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8 Attorneys for Plaintiff
9 LAURENCE VINOUCUR

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 VINOUCUR,

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 MECO CORPORATION

Filed: March 29, 2013

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

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13 **JAN 28 2015**

GEORGE C. HERNANDEZ, JR.

14 Dated: _____

15 Hon. George Hernandez
16 Judge Of The Superior Court
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EXHIBIT A

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Attorneys for Plaintiff
LAURENCE VINOCUR

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

LAURENCE VINOCUR,

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 MECO CORPORATION**

(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 identified in Exhibit A (“Settling Defendant” or “Meco”), with
5 Plaintiff and the Settling Defendant 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 Defendant**

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

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that each Settling Defendant manufactured, imported, sold
16 and/or distributed for sale in California, products with foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”)
18 without the requisite Proposition 65 health hazard warnings. Plaintiff further alleges that Settling
19 Defendant manufactured, imported, sold and/or distributed for sale in California, products with
20 vinyl/PVC covers containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite
21 Proposition 65 health hazard warnings.

22 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed
23 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
24 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §
25 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

26 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
27 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
28

1 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
2 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

3 1.4.4 On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical
4 known to cause birth defects and other reproductive harm. DEHP became subject to the warning
5 requirement one year later and was therefore subject to the “clear and reasonable warning”
6 requirements of Proposition 65, beginning on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(b);
7 Health & Safety Code §§ 25249.8 and 25249.10(b).

8 DEHP, TDCPP and TCEP are hereinafter collectively referred to as the “Listed Chemicals.”
9 Plaintiff alleges that the Listed Chemicals escape from foam padding, leading to human exposures.

10 1.5 Product Description

11 The products and/or categories of products that are covered by this Consent Judgment as
12 to Settling Defendant is identified on Exhibit A (hereinafter “Products” or “Exemplar Products”).
13 Polyurethane foam that is supplied, shaped or manufactured for use as a component of another
14 product, such as upholstered furniture, but which is not itself a finished product, is specifically
15 excluded from the definition of Products and shall not be identified by Settling Defendant on
16 Exhibit A as a Product.

17 1.6 Notices of Violation

18 On January 8, 2013, Plaintiff served Settling Defendant and certain requisite public
19 enforcement agencies with “60-Day Notices of Violation” (“Notices”) that provided the recipients
20 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
21 consumers, and workers in California that the Products expose users to TDCPP.

22 On April 11, 2013, Plaintiff served Settling Defendant and certain requisite public
23 enforcement agencies with “60-Day Notices of Violation” (“Notices”) that provided the recipients
24 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
25 consumers, and workers in California that the Products expose users to DEHP.

26 To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
27 prosecuting the allegations set forth in the Notices.
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1.7 Complaint

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

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

1.8 No Admission

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

1.9 Consent to Jurisdiction

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

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2. **DEFINITIONS**

2.1 **California Customers**

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

2.2 **Detectable**

“Detectable”, as to TDCPP and TCEP, shall mean containing more than 25 parts per million (“ppm”) (the equivalent of .0025%) of any one chemical in any material, component, or constituent of a subject product, when analyzed by a laboratory certified by the State of California or accredited by the State of California, a federal agency, the National Environmental Laboratory Accreditation Program or similar nationally recognized accrediting organization to perform the chemical analysis in question pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

2.3 **Effective Date**

“Effective Date” shall mean November 30, 2013.

2.4 **Private Label Covered Products**

“Private Label Covered Products” means Products that bear a brand or trademark owned or licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of California.

2.5 **Reformulated Products**

“Reformulated Products” shall mean Products that contain no Detectable amount of DEHP, TDCPP or TCEP.¹

2.6 **Reformulation Standard**

The “Reformulation Standard” shall mean containing no more than 25 ppm for each of TDCPP and TCEP.

¹ As to the Settling Defendant who received supplemental Notices concerning DEHP, the term “Reformulated Products” further requires that the Products for which claims concerning DEHP were noticed (the “Phthalate Products”) contain no more than 1000 ppm each of DEHP, BBP, and DBP.

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3 **2.7 Retailer**

4 “Retailer” means an individual or entity that offers a Product for retail sale to consumers in
5 the State of California.

6 **3. INJUNCTIVE RELIEF: REFORMULATION**

7 **3.1 Reformulation Commitment**

8 Commencing on March 31, 2014, Settling Defendant shall not manufacture or import, or
9 cause to be manufactured or imported, any Products that are not Reformulated Products.

10 **3.2 Vendor Notification/Certification**

11 On or before the Effective Date, Settling Defendant shall provide written notice to all of its
12 then-current vendors of the Products, instructing each such vendor to use reasonable efforts to
13 provide only Reformulated Products. In addressing the obligation set forth in the preceding
14 sentence, Settling Defendant shall not employ statements that will encourage a vendor to delay
15 compliance with the Reformulation Standard. Settling Defendant shall subsequently obtain
16 written certifications, no later than April 1, 2014, from such vendors, and any newly engaged
17 vendors, that the Products manufactured by such vendors are in compliance with the
18 Reformulation Standard. Certifications shall be held by Settling Defendant for at least two years
19 after their receipt and shall be made available to Plaintiff upon request.

20 **3.3 Products No Longer in Settling Defendant’s Control**

21 No later than 45 days after the Effective Date, Settling Defendant shall send a letter,
22 electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer
23 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
24 in the Notice(s) the Settling Defendant received from Plaintiff (“Exemplar Product”); and (2) any
25 California Customer and/or Retailer that the Settling Defendant reasonably understands or
26 believes had any inventory for resale in California of Exemplar Products as of the relevant Notice’s
27 dates. The Notification Letter shall advise the recipient that the Exemplar Product “contains
28 TDCPP and/or TCEP, chemicals known to the State of California to cause cancer,” and request

1 that the recipient either: (a) label the Exemplar Products remaining in inventory for sale in
2 California, or to California Customers, pursuant to Section 3.5; or (b) return, at the Settling
3 Defendant's sole expense, all units of the Exemplar Product held for sale in California, or to
4 California Customers, to the Settling Defendant or a party the Settling Defendant has otherwise
5 designated. The Notification Letter shall require a response from the recipient within 15 days
6 confirming whether the Exemplar Product will be labeled or returned. Settling Defendant shall
7 maintain records of all correspondence or other communications generated pursuant to this
8 Section for two years after the Effective Date and shall promptly produce copies of such records
9 upon Plaintiff's written request.

10 3.4 Current Inventory

11 Any Products in, or manufactured and en route to, Settling Defendant's inventory as of or
12 after December 31, 2013, that do not qualify as Reformulated Products and that Settling Defendant
13 has reason to believe may be sold or distributed for sale in California, shall contain a clear and
14 reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.²

15 3.5 Product Warnings

16 3.5.1 Product Labeling

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

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

25 **WARNING:** This product contains chemicals
26 DEHP (a phthalate) and TDCPP (a
27 flame retardant chemical) known to
28 the State of California to cause cancer,

² This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendant's inventory as of December 31, 2013.

birth defects or other reproductive harm.³

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.⁴ Provided that the other
3 requirements set forth in this Section are addressed, including as to the required warning
4 statement, Settling Defendant that elect not to utilize the template warnings remain free to provide
5 a warning in any other manner meeting the requirements of 27 CCR § 25603.1.

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 during 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 chemicals
14 DEHP (a phthalate) and TDCPP (a
15 flame retardant chemical) known to
16 the State of California to cause cancer,
17 birth defects or other reproductive
18 harm.⁵

19 **3.6 Alternatives to Interim Warnings**

20 The obligations of Settling Defendant under Section 3.3 shall be relieved provided the
21 Settling Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting
22 the Reformulation Standard will be offered for sale in California, or to California Customers for

23 ³ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling
24 Defendant had begun to use it, prior to the Effective Date. The Parties agree that the following hybrid warning language
25 shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent
26 Judgment: (a) "cancer or birth defects or other reproductive harm"

27 ⁴ The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no
28 less than 12 point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to
the Product; (b) a yellow warning sign measuring 8.5" x. 11", with no less that 32 point font, with the warning language
printed on each side, which shall be affixed directly to the Product; and (c) for Products sold at retail in a box or
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.

⁵ Footnote 4, *supra*, applies in this context as well.

1 sale in California, after December 31, 2013. The obligations of Settling Defendant under Section 3.4
2 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013 that,
3 after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California,
4 or to California Customers for sale in California, Products (i.e., Products beyond the Exemplar
5 Product) meeting the Reformulation Standard. The certifications provided by this Section are
6 material terms and time is of the essence.

7 **4. MONETARY PAYMENTS**

8 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

9 In settlement of all the claims referred to in this Consent Judgment, Settling Defendant
10 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.⁶

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

18 4.1.1 Initial Civil Penalty. On or before the Effective Date, Settling Defendant
19 shall make an initial civil penalty payment in the amount identified on Exhibit A.

20 4.1.2 Second Civil Penalty. On or before January 15, 2014, Settling Defendant
21 shall make a second civil penalty payment in the amount identified on the Settling Defendant's
22 Exhibit A. The amount of the second penalty may be reduced according to any penalty waiver the
23 Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

24 4.1.3 Third Civil Penalty. On or before November 30, 2014, Settling Defendant
25 shall make a third civil penalty payment in the amount identified on the Settling Defendant's
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27 ⁶ For Settling Defendant 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 Exhibit A. The amount of the third penalty may be reduced according to any penalty waiver the
2 Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

3 4.1.4 Reductions to Civil Penalty Payment Amounts. Settling Defendant may
4 reduce the amount of the second and/or third civil penalty payments identified on the Settling
5 Defendant's Exhibit A by providing Plaintiff with certification of certain efforts undertaken to
6 reformulate their Products or limit the ongoing sale of non-reformulated Products in California.
7 The options to provide a written certification in lieu of making a portion of Settling Defendant's
8 civil penalty payment constitute material terms of this Consent Judgment, and with regard to such
9 terms, time is of the essence.

10 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
11 **Products Sold or Offered for Sale in California.**

12 As shown on an electing Settling Defendant's Exhibit A, a portion of the second civil
13 penalty shall be waived, to the extent that it has agreed that, as of November 1, 2013, and
14 continuing into the future, it shall only manufacture or import for distribution or sale to California
15 Customers or cause to be manufactured or imported for distribution or sale to California
16 Customers, Reformulated Products. An officer or other authorized representative of Settling
17 Defendant that has exercised this election shall provide Plaintiff with a written certification
18 confirming compliance with such conditions, which certification must be received by Plaintiff's
19 counsel on or before December 15, 2013.

20 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

21 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil penalty
22 shall be waived, to the extent that it has agreed that, as of March 15, 2014, and continuing into the
23 future, it shall only manufacture or import for distribution or sale in California or cause to be
24 manufactured or imported for distribution or sale in California, Reformulated Products that also
25 do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than
26 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent
27 of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
28 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies

1 to determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or
2 other authorized representative of Settling Defendant that has exercised this election shall provide
3 Plaintiff with a written certification confirming compliance with such conditions, which
4 certification must be received by Plaintiff's counsel on or before November 15, 2014.

5 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
6 **Exemplar Products from the California Market.**

7 As shown on Settling Defendant's Exhibit A, a portion of the second civil penalty shall be
8 waived, if an officer or other authorized representative of Settling Defendant provides Plaintiff
9 with written certification, by December 15, 2013, confirming that each individual or establishment
10 in California to which it supplied the Exemplar Product after October 28, 2011, has elected to
11 return all remaining Exemplar Products held for sale in California.⁷

12 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
13 **California of Unreformulated Inventory.**

14 As shown on Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
15 waived, if an officer or other authorized representative of Settling Defendant provides Plaintiff
16 with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it has
17 and will continue to distribute, offer for sale, or sell in California, or to California Customers, only
18 Reformulated Products.

19 **4.2 Representation**

20 Settling Defendant represents that the sales data and other information concerning its size,
21 knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided to
22 Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs have relied to
23 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in
24 this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discover and present
25 to Settling Defendant, evidence demonstrating that the preceding representation and warranty

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27 ⁷ For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs
28 have, prior to August 31, 2013, provided the Settling Defendant with test results from a properly accredited laboratory
showing the presence of a Listed Chemical at a level in excess of 250 ppm pursuant to EPA testing methodologies 3545
or 8270C.

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

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

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

25 ⁸ This Section shall not be applicable where the vendor in question had previously been found by the Settling
26 Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more
27 than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling
28 Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

⁹ 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.

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4.4 Reimbursement of Fees and Costs

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

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4.5 Payment Procedures

4.5.1 Issuance of Payments.

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

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
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. Settling Defendant shall issue a separate 1099 form for
20 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 Settling Defendant, its
parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
distribute or sell Products, including, but not limited, to downstream distributors, wholesalers,
customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"),

1 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
2 exposures to the Listed Chemicals in the Exemplar Products, as set forth in the Notices. *Office*
3 *Depot is considered a "Releasee" under this Section but only to the extent of any chair with padded seat sold*
4 *to Office Depot, Inc. by Mecco Corporation. This release does not extend to any other products, including,*
5 *but not limited to, Office-Stor Commercial Stacking Chair or other chairs with padded seats, manufactured,*
6 *distributed or otherwise sold to Office Depot, Inc. by any individual or entity besides Mecco Corporation.*

7 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
8 with respect to exposures to the Listed Chemicals from the Products, as set forth in the Notices.

9 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
10 with respect to exposures to the Listed Chemicals from the Products, as set forth in the Notices.

11 The Parties further understand and agree that this Section 5.1 release shall not extend upstream to
12 any entities, other than Settling Defendant, that manufactured the Products or any component
13 parts thereof, or any distributors or suppliers who sold the Products or any component parts
14 thereof to Settling Defendant, except that entities upstream of Settling Defendant that is a Retailer
15 of a Private Labeled Covered Product shall be released as to the Private Labeled Covered Products
16 offered for sale in California, or to California Customers, by the Retailer in question.¹⁰

17 5.2 Plaintiff's Individual Releases of Claims

18 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides
19 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
20 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
21 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
22 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP,
23 TDCPP, TCEP, and/or TDBPP in the Exemplar Products or Additional Products (as defined in
24 Section 11.1 and delineated on Settling Defendant's Exhibit A) manufactured, imported,
25

26 _____
27 ¹⁰ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"
28 shall include DEHP with respect to those Settling Defendant that received supplemental Notices
alleging violations of Proposition 65 as to exposures to DEHP.

1 distributed, or sold by Settling Defendant prior to the Effective Date.¹¹ *Office Depot is considered a*
2 *"Releasee" under this Section but only to the extent of any chair with padded seat sold to Office Depot, Inc.*
3 *by Meco Corporation. This release does not extend to any other products, including, but not limited to,*
4 *Office-Stor Commercial Stacking Chair or other chairs with padded seats, manufactured, distributed or*
5 *otherwise sold to Office Depot, Inc. by any individual or entity besides Meco Corporation.* The Parties
6 further understand and agree that this Section 5.2 release shall not extend upstream to any entities
7 that manufactured the Products or Additional Products, or any component parts thereof, or any
8 distributors or suppliers who sold the Products or Additional Products, or any component parts
9 thereof to Settling Defendant, except that entities upstream of Settling Defendant that is a Retailer
10 of a Private Labeled Covered (or Additional) Product shall be released as to the Private Labeled
11 Covered (or Additional) Products offered for sale in California by the Retailer in question.
12 Nothing in this Section affects Plaintiff's rights to commence or prosecute an action under
13 Proposition 65 against a Releasee that does not involve Settling Defendant's Products or
14 Additional Products.¹²

15 5.3 Settling Defendant' Release of Plaintiff

16 Settling Defendant, on behalf of itself, its past and current agents, representatives,
17 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his
18 attorneys and other representatives, for any and all actions taken or statements made (or those that
19 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether
20 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in
21 this matter with respect to the Products or Additional Products.

22 6. COURT APPROVAL

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court

25 _____
26 ¹¹ The injunctive relief requirements of Section 3 shall apply to Additional Products as
otherwise specified.

27 ¹² 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 Defendant that received
supplemental Notices alleging violations of Proposition 65 as to exposures to DEHP.

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

14 **7. GOVERNING LAW**

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

24 **8. NOTICES**

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

1 To Settling Defendant:

To Plaintiff:

2 At the address shown on Exhibit A

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

3
4
5 Any Party, from time to time, may specify in writing to the other Party a change of address to
6 which all notices and other communications shall be sent.

7
8 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

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

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 11.1 In addition to the Products, where Settling Defendant has identified on Exhibit A
17 additional products that contain Listed Chemicals and that are sold or offered for sale by it in
18 California, or to California Customers, ("Additional Products"), then by no later than October 15,
19 2013, the Settling Defendant may provide Plaintiff with additional information or representations
20 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit
21 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.
22 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
23 such as upholstered furniture, is specifically excluded from the definition of Additional Products
24 and shall not be identified by Settling Defendant on Exhibit A as an Additional Product. Except as
25 agreed upon by Plaintiff, Settling Defendant shall not include a product, as an Additional Product,
26 that is the subject of an existing 60-day notice issued by Plaintiff or any other private enforcer at
27 the time of execution. After receipt of the required information, Plaintiff agrees to issue a
28 supplemental 60-day notice in compliance with all statutory and regulatory requirements for the

1 Additional Products. Plaintiff will, and in no event later than October 1, 2014, prepare and file an
2 amendment to this Consent Judgment to incorporate the Additional Products within the defined
3 term "Products" and serve a copy thereof and its supporting papers (including the basis for
4 supplemental stipulated penalties, if any) on the Office of the California Attorney General. Upon
5 the Court's approval thereof, the Additional Products shall become subject to Section 5.1 in
6 addition to Section 5.2. The Settling Defendant shall, at the time it elects to utilize this Section
7 and tenders the additional information or representations regarding the Additional Products to
8 Plaintiff, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated
9 penalties and attorneys' fees and costs incurred by Plaintiff in issuing the new notice and engaging
10 in other reasonably related activities, which may be released from the trust as awarded by the
11 Court upon Plaintiff's application. (Any tendered funds remaining in the trust thereafter shall be
12 refunded to the Settling Defendant within 15 days). Such payment shall be made to "in trust for
13 The Chanler Group" and delivered as per Section 4.5.1(a) above.

14 11.2 Plaintiff and Settling Defendant agree to support the entry of this agreement as a
15 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
16 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
17 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff
18 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and each
19 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.
20 This provision is a material component of the Consent Judgment and shall be treated as such in the
21 event of a breach.

22 **12. MODIFICATION**

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

26 ///

27 ///

13. AUTHORIZATION

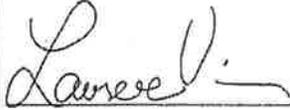
1 The undersigned are authorized to execute this Consent Judgment on behalf of their
2 respective Parties and have read, understood, and agree to all of the terms and conditions of this
3 Consent Judgment.

4 AGREED TO:

AGREED TO:

5 Date: November 26, 2013

Date: November 26, 2013

6
7 

8 Plaintiff Laurence Vinocur

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11 Mark Proffitt, President
12 Settling Defendant Mecco Corporation
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EXHIBIT A

MECO CORPORATION

Product: chairs with padded seats and chairs with vinyl/PVC seats

Exemplar Product: Sudden Comfort by Meco chairs

Additional Product: none

Penalty 1 (Section 4.1.1): (due December 2, 2013) \$20,000

Penalty 2 (Section 4.1.2) (due January 15, 2014): \$42,000

Penalty 3 (Section 4.1.3) (due November 30, 2014): \$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

Additional Releasee: Office Depot, Inc. *(As part of this settlement, defendant Office Depot, Inc. is considered a Releasee, but only to the limited extent of Office Depot Inc.'s sale of chairs with padded seats and chairs with vinyl/PVC seats sold to Office Depot, Inc. by Meco Corporation and not to any other furniture or chairs sold by Office Depot, Inc.)*

Section 4.4 fee and costs reimbursement: \$48,500

Supplemental fee for additional Releasees: \$8,000

Fee and cost payment timing:

December 2, 2013 - \$20,000 to TCG per Section 4 (1 of 2 fee/cost reimbursement payments)

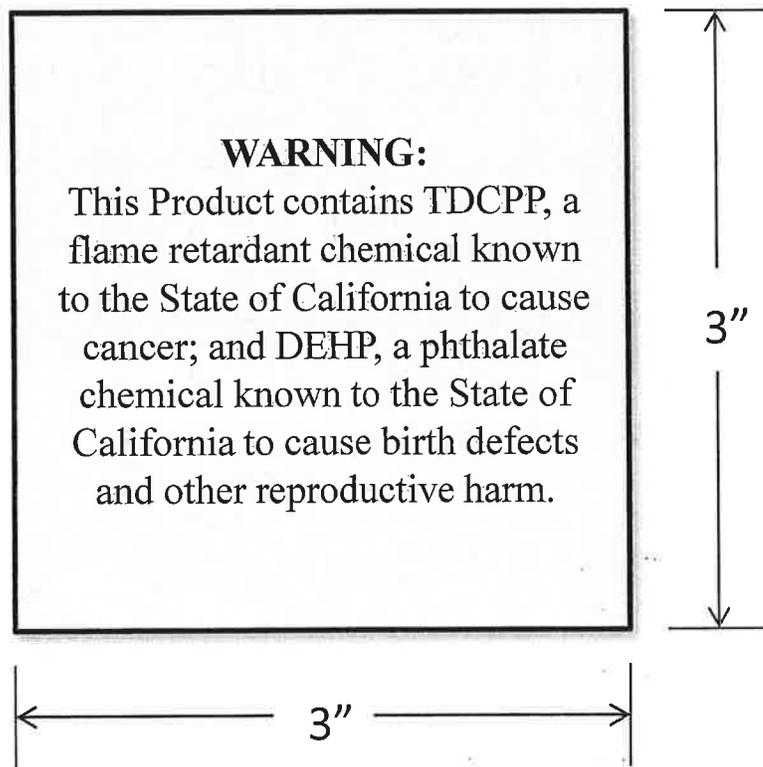
February 3, 2014 - \$36,500 to TCG per Section 4 (2 of 2 fee/cost reimbursement payments)

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

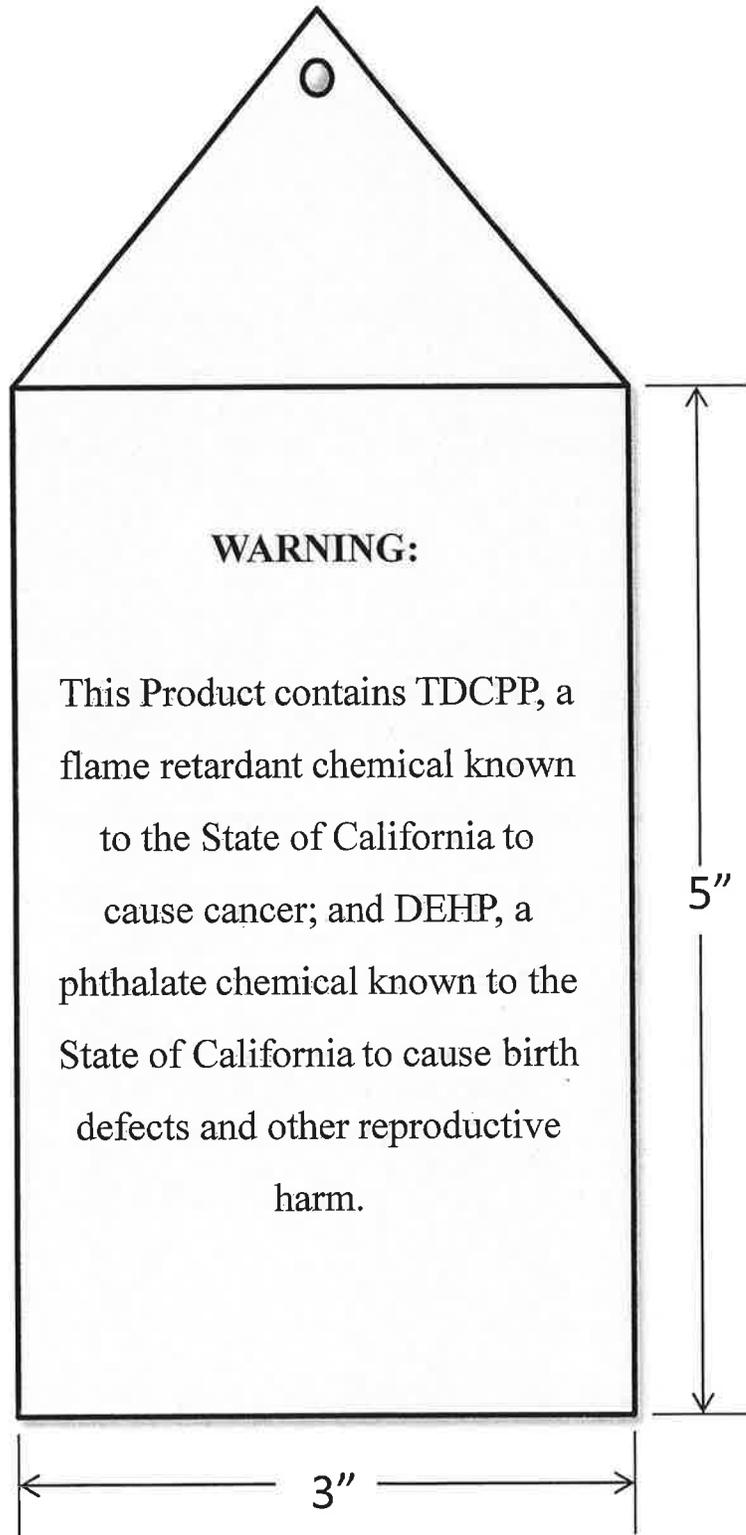
Dana P. Palmer, Esq.
McGuireWoods LLP
1800 Century Park East, 8th Floor
Los Angeles, CA 90067
DPalmer@mcguirewoods.com

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 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.