prior to 30 days after the Effective Date. The  
16 Parties further understand and agree that this Section 4.2 release shall not extend upstream to any  
17 entities that manufactured the Covered Products, or any component parts thereof, or any distributors  
18 or suppliers who sold the Covered Products to Ningbo Vontone, or any component parts thereof to  
19 Ningbo Vontone.

#### 20           **4.3     Ningbo Vontone’s Release of Kallander**

21         Ningbo Vontone, on its own behalf and on behalf of its past and current agents,  
22 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against  
23 Kallander and her attorneys and other representatives, for any and all actions taken or statements  
24 made (or those that could have been taken or made) by Kallander and her attorneys and other  
25 representatives, whether in the course of investigating claims, seeking to enforce Proposition 65  
26 against it in this matter, or with respect to the Covered Products.

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1           **4.4 California Civil Code Section 1542**

2           It is possible that other claims not known to the Parties arising out of the facts alleged in the  
3 Notice and relating to the Covered Products will develop or be discovered. Kallander on behalf of  
4 herself only, on one hand, and Ningbo on behalf of itself only, on the other hand, acknowledge that  
5 this Consent Judgment is expressly intended to cover and include all such claims prior to 30 days  
6 after the Effective Date. The Parties acknowledge that the claims released in Sections 4.2 and 4.3  
7 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
8 such unknown claims. California Civil Code section 1542 reads as follows:  
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10                                   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
11                                   THAT THE CREDITOR OR RELEASING PARTY DOES  
12                                   NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
13                                   FAVOR AT THE TIME OF EXECUTING THE RELEASE  
14                                   AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
15                                   MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
16                                   WITH THE DEBTOR OR RELEASED PARTY.

17           Kallander and Ningbo each acknowledge and understand the significance and consequences  
18 of this specific waiver of California Civil Code § 1542.

19           **5. COURT APPROVAL**

20           This Consent Judgment is not effective until it is approved and entered by the Court and  
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
22 after it has been fully executed by all Parties. Kallander and Ningbo Vontone agree to support the  
23 entry of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a  
24 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code  
25 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,  
26 which motion Kallander shall draft and file and Ningbo Vontone shall support, appearing at the  
27 hearing if so requested. If any third-party objection to the motion is filed, Kallander and Ningbo  
28 Vontone agree to work together to file a reply and appear at any hearing. This provision is a  
material component of the Consent Judgment and shall be treated as such in the event of a breach.

1 In the event that this Consent Judgment is not approved by the Court, the Parties agree to  
2 meet and confer on how to proceed and if such agreement is not reached within 30 days, the case  
3 shall proceed on its normal course. If the Court approves this Consent Judgment and is reversed or  
4 vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of  
5 this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case  
6 shall proceed on its normal course on the trial court's calendar.

7 **6. SEVERABILITY**

8 If, subsequent to the execution of this Consent Judgment, any provision of this Consent  
9 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall  
10 not be adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California  
13 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
14 rendered inapplicable by reason of law generally, or as to the Covered Products, then Ningbo  
15 Vontone may provide written notice to Kallander of any asserted change in the law and shall have  
16 no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the  
17 extent that, the Covered Products are so affected.

18 **8. NOTICE**

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

23 For Ningbo Vontone:

24 Alecia E. Cotton  
25 ROGERS JOSEPH O'DONNELL  
26 311 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104

For Kallander:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
839 Emerson Street  
Palo Alto, CA 94301

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

1 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Kallander and her attorneys agree to comply with the reporting form requirements  
7 referenced in California Health and Safety Code section 25249.7(f).

8 **11. MODIFICATION**

9 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
10 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
11 any party and the entry of a modified Consent Judgment by the Court thereon.

12 **12. NEUTRAL CONSTRUCTION**

13 Both Parties and their counsel have participated in the preparation of this Consent Judgment  
14 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment  
15 was subject to revision and modification by the Parties and has been accepted and approved as to its  
16 final form by both Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in  
17 this Consent Judgment shall not be interpreted against any Party by virtue of its participation in the  
18 preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute  
19 or rule of construction providing that ambiguities are to be resolved against the drafting party  
20 should not be employed in the interpretation of this Consent Judgment and, in this regard, the  
21 Parties hereby waive California Civil Code Section 1654.

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1 **13. AUTHORIZATION**


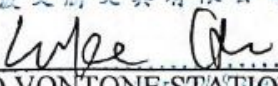
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understand, and agreed to all of the terms and conditions of this  
4 Consent Judgment.

5 **AGREED TO:**

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7 Date: Jan 30, 2024

8  
9 By:   
10 AUDREY KALLANDER

5 **AGREED TO:**

6  
7 Date: -  
8   
9 By:   
10 NINGBO VONTONE STATIONERY  
11 CO. LTD.

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