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8 Attorneys for Plaintiff  
9 LAURENCE VINOCUR

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 28 2015

CLERK OF THE SUPERIOR COURT  
By YOLANDA ESTRADA Deputy

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

13 LAURENCE VINOCUR,

14 Plaintiff,

15 vs.

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

22 Defendants.

Case No. RG13673697

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

**JUDGMENT AS TO FAIRFIELD  
PROCESSING CORPORATION**

Filed: March 29, 2013

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

11 **IT IS SO ORDERED.**

12  
13  
14 Dated: JAN 28 2015

**GEORGE C. HERNANDEZ, JR.**

\_\_\_\_\_  
Hon. George Hernandez  
Judge Of The Superior Court

# **EXHIBIT A**

1 Clifford A. Chanler, State Bar No. 135534  
2 Gregory M. Sheffer, State Bar No. 173124  
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8 Attorneys for Plaintiff  
9 LAURENCE VINOCUR

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA  
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13 LAURENCE VINOCUR,  
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15 vs.

16 ACE BAYOU CORP., MARCO GROUP, INC.,  
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21 DOES 1-150,  
22 Defendants.

Case No. RG13673697

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

**CONSENT TO JUDGMENT AS TO  
DEFENDANTS THE FAIRFIELD  
PROCESSING CORPORATION AND  
MICHAELS STORES, INC.**

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

Filed: March 29, 2013

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur  
4 (“Plaintiff”), Fairfield Processing Corporation (“Fairfield”) and Michaels Stores, Inc. (“Michaels”)  
5 (Fairfield and Michaels shall be referred to collectively as, “Settling Defendants”), with Plaintiff  
6 and the Settling Defendants collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Settling Defendants**

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

15 **1.4 General Allegations**

16 Plaintiff alleges that each Settling Defendant manufactured, imported, sold and/or  
17 distributed for sale in California, products comprised of polyurethane foam containing tris(1,3-  
18 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard  
19 warnings.

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

24 TDCPP is hereinafter referred to as the “Listed Chemical.” Plaintiff alleges that the Listed  
25 Chemical escapes from foam padding, leading to human exposures.

26 **1.5 Product Description**

1 The categories of products that are covered by this Consent Judgment as to Settling  
2 Defendants are identified on Exhibit A (hereinafter "Products").

3 **1.6 Notices of Violation**

4 On January 30, 2013, Plaintiff served Settling Defendants and certain requisite public  
5 enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the recipients  
6 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,  
7 consumers, and workers in California that the Products expose users to one or more Listed  
8 Chemicals. To the best of the Parties' knowledge, no public enforcer has commenced or is  
9 diligently prosecuting the allegations set forth in the Notices.

10 **1.7 Complaint**

11 On October 18, 2013, Plaintiff filed a Second Amended Complaint in the Superior Court in  
12 and for the County of Alameda against the Settling Defendants, other defendants and Does 1  
13 through 150, alleging violations of Proposition 65, based in part on the alleged unwarned  
14 exposures to TDCPP contained in the Products.

15 **1.8 No Admission**

16 The Settling Defendants deny the material factual and legal allegations contained in  
17 Plaintiff's Notices and Complaints and maintain that all products that they have manufactured,  
18 imported, distributed, and/or sold in California, including the Products, have been and are in  
19 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission  
20 by a Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
21 compliance with this Consent Judgment constitute or be construed as an admission by any Settling  
22 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section  
23 shall not diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and  
24 duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over the Settling Defendants as to the allegations contained in the Complaints, that  
28 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce

1 the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil  
2 Procedure § 664.6.

3 **2. DEFINITIONS**

4 **2.1 California Customers**

5 "California Customer" shall mean any customer that a Settling Defendant reasonably  
6 understands is located in California, has a California warehouse or distribution center, maintains a  
7 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

8 **2.2 Detectable**

9 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent  
10 of .0025%) of any one chemical in any material, component, or constituent of a subject product,  
11 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545  
12 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the  
13 presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

14 **2.3 Effective Date**

15 "Effective Date" shall mean the date the Court issues an order approving this Consent  
16 Judgment.

17 **2.4 Private Label Covered Products**

18 "Private Label Covered Products" means Products that bear a brand or trademark owned  
19 or licensed by a Retailer or entity affiliated with Settlement Defendants that is sold or offered for  
20 sale by a Retailer in the State of California.

21 **2.5 Reformulated Products**

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

24 **2.6 Reformulation Standard**

25 The "Reformulation Standard" shall mean containing no more than 25 ppm of TDCPP.

26 **2.7 Retailer**

27 "Retailer" means an individual or entity that offers a Product for retail sale to consumers in  
28 the State of California.

1           **3.       INJUNCTIVE RELIEF**

2                   **3.1       Reformulation Commitment**

3                   Commencing on March 31, 2014, Fairfield shall not manufacture or import, or cause to be  
4 manufactured or imported, any Products that are not Reformulated Products.

5                   **3.2       Vendor Notification/Certification**

6                   On or before the October 30, 2014, Fairfield shall provide written notice to all of its then-  
7 current vendors of the Products, or to California Customers, instructing each such vendor to use  
8 reasonable efforts to provide it with only Reformulated Products. In addressing the obligation set  
9 forth in the preceding sentence, Fairfield shall not employ statements that will encourage a vendor  
10 to delay compliance with the Reformulation Standard. Fairfield shall subsequently obtain written  
11 certifications, no later than December 1, 2014, from such vendors, and any newly engaged vendors,  
12 that the Products manufactured by such vendors are in compliance with the Reformulation  
13 Standard. Certifications shall be held by Fairfield for at least two years after their receipt and shall  
14 be made available to Plaintiff upon request.

15                   **3.3       Products No Longer in a Settling Defendant's Control**

16                   No later than December 1, 2014, Fairfield shall have sent a letter, electronic or otherwise  
17 ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after October 28,  
18 2011, and before confirmed reformulation to remove TDCPP, supplied the item for resale in  
19 California described as an exemplar in the Notice(s) the Settling Defendant received from Plaintiff  
20 ("Exemplar Product"); and (2) any California Customer and/or Retailer that the Settling  
21 Defendant reasonably understands or believes had any inventory for resale in California of  
22 Exemplar Products as of the relevant Notice's dates. The Notification Letter shall advise the  
23 recipient that the Exemplar Product "contains TDCPP, chemicals known to the State of California  
24 to cause cancer," and request that the recipient either: (a) label the Exemplar Products remaining  
25 in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or (b)  
26 return, at the Settling Defendant's sole expense, all units of the Exemplar Product held for sale in  
27 California, or to California Customers, to the Settling Defendant or a party the Settling Defendant  
28 has otherwise designated. The Notification Letter shall require a response from the recipient



1 within 15 days confirming whether the Exemplar Product will be labeled or returned. The Settling  
2 Defendant shall maintain records of all correspondence or other communications generated  
3 pursuant to this Section for two years after the Effective Date, and shall promptly provide copies  
4 of such records upon Plaintiff's written request.

### 5 3.4 Current Inventory

6 Any Products in, or manufactured and en route to, a Settling Defendant's inventory as of or  
7 after December 31, 2013, that do not qualify as Reformulated Products and that the Settling  
8 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a  
9 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.<sup>1</sup>

### 10 3.5 Product Warnings

#### 11 3.5.1 Product Labeling

12 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,  
13 labeling, or directly on each Product. Each warning shall be prominently placed with such  
14 conspicuousness as compared with other words, statements, designs, or devices as to render it  
15 likely to be read and understood by an ordinary individual under customary conditions before  
16 purchase. Each warning shall be provided in a manner such that the consumer or user  
17 understands to which specific Product the warning applies, so as to minimize the risk of consumer  
18 confusion.

19 A warning provided pursuant to this Consent Judgment shall state:

20 **WARNING:** This product contains TDCPP, a  
21 chemical known to the State of  
22 California to cause cancer.<sup>2</sup>

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23 <sup>1</sup> This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants'  
24 inventory as of December 31, 2013.

25 <sup>2</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling  
26 Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning  
27 language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks  
28 to use an alternative method of transmission of the warning, must obtain the Court's approval of its alternative warning  
statement and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to  
comment or object before the Court acts on the request. The Parties agree that the following hybrid warning language  
shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent  
Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth defects or other reproductive  
harm."

1 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be  
2 clear and reasonable for purposes of this Consent Judgment.<sup>3</sup> Provided that the other  
3 requirements set forth in this Section are addressed, including as to the required warning  
4 statement and method of transmission as set forth above, Settling Defendants remain free not to  
5 utilize the template warnings.

### 6 3.5.2 Internet Website Warning

7 A warning shall be given in conjunction with the sale of the Products to California, or  
8 California Customers, via the internet, which warning shall appear on one or more web pages  
9 displayed to a purchaser prior to the checkout process. The following warning statement shall be  
10 used and shall: (a) appear adjacent to or immediately following the display, description, or price  
11 of the Product; (b) appear as a pop-up box or (c) otherwise automatically appear to the consumer.  
12 The warning text shall be the same type size or larger than the Product description text:

13 **WARNING:** This product contains TDCPP, a  
14 chemical known to the State of  
California to cause cancer.<sup>4</sup>

### 15 3.6 Alternatives to Interim Warnings

16 Fairfield's obligations under Section 3.3 shall be relieved provided Fairfield certifies on or  
17 before November 1, 2014, that only Exemplar Products meeting the Reformulation Standard have  
18 and will continue to be offered for sale in California, or to California Customers for sale in  
19 California, after January 31, 2014. The obligations of a Settling Defendant under Section 3.4 shall  
20 be relieved provided the Settling Defendant certifies on or before December 1, 2014 that, after  
21 January 31, 2014, it has and will continue to only distribute or cause to be distributed for sale in, or  
22 sell in, California, or to California Customers for sale in California, Products (i.e., Products beyond  
23

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24 <sup>3</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no  
25 less than 12 point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to  
26 the Product; (b) a yellow warning sign measuring 8.5" x. 11", with no less that 32 point font, with the warning language  
27 printed on each side, which shall be affixed directly to the Product; and (c) for Products sold at retail in a box or  
28 packaging, a yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed directly to  
the Product packaging.

<sup>4</sup> Footnote 4, *supra*, applies in this context as well.

1 the Exemplar Product) meeting the Reformulation Standard. The certifications provided by this  
2 Section are material terms and time is of the essence.

3 **4. MONETARY PAYMENTS**

4 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

5 In settlement of all the claims referred to in this Consent Judgment, Fairfield shall pay the  
6 civil penalties shown on Exhibit A in accordance with this Section.<sup>5</sup>

7 Each penalty payment will be allocated in accordance with California Health & Safety Code  
8 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental  
9 Health Hazard Assessment (“OEHHA”) and 25% of the penalty remitted to “Laurence Vinocur,  
10 Client Trust.” Each penalty payment shall be made within two business days of the date it is due  
11 and be delivered to the addresses listed in Section 4.5 below. A Settling Defendant shall be liable  
12 for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this  
13 Section that are not received within two business days of the due date.

14 4.1.1 Initial Civil Penalty. Within ten (10) calendar days after the Effective Date,  
15 Settling Defendant shall make the penalty payment in the amount identified on Exhibit A.

16 4.1.2 Second Civil Penalty. On or before January 1, 2015, Settling Defendant shall  
17 make a second civil penalty payment in the amount identified on Exhibit A. The amount of the  
18 second penalty may be reduced according to any penalty waiver the Settling Defendant is eligible  
19 for under Sections 4.1.4(i), below.

20 4.1.3 Third Civil Penalty. On or before January 1, 2015, each Settling Defendant  
21 shall make a third civil penalty payment in the amount identified on the Settling Defendant’s  
22 Exhibit A. The amount of the third penalty may be reduced according to any penalty waiver the  
23 Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iii), below.

24 4.1.4 Reductions to Civil Penalty Payment Amounts. Each Settling Defendant  
25 may reduce the amount of the second and/or third civil penalty payments identified on the  
26 Settling Defendant’s Exhibit A by providing Plaintiff with certification of certain efforts

27 <sup>5</sup> For Settling Defendants that received supplemental Notices alleging violations of Proposition 65 concerning  
28 DEHP in Phthalate Products, the penalty amount shown on Exhibit A includes an additional component to address the  
resolution of those additional claims.

1 undertaken to reformulate their Products or limit the ongoing sale of non-reformulated Products  
2 in California. The options to provide a written certification in lieu of making a portion of a Settling  
3 Defendant's civil penalty payment constitute material terms of this Consent Judgment, and with  
4 regard to such terms, time is of the essence.

5 **4.1.4(i) Partial Penalty Waiver for Extended Reformulation.**

6 As shown on an electing Settling Defendant's Exhibit A, a portion of the  
7 second civil penalty shall be waived, to the extent that it has agreed that, as of January 1,  
8 2015, and continuing into the future, it shall only manufacture or import for distribution or  
9 sale in California or cause to be manufactured or imported for distribution or sale in  
10 California, Reformulated Products that also do not contain tris(2,3-  
11 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per  
12 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a  
13 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA  
14 testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or  
15 state agencies to determine the presence, and measure the quantity, of TDBPP in a solid  
16 substance. An officer or other authorized representative of a Settling Defendant that has  
17 exercised this election shall provide Plaintiff with a written certification confirming  
18 compliance with such conditions, which certification must be received by Plaintiff's  
19 counsel on or before December 1, 2014.

20 **4.1.4(ii) Partial Penalty Waiver for Withdrawal of Unreformulated  
21 Exemplar Products from the California Market.**

22 As shown on a Settling Defendant's Exhibit A, a portion of the third civil penalty shall be  
23 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff  
24 with written certification confirming that each individual or establishment in California to which it  
25 supplied the Exemplar Product after October 28, 2011, either has no inventory of Exemplar  
26 Product or has elected to return all remaining Exemplar Products held for sale in California by  
27  
28

1 November 15, 2014.<sup>6</sup> An officer or other authorized representative of a Settling Defendant that has  
2 exercised this election shall provide Plaintiff with a written certification confirming such  
3 information, which certification must be received by Plaintiff's counsel on or before December 1,  
4 2014.

5 **4.1.4(iii) Partial Penalty Waiver for Termination of Distribution to**  
6 **California of Non-reformulated Inventory.**

7 As shown on a Settling Defendant's Exhibit A, a portion of the third civil penalty shall be  
8 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff  
9 with written certification confirming that, as of September 1, 2014, it has and will continue to  
10 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated  
11 Products. An officer or other authorized representative of a Settling Defendant that has exercised  
12 this election shall provide Plaintiff with a written certification confirming such information, which  
13 certification must be received by Plaintiff's counsel on or before December 1, 2014.

14 **4.2 Representations**

15 Fairfield represents that the sales data and other information concerning its size,  
16 knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided to  
17 Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs have relied to  
18 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in  
19 this Consent Judgment. If, within nine months of the August 1, 2014, Plaintiff discovers and  
20 presents to Fairfield, evidence demonstrating that the preceding representation and warranty was  
21 materially inaccurate, then Fairfield shall have 30 days to meet and confer regarding the Plaintiff's  
22 contention. Should this 30 day period pass without any such resolution between the Plaintiff and  
23 the Settling Defendant, Plaintiff shall be entitled to file a formal legal claim including, but not  
24 limited to, a claim for damages for breach of contract.

25 Fairfield further represents that in implementing the requirements set forth in Sections 3.1  
26 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve

27 <sup>9</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"  
28 shall include DEHP, BBP and DBP with respect to those Settling Defendants that received  
supplemental Notices alleging violations of Proposition 65 as to exposures to DEHP.

1 reformulation of its Products and additional Products on a nationwide basis and not employ  
2 statements that will encourage a vendor to limit its compliance with the Reformulation Standard  
3 to goods intended for sale to California Consumers.

4 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**  
5 **Standard.**

6 If Plaintiff provides notice and appropriate supporting information to a Settling Defendant  
7 that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one  
8 or more Products labeled or otherwise marked in an identifiable manner as manufactured or  
9 imported after a deadline for meeting the Reformulation Standard has arisen for a Settling  
10 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated  
11 penalty to relieve any further potential liability under Proposition 65 or sanction under this  
12 Consent Judgment as to Products sourced from the vendor in question.<sup>7</sup> The stipulated penalty  
13 shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between  
14 100 ppm and 249 ppm, this being applicable for any amount in excess of the Reformulation  
15 Standards but under 250 ppm.<sup>8</sup> Plaintiff shall further be entitled to reimbursement of their  
16 associated expense in an amount not to exceed \$5,000 regardless of the stipulated penalty level. A  
17 Settling Defendant under this Section must provide notice and appropriate supporting  
18 information relating to the purchase (e.g. vendor name and contact information including  
19 representative, purchase order, certification (if any) received from vendor for the exemplar or  
20 subcategory of products), test results, and a letter from a company representative or counsel  
21 attesting to the information provided, to Plaintiff within 30 calendar days of receiving test results  
22 from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the full  
23 remedies provided pursuant to this Consent Judgment and at law.

24 **4.4 Reimbursement of Fees and Costs**

25 \_\_\_\_\_  
26 <sup>9</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"  
shall include DEHP, BBP and DBP with respect to those Settling Defendants that received  
supplemental Notices alleging violations of Proposition 65 as to exposures to DEHP.

27 <sup>9</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"  
28 shall include DEHP, BBP and DBP with respect to those Settling Defendants that received  
supplemental Notices alleging violations of Proposition 65 as to exposures to DEHP.

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 Defendants  
5 expressed a desire to resolve the fee and cost issue. The Settling Defendants 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 amount of fees and costs allocable  
9 to Settling Defendants that were incurred as a result of investigating, bringing this matter to the  
10 Settling Defendant's attention, negotiating a settlement in the public interest, and seeking court  
11 approval of the same. In addition, the negotiated fee and cost figure expressly includes the  
12 anticipated significant amount of time plaintiffs' counsel will incur to monitor various provisions  
13 in this agreement over the next two years, with the exception of additional fees that may be  
14 incurred pursuant to a Settling Defendant's election in Section 11. Each Settling Defendant more  
15 specifically agreed, upon the Court's approval and entry of this Consent Judgment, to pay  
16 Plaintiff's counsel the amount of fees and costs indicated on the Settling Defendant's Exhibit A.  
17 Each Settling Defendant further agreed to tender and shall tender its full required payment under  
18 this Section to a trust account at The Chanler Group (made payable "In Trust for The Chanler  
19 Group") on or before ten (10) calendar days after the Effective Date. Such funds shall be released  
20 from the trust account upon the Court's approval and entry of this Consent Judgment.

21 **4.5 Payment Procedures**

22 **4.5.1 Issuance of Payments.**

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

25 The Chanler Group  
26 Attn: Proposition 65 Controller  
27 2560 Ninth Street  
28 Parker Plaza, Suite 214  
Berkeley, CA 94710

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

4 For United States Postal Service Delivery:

5 Mike Gyurics  
6 Fiscal Operations Branch Chief  
7 Office of Environmental Health Hazard Assessment  
8 P.O. Box 4010  
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 1001 I Street  
15 Sacramento, CA 95814

16 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA  
17 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in  
18 Section 4.5.1(a) above, as proof of payment to OEHHA.

19 4.5.3 Tax Documentation. A Settling Defendant shall issue a separate 1099 form  
20 for each payment required by this Section to: (a) Laurence Vinocur, whose address and tax  
21 identification number shall be furnished upon request after this Consent Judgment has been fully  
22 executed by the Parties; (b) OEHHA, who shall be identified as "California Office of  
23 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered  
24 directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-  
25 3171522) to the address set forth in Section 4.5.1(a) above.

## 26 5. CLAIMS COVERED AND RELEASED

### 27 5.1 Plaintiff's Release of Proposition 65 Claims

28 Plaintiff, acting on his own behalf and in the public interest, releases Fairfield, its parents,  
subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,  
attorneys, and each entity to whom Fairfield directly or indirectly distributes or sells Products,  
including, but not limited, to downstream distributors, wholesalers, customers, retailers,  
franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for



1 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed  
2 Chemicals in the Products, as set forth in the Notices. *As part of this settlement, Michaels shall be*  
3 *considered a Releasee only to the extent of Michaels's sale or other distribution of the Exhibit A Products*  
4 *sold or supplied to it by Fairfield.* Compliance with the terms of this Consent Judgment constitutes  
5 compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the  
6 Products, as set forth in the Notices. The Parties further understand and agree that this Section 5.1  
7 release shall not extend upstream to any entities, other than Settling Defendants, that  
8 manufactured the Products or any component parts thereof, or any distributors or suppliers who  
9 sold the Products or any component parts thereof to a Settling Defendant, except that entities  
10 upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered Product shall be  
11 released as to the Private Labeled Covered Products offered for sale in California, or to California  
12 Customers, by the Retailer in question.

## 13 5.2 Plaintiff's Individual Releases of Claims

14 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides  
15 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
16 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
17 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,  
18 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP in  
19 the Products or Additional Products (as defined in Section 11.1 and delineated on a Settling  
20 Defendant's Exhibit A) manufactured, imported, distributed, or sold by Settling Defendants prior  
21 to the Effective Date. The Parties further understand and agree that this Section 5.2 release shall  
22 not extend upstream to any entities that manufactured the Products or additional Products, or any  
23 component parts thereof, or any distributors or suppliers who sold the Products or additional  
24 Products, or any component parts thereof to Settling Defendants, except that entities upstream of a  
25 Settling Defendant that is a Retailer of a Private Labeled Covered (or additional) Product shall be  
26 released as to the Private Labeled Covered (or additional) Products offered for sale in California by  
27 the Retailer in question. Nothing in this Section affects Plaintiff's rights to commence or prosecute  
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1 an action under Proposition 65 against a Releasee that does not involve a Settling Defendant's  
2 Products or additional Products.<sup>9</sup>

3 **5.3 Settling Defendants' Release of Plaintiff**

4 Each Settling Defendant, on behalf of itself, its past and current agents, representatives,  
5 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his  
6 attorneys and other representatives, for any and all actions taken or statements made (or those that  
7 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether  
8 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in  
9 this matter with respect to the Products or additional Products.

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and  
12 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court  
13 within one year after it has been fully executed by all Parties. If the Court does not approve the  
14 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or  
15 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case  
16 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is  
17 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to  
18 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action  
19 to take, then the case shall proceed in its normal course on the Court's trial calendar. In the event  
20 that this Consent Judgment is entered by the Court and subsequently overturned by any appellate  
21 court, any monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section  
22 4, above, shall be refunded within 15 days of the appellate decision becoming final. If the Court  
23 does not approve and enter the Consent Judgment within one year of the Effective Date, any  
24 monies that have been provided to OEHHA or held in trust for Plaintiff or his counsel pursuant to  
25 Section 4, above, shall be refunded to the associated Settling Defendant within 15 days.

26  
27 <sup>9</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"  
28 shall include DEHP, BBP and DBP with respect to those Settling Defendants that received  
supplemental Notices alleging violations of Proposition 65 as to exposures to DEHP.

1           **7. GOVERNING LAW**

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

11           **8. NOTICES**

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

16 To Fairfield:

17 Fairfield Processing Corp.  
18 88 Rose Hill Avenue  
19 Danbury, CT 06810  
20 Attn: Mr. Jordan Young

To Plaintiff:

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

21 With a copy to:

22 Jeffrey M. Judd  
23 JUDD LAW GROUP LLP  
24 2 Embarcadero Center, Suite 610  
25 San Francisco, CA 94111

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

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

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

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

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

8           **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

17           **12. MODIFICATION**

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

21           **13. AUTHORIZATION**


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

25           AGREED TO:

AGREED TO:

26           Date: October 10, 2014

Date: October \_\_, 2014

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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(s) 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 each Settling Defendant 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.

12. MODIFICATION

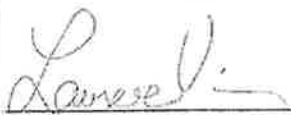
This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

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.

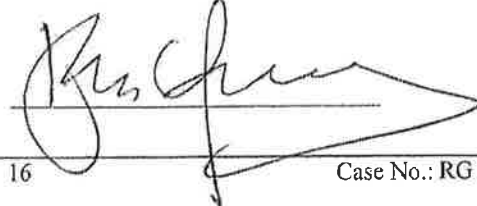
AGREED TO:

Date: October 10, 2014



AGREED TO:

Date: October 15, 2014



Plaintiff Laurence Vinocur

Jordan Young, President  
Fairfield Processing Corporation

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EXHIBIT A

SETTLING DEFENDANTS

**FAIRFIELD PROCESSING CORPORATION.**

Listed Chemical: TDCPP

Product: foam containing TDCPP

Exemplar Product: Poly-Fil Tru-Foam Bio Based Foam Roll and Poly-Fil Tru Foam Chair Pads

Additional Product: None

Penalty 1 (Section 4.1.1) \$27,000

Penalty 2 (Section 4.1.2) (due January 1, 2015): \$20,000

Penalty 3 (Section 4.1.3) (due January 1, 2015): \$18,000

Section 4.1.4(i) penalty waiver: \$20,000

Section 4.1.4(ii) penalty waiver: \$9,000

Section 4.1.4(iii) penalty waiver: \$9,000

Additional Releasees: Michaels Stores Inc. *(As part of this settlement, coordinated defendant Michael's Stores, Inc. shall be considered a Releasee only to the extent of Michaels Stores Inc.'s sale or other distribution of the Poly-Fil Tru-Foam Bio Based Foam Roll and the Poly-Fil Tru-Foam Chair Pads sold or supplied to it by Fairfield Processing Corporation).*

Section 4.4 fee and costs reimbursement (due ten (10) calendar days after Effective Date): \$50,000 (this amount includes a \$5,000.00 supplemental fee for the inclusion as an additional Releasee of Michaels Stores, Inc.)

Person(s) to receive Notices pursuant to Section 8:

To Settling Defendants:

Fairfield Processing Corp.  
88 Rose Hill Avenue  
Danbury, CT 06810  
Attn: Mr. Jordan Young

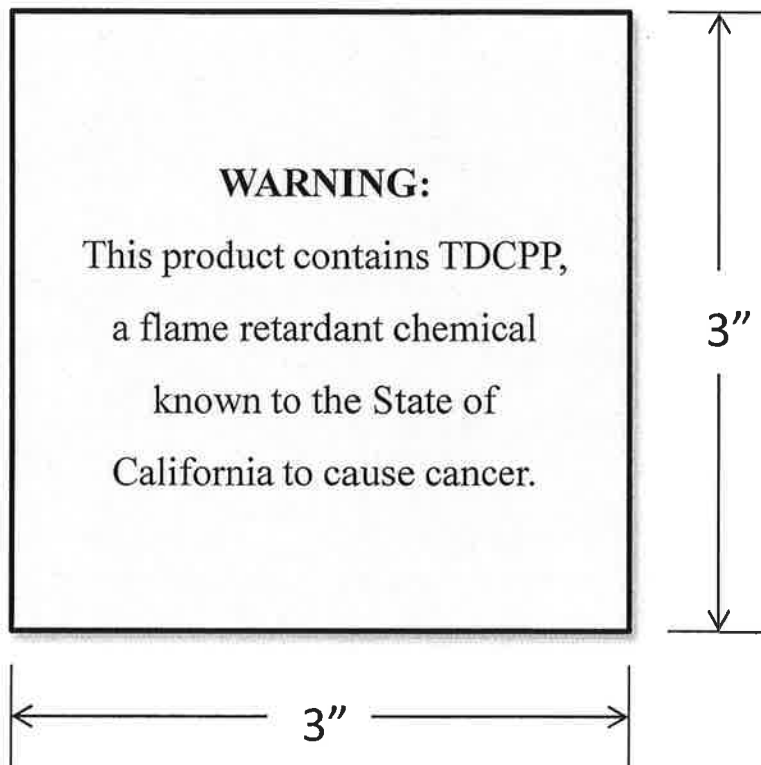
With a copy to:

Jeffrey M. Judd  
Judd Law Group LLP  
2 Embarcadero Center, Suite 610  
San Francisco, CA 94111

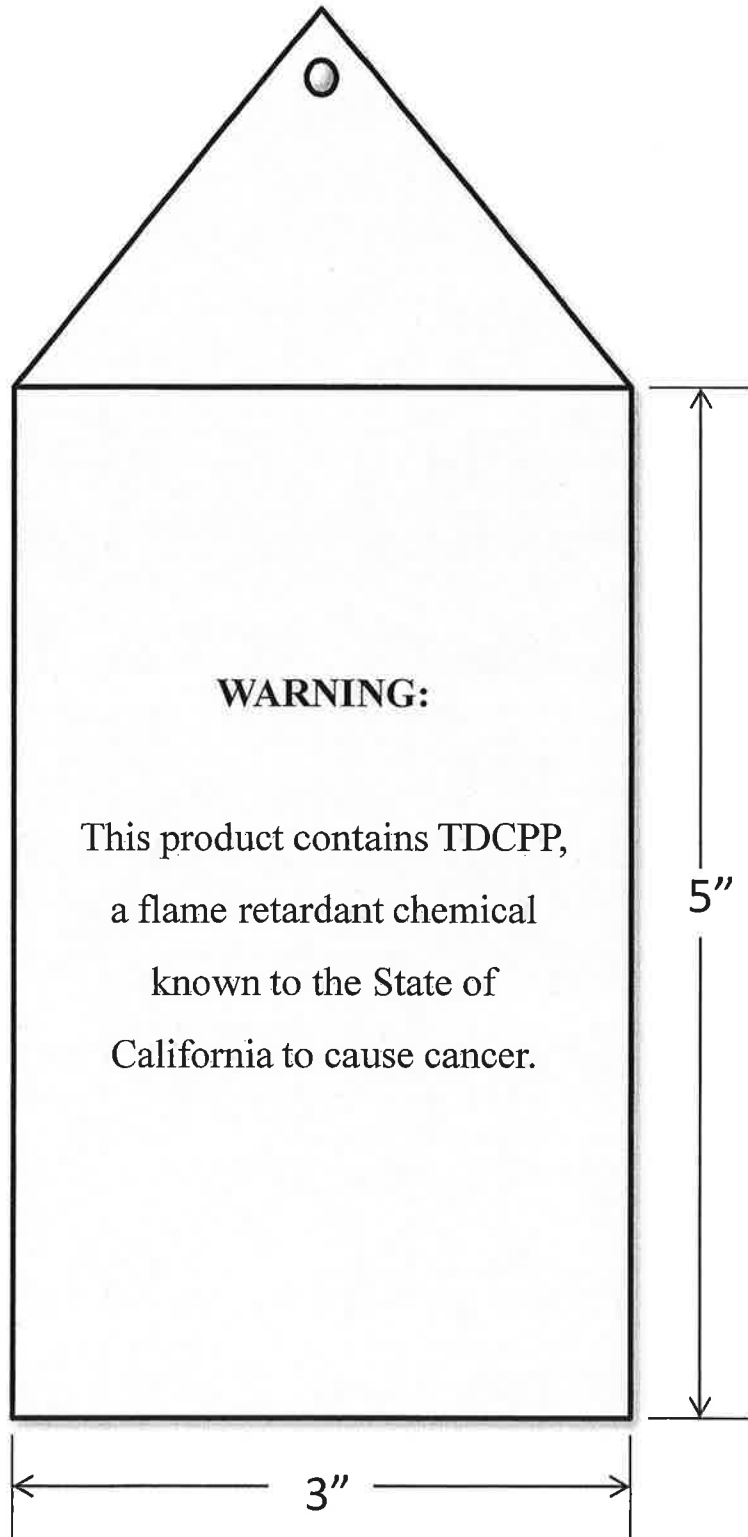
EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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**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  
8.5"  
chemical known to the State of California to  
cause cancer.

11"

**INSTRUCTIONS:**

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