

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
THE CHANLER GROUP
81 Throckmorton Avenue, Suite 202
Mill Valley, CA 94941
Telephone: 415.388.0911
Facsimile: 415.388.9911

Attorneys for Plaintiff
LAURENCE VINO CUR

ENDORSED
FILED
ALAMEDA COUNTY

JAN 29 2015

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,

Plaintiff,

vs.

ACE BAYOU CORP., MARCO GROUP, INC.,
MECO CORPORATION, MICHAELS
STORES, INC., OFFICE DEPOT, INC., THE
FAIRFIELD PROCESSING CORPORATION,
UNAKA COMPANY, INCORPORATED and
DOES 1-150,

Defendants.

Case No. RG13673697

Assigned for All Purposes to Judge George C.
Hernandez, Jr., Department 17

JUDGMENT AS TO OFFICE DEPOT, INC.

Filed: March 29, 2013

1 In the above-entitled action, Plaintiff Laurence Vinocur and Defendant Office Depot, Inc.,
2 having agreed through their respective counsel that a judgment be entered pursuant to the terms
3 of the Consent To Judgment entered into by the parties in resolution of this Proposition 65
4 action, and following the issuance of an order approving the Parties' Consent to Judgment on
5 this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in
7 accordance with the terms of the Consent To Judgment attached hereto as Exhibit A. By
8 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code
9 of Civil Procedure § 664.6.
10

11 **IT IS SO ORDERED.**

12
13
14 Dated: JAN 29 2015

13 **GEORGE C. HERNANDEZ, JR.**

14 _____
15 Hon. George Hernandez
16 Judge Of The Superior Court
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
THE CHANLER GROUP
81 Throckmorton Avenue, Suite 202
Mill Valley, CA 94941
Telephone: 415.388.0911
Facsimile: 415.388.9911

Attorneys for Plaintiff
LAURENCE VINO CUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,

Plaintiff,

vs.

ACE BAYOU CORP., MARCO GROUP, INC.,
MECO CORPORATION, MICHAELS
STORES, INC., OFFICE DEPOT, INC., THE
FAIRFIELD PROCESSING CORPORATION,
UNAKA COMPANY, INCORPORATED and
DOES 1-150,

Defendants.

Case No. RG13673697

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**CONSENT TO JUDGMENT AS TO
DEFENDANT OFFICE DEPOT, INC.**

(Health & Safety Code § 25249.6 *et seq.*)

Filed: March 29, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Plaintiff”) and the Defendant Office Depot, Inc. (“Settling Defendant” or “Office Depot”), with
5 Plaintiff and Office Depot collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Plaintiff 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
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Settling Defendants**

11 Office Depot employs ten or more persons 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 &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that Office Depot manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65
18 health hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear
21 and reasonable warning” requirements of Proposition 65 one year later on October 28,
22 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).
23 Plaintiff alleges that TDCPP escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The Categories of products that are covered by this Consent Judgment are identified on
26 Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or manufactured
27
28

1 for use as a component of another product, such as upholstered furniture, but which is not itself a
2 finished product, is specifically excluded from the definition of Products on Exhibit A.

3 **1.6 Notices of Violation**

4 On January 8, 2013, Plaintiff served Office Depot and certain requisite public enforcement
5 agencies with a "60-Day Notice of Violation" ("Notices") that provided the recipients with notice
6 of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers,
7 and workers in California that the Products expose users to TDCPP. On June 10, 2013, Plaintiff
8 served Office Depot and certain requisite public enforcement agencies with a "Supplemental 60-
9 Day Notice of Violation" ("Supplemental Notice") that provided the recipients with notice of
10 alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers,
11 and workers in California that the Products expose users to DEHP. To the best of the Parties'
12 knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth
13 in the Notices.

14 **1.7 Complaint**

15 On April 12, 2013, plaintiff filed a First Amended Complaint in the Superior Court in and
16 for the County of Alameda against the Settling Defendants, other defendants and Does 1 through
17 150, and on October 18, 2013, plaintiff filed a Second Amended Complaint in the Superior Court in
18 and for the County of Alameda against the Settling Defendants, other defendants and Does 1
19 through 150 alleging violations of Proposition 65, based in part on the alleged unwarned
20 exposures to TDCPP and DEHP contained in the Products.

21 **1.8 No Admission**

22 Office Depot denies the material factual and legal allegations contained in Plaintiff's
23 Notices and Complaints and maintains that all products that it has manufactured, imported,
24 distributed, and/or sold in California, including the Products, have been and are in compliance
25 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Office
26 Depot of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with
27 this Consent Judgment constitute or be construed as an admission by Office Depot of any fact,
28 finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or

1 otherwise affect Office Depot's obligations, responsibilities, and duties under this Consent
2 Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Settling Defendant as to the allegations contained in the Complaints, that venue is
6 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
7 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
8 Procedure § 664.6.

9 **2. DEFINITIONS**

10 **2.1 Accessible Component**

11 "Accessible Component" shall mean a component made of vinyl or soft plastic that could
12 be touched by a person during normal and reasonably foreseeable use.

13 **2.2 Detectable**

14 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
15 of .0025%) of TDCPP in any material, component, or constituent of a subject product, when
16 analyzed pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies
17 utilized by federal or state agencies to determine the presence, and measure the quantity, of
18 TDCPP in a solid substance.

19 **2.3 Effective Date**

20 "Effective Date" shall mean the date on which the Court enters this Consent Judgment.

21 **2.4 Reformulated Products**

22 "Reformulated Products" shall mean Products that contain no Detectable amount of
23 TDCPP.

24 **2.5 Reformulation Standard**

25 The "Reformulation Standard" shall mean containing no more than 25 parts per million
26 ("ppm") of TDCPP.

27 **3. INJUNCTIVE RELIEF: REFORMULATION**

28 **3.1 Reformulation Commitment**

1 **As a material term of this Consent to Judgment, Office Depot confirms that, as of at least**
2 **September 1, 2014, it is no longer selling any products in California that are not**
3 **Reformulated Products. Notwithstanding this confirmation, Office Depot agrees to**
4 **comply with the following commitments.**

5 3.1.1 Commencing on the Effective Date, Office Depot shall not sell in California
6 or manufacture or import, or cause to be manufactured or imported, for sale in California
7 any Products that are not Reformulated Products.

8 3.1.2 Commencing on the Effective Date, Office Depot shall not manufacture, or
9 cause to be manufactured, for sale in California, any Products that contain more than 1,000
10 ppm of DEHP in any Accessible Component when analyzed by an accredited laboratory
11 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C
12 or any other methodology utilized by federal or state agencies for the purpose of
13 determining the DEHP content in a consumer product.

14 **3.2 Vendor Notification/Certification**

15 As a material term of this agreement, Office Depot confirms that, as of at least September 1,
16 2014, all of its vendors of Products are already supplying Office Depot with only Reformulated
17 Products. Notwithstanding this confirmation, within five business days of the Effective Date,
18 Office Depot shall provide written notice to all of its then-current vendors of the Products,
19 instructing each such vendor to use reasonable efforts to provide only Reformulated Products. In
20 addressing the obligation set forth in the preceding sentence, Office Depot shall not employ
21 statements that will encourage a vendor to delay compliance with the Reformulation Standard. In
22 such notification, Office Depot shall request vendor confirm in writing that all Products supplied
23 by vendor after the Effective Date are or will be in compliance with the Reformulation Standard.
24 All written correspondence pursuant to this section shall be maintained by Office Depot for two
25 (2) years from Effective Date and shall be made available to plaintiff upon request.

26 **3.3 Current Inventory**

27 Office Depot represents that it does not have any current inventory of Products for sale in
28 California that are not Reformulated Products and agrees not to sell in California any non-

1 Reformulated Product from any inventory it may have. Commencing September 1, 2014, any
2 Products manufactured before the Effective Date and sold or offered for sale in California by
3 Office Depot that do not comply with the DEHP standard of Section 3.1.2 shall contain a clear and
4 reasonable warning as set forth in Section 3.4 below.

5 **3.4 Product Warnings**

6 Any warning provided under Section 3.3 above shall be affixed to the packaging, labeling,
7 or directly on each Product. Each warning shall be prominently placed with such conspicuousness
8 as compared with other words, statements, designs, or devices as to render it likely to be read and
9 understood by an ordinary individual under customary conditions before purchase. Each warning
10 shall be provided in a manner such that the consumer or user understands to which specific
11 Product the warning applies, so as to minimize the risk of consumer confusion.

12 A warning provided pursuant to this section shall state:

13 **WARNING:** This product contains a chemical
14 known to the State of California to
cause birth defects or other
reproductive harm.

15 **4. MONETARY PAYMENTS**

16 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

17 In settlement of all the claims referred to in this Consent Judgment, Office Depot shall pay
18 the civil penalties shown for it on Exhibit A in accordance with this Section.¹ Each penalty
19 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and
20 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
21 Assessment (“OEHHA”) and 25% of the penalty remitted to “Laurence Vinocur, Client Trust
22 Account.” Each penalty payment shall be delivered to the addresses listed in Section 4.5 below.
23 Office Depot shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts
24 due and owing under this Section that are not received within two business days of the due date.

25 **4.1.1 Initial Civil Penalty.** Within five business days of the Effective Date, Office
26 Depot shall make an initial civil penalty payment in the amount identified on Exhibit A.

1 4.1.2 **Second Civil Penalty.** Within five business days of the Effective Date,
2 Office Depot shall make a second civil penalty payment in the amount identified on Exhibit
3 A. The amount of the second penalty may be reduced according to any penalty waiver
4 Office Depot is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

5 4.1.3 **Third Civil Penalty.** On or before January 1, 2015, Office Depot shall make
6 a third civil penalty payment in the amount identified on Exhibit A. The amount of the
7 third penalty may be reduced according to any penalty waiver Office Depot is eligible for
8 under Sections 4.1.4(ii) and 4.1.4(iv), below.

9 4.1.4 **Reductions to Civil Penalty Payment Amounts.** Office Depot may reduce
10 the amount of the second and/or third civil penalty payments identified on Exhibit A by
11 providing Plaintiff with certification of certain efforts undertaken to reformulate its
12 Products or limit the ongoing sale of non-reformulated Products in California. The options
13 to provide a written certification in lieu of making a portion of Office Depot's civil penalty
14 payment constitute material terms of this Consent Judgment, and with regard to such
15 terms, time is of the essence.

16 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
17 **Products Sold or Offered for Sale in California.**

18 As shown on Exhibit A, a portion of the second civil penalty shall be waived, to the extent
19 that Office Depot has agreed that, as of June 10, 2014, and continuing into the future, it shall only
20 manufacture or import for distribution or sale to California Customers or cause to be
21 manufactured or imported for distribution or sale to California Customers, Reformulated
22 Products. An officer or other authorized representative of Settling Defendant shall provide
23 Plaintiff with a written certification confirming compliance with such conditions, which
24 certification must be received by Plaintiff's counsel within five business days of the Effective Date.

25 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

26 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent
27 that Office Depot has agreed that, as of June 10, 2014, and continuing into the future, it shall only
28 manufacture or import for distribution or sale in California or cause to be manufactured or

1 imported for distribution or sale in California, Reformulated Products that also do not contain
2 tris(2-chloroethyl) phosphate ("TCEP") or tris(2,3-dibromopropyl)phosphate ("TDBPP") in a
3 detectable amount of more than 25 parts per million ("ppm") (the equivalent of .0025%) in any
4 material, component, or constituent of a Product, when analyzed pursuant to EPA testing
5 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies
6 to determine the presence, and measure the quantity, of TCEP or TDBPP in a solid substance. An
7 officer or other authorized representative of Settling Defendant shall provide Plaintiff with a
8 written certification confirming compliance with such conditions, which certification must be
9 received by Plaintiff's counsel within five business days of the Effective Date.

10 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
11 **Exemplar Products from the California Market.**

12 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
13 other authorized representative of Office Depot provides Plaintiff with written certification, within
14 five business days of the Effective Date, confirming that it is no longer offering the Exemplar
15 Product for sale in California.

16 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
17 **California of Unreformulated Inventory.**

18 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
19 other authorized representative of Office Depot provides Plaintiff with written certification, within
20 five business days of the Effective Date, confirming that, as of July 1, 2014, it has and will continue
21 to distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
22 Products.

23 **4.2 Representation**

24 Office Depot represents that the sales data and other information concerning its size,
25 knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Plaintiff was
26 truthful to its knowledge and a material factor upon which Plaintiff has relied to determine the
27 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
28 Judgment. If, within nine months of the Effective Date, Plaintiff discover and present to Settling

1 Defendant, evidence demonstrating that the preceding representation and warranty was
2 materially inaccurate, then Settling Defendant shall have 30 days to meet and confer regarding the
3 Plaintiff's contention. Should this 30 day period pass without any such resolution between the
4 Plaintiff and Settling Defendant, Plaintiff may file a formal legal claim including, but not limited
5 to, a claim for damages for breach of contract.

6 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

7 If Plaintiff provides notice and appropriate supporting information to Settling Defendant
8 that levels of TDCPP in excess of the Reformulation Standard have been detected in one or more
9 Products labeled or otherwise marked in an identifiable manner as manufactured or imported
10 after a deadline for meeting the Reformulation Standard has arisen under Section 3.1 above,
11 Settling Defendant may elect to pay a stipulated penalty to relieve any further potential liability
12 under Proposition 65 or sanction under this Consent Judgment as to Products sourced from the
13 vendor in question.² The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm
14 and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any
15 amount in excess of the Reformulation Standards but under 250 ppm.³ Plaintiff shall further be
16 entitled to reimbursement of his associated expense in an amount not to exceed \$5,000 regardless
17 of the stipulated penalty level. Settling Defendant under this Section must provide notice and
18 appropriate supporting information relating to the purchase (e.g. vendor name and contact
19 information including representative, purchase order, certification (if any) received from vendor
20 for the exemplar or subcategory of products), test results, and a letter from a company
21 representative or counsel attesting to the information provided, to Plaintiff within 30 calendar
22 days of receiving test results from Plaintiff's counsel. Any violation levels at or above 250 ppm
23 shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

24 **4.4 Reimbursement of Fees and Costs**

25 ² This Section shall not be applicable where the vendor in question had previously been found by the Settling Defendant to
26 have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion.
27 Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling Defendant's vendor at a level between 100
28 and 249 ppm shall not be available after July 1, 2015.

³ Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in the same manner as set
forth in Sections 4.1 and 4.5, respectively.

1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
2 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
3 this fee reimbursement issue to be resolved after the material terms of the agreement had been
4 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant
5 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay
6 Plaintiff and his counsel under general contract principles and the private attorney general
7 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
8 through the mutual execution of this agreement, including the fees and costs incurred as a result of
9 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in
10 the public interest, and seeking court approval of the same. In addition, the negotiated fee and
11 cost figure expressly includes the anticipated significant amount of time plaintiffs' counsel will
12 incur to monitor various provisions in this agreement over the next two years. Office Depot more
13 specifically agreed, upon the Court's approval and entry of this Consent Judgment, to pay
14 Plaintiff's counsel the amount of fees and costs indicated on Exhibit A. Office Depot further
15 agreed to tender and shall tender its full required payment under this Section to a trust account at
16 The Chanler Group (made payable "In Trust for The Chanler Group") within five business days of
17 the Court's approval of this Agreement.

18 **4.5 Payment Procedures**

19 **4.5.1 Issuance of Payments.**

20 (a) All payments owed to Plaintiff and their counsel, pursuant to
21 Sections 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
28 Section 4.1 and 4.3, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties")
at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 P.O. Box 4010
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

12 4.5.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
14 in Section 4.5.1(a) above, as proof of payment to OEHHA.

15 4.5.3 **Tax Documentation.** Settling Defendant shall issue a separate 1099 form for
16 each payment required by this Section to: (a) Laurence Vinocur, whose address and tax
17 identification number shall be furnished upon request after this Consent Judgment has
18 been fully executed by the Parties; (b) OEHHA, who shall be identified as "California
19 Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to
20 be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
21 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Plaintiff's Release of Proposition 65 Claims**

24 Plaintiff, acting on his own behalf and in the public interest, releases Office Depot, its
25 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
26 employees, attorneys, and each entity to whom Office Depot directly or indirectly distribute or sell
27 Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers,
28 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
Chemicals in the Products, as set forth in the Notices. *This release does not release Marco Group, Inc.,
Meco Corporation or Unaka Company, Incorporated for any products manufactured, distributed or
otherwise sold to Office Depot, Inc. by Marco Group, Inc., Meco Corporation or Unaka Company,*

1 *Incorporated (including, but not limited to Office-Stor Commercial Stacking Chair or Sudden Comfort by*
2 *Meco chair)*. Compliance with the terms of this Consent Judgment constitutes compliance with
3 Proposition 65 with respect to exposures to the TDCPP and DEHP from the Products, as set forth
4 in the Notices.

5 **5.2 Plaintiff's Individual Releases of Claims**

6 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides
7 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
8 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
9 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
10 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
11 TCEP, TDBPP, and/or DEHP in the Products manufactured, imported, distributed, or sold by
12 Office Depot prior to the Effective Date. *This release does not release Marco Group, Inc., Meco*
13 *Corporation or Unaka Company, Incorporated for any products manufactured, distributed or otherwise sold*
14 *to Office Depot, Inc. by Marco Group, Inc., Meco Corporation or Unaka Company, Incorporated (including,*
15 *but not limited to Office-Stor Commercial Stacking Chair or Sudden Comfort by Meco chair)*. The Parties
16 further understand and agree that this Section 5.2 release shall not extend upstream to any entities
17 that manufactured the Products or Additional Products, or any component parts thereof, or any
18 distributors or suppliers who sold the Products or Additional Products, or any component parts
19 thereof to Settling Defendants, except that entities upstream of a Settling Defendant that is a
20 Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled Covered
21 Products offered for sale in California by the Retailer in question. Nothing in this Section affects
22 Plaintiff's rights to commence or prosecute an action under Proposition 65 against a Releasee that
23 does not involve Settling Defendant's Products.

24 **5.3 Settling Defendants' Release of Plaintiff**

25 Office Depot, on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and assignees, hereby waives any and all claims against Plaintiff and his attorneys and
27 other representatives, for any and all actions taken or statements made (or those that could have
28 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course

1 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
2 respect to the Products or Additional Products.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
6 within one year after it has been fully executed by all Parties. If the Court does not approve the
7 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or
8 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case
9 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is
10 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to
11 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action
12 to take, then the case shall proceed in its normal course on the Court's trial calendar. In the event
13 that this Consent Judgment is entered by the Court and subsequently overturned by any appellate
14 court, any monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section
15 4, above, shall be refunded within 15 days of the appellate decision becoming final. If the Court
16 does not approve and enter the Consent Judgment within one year of the Effective Date, any
17 monies that have been provided to OEHHA or held in trust for Plaintiff or his counsel pursuant to
18 Section 4, above, shall be refunded to Office Depot within 15 days.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
22 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
23 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
24 rendered inapplicable by reason of law generally as to the Products, then Settling Defendant may
25 provide written notice to Plaintiff of any asserted change in the law, and shall have no further
26 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
27 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Settling
28 Defendant from any obligation to comply with any pertinent state or federal law or regulation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. NOTICES

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

To Settling Defendant:

To Plaintiff:

At the addresses shown on Exhibit A

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

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Plaintiff and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Plaintiff and Settling Defendant agree to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and Office Depot shall work together to file a reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

13. AUTHORIZATION

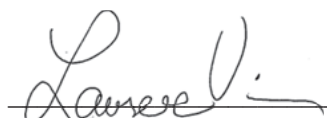
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: October 9, 2014

Date: October , 2014



Plaintiff Laurence Vinocur

Settling Defendant Office Depot, Inc.

12. MODIFICATION

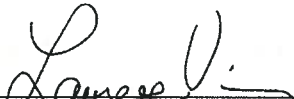
This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

13. AUTHORIZATION

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

AGREED TO:

Date: October 9, 2014



Plaintiff Laurence Vinocur

AGREED TO:

Date: ~~October~~ 2014,
November 24,



Settling Defendant Office Depot, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

OFFICE DEPOT, INC.

Released Chemicals: TDCPP, DEHP

Products: Padded, upholstered chairs, containing TDCPP or vinyl upholstered chairs containing DEHP that bear a brand or trademark owned or licensed by Office Depot or affiliated entity. (Products do not include any products manufactured, distributed or otherwise sold to Office Depot, Inc. by Marco Group, Inc., Meco Corporation or Unaka Company, Incorporated (including, but not limited to Office-Stor Commercial Stacking Chair or Sudden Comfort by Meco chair).

Exemplar Product: Alvy Task Chair, Item 715-010 and Item 817-765.

Penalty 1 (Section 4.1.1): \$16,000

Penalty 2 (Section 4.1.2): \$42,000

Penalty 3 (Section 4.1.3) (due January 1, 2015): \$24,000

Section 4.1.4(i) penalty waiver: \$25,000

Section 4.1.4(ii) penalty waiver: \$12,000

Section 4.1.4(iii) penalty waiver: \$17,000

Section 4.1.4(iv) penalty waiver: \$12,000

Section 4.4 fee and costs reimbursement: \$42,000

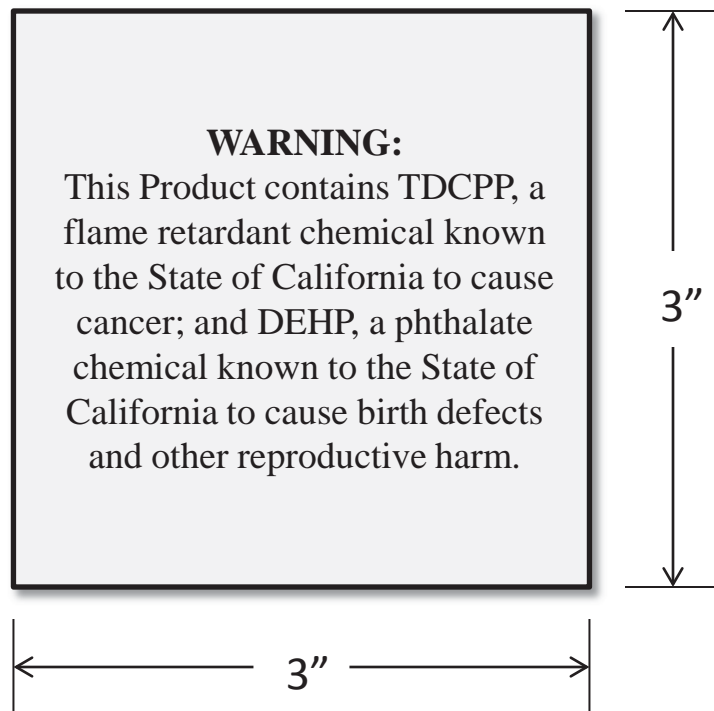
Supplemental fee for additional Releasees: none

Person(s) to receive Notices pursuant to Section 8

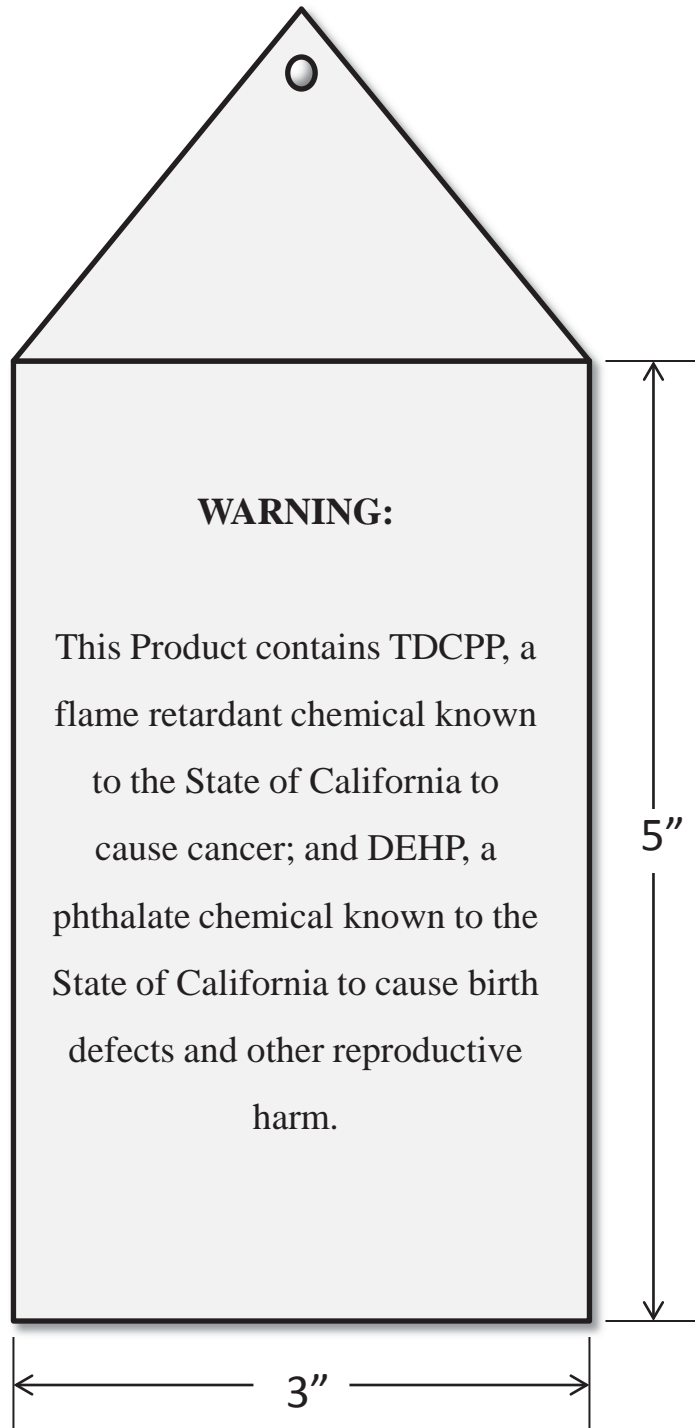
Alicia Trinley
Senior Litigation Counsel
Office Depot, Inc.
6600 North Military Trail
Boca Raton, FL 33496-2434
Mail Code: C476 Legal Dept

With a copy to:

Jeffrey B. Margulies
Norton Rose Fulbright
555 South Flower Street, 41st Floor
Los Angeles, CA 90071



INSTRUCTIONS: Minimum 12 pt. font. “WARNING:” text must be bold.



INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This Product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer; and DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.