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LAURENCE VINO CUR
7

ENDORSED
FILED
ALAMEDA COUNTY

JUL 15 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 UNLIMITED CIVIL JURISDICTION

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14 LAURENCE VINO CUR,

15 Plaintiff,

16 v.

17 OFFICEMAX INCORPORATED, et al.,

18 Defendants.
19
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Case No. RG13674322

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: July 15, 2014

Time: 2:30 p.m.

Dept. 17

Judge: Hon. George C. Hernandez, Jr.

Reservation No. R-1520017

1 Plaintiff Laurence Vinocur and Defendant OfficeMax Incorporated having agreed
2 through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an order approving the Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
7 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
8 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
9 enforce the terms of the settlement under Code of Civil Procedure section 664.6.

10 **IT IS SO ORDERED.**

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Dated: JUL 15 2014

GEORGE C. HERNANDEZ, Jr.

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Clifford A. Chanler, State Bar No. 135534
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5 Attorneys for Plaintiff
6 LAURENCE VINOCUR

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

LAURENCE VINOCUR,
Plaintiff,
v.
OFFICEMAX INCORPORATED; et al.
Defendants.

Case No. RG 13-674322

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

**CONSENT JUDGMENT AS TO
DEFENDANT OFFICEMAX
INCORPORATED**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: April 5, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Plaintiff”) and defendant OfficeMax Incorporated, the defendant identified in Exhibit A (“Settling
5 Defendant”), with 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 hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Settling Defendant**

11 The 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 the 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”) without the requisite Proposition 65 health hazard
18 warnings.

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

25 **1.5 Product Description**

26 The categories of products that are covered by this Consent Judgment as to the Settling
27 Defendant are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied,
28 shaped or manufactured for use as a component of another product, such as upholstered furniture,

1 but which is not itself a finished product, is specifically excluded from the definition of Products
2 and shall not be identified by the Settling Defendant on Exhibit A as a Product.

3 **1.6 Notice of Violation**

4 On January 24, 2013, Plaintiff served the Settling Defendant and certain requisite public
5 enforcement agencies with a "60-Day Notice of Violation" ("Notice") 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 the Listed Chemical. To the
8 best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the
9 allegations set forth in the Notice.

10 **1.7 Complaint**

11 On April 5, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County of
12 Alameda against the Settling Defendant, and Does 1 through 150, *Laurence Vinocur v. OfficeMax*
13 *Incorporated, et al.*, Case No. RG 13-674322 ("Complaint"), alleging violations of Proposition 65,
14 based in part on the alleged unwarned exposures to TDCPP contained in the Products.

15 **1.8 No Admission**

16 The Settling Defendant denies the material factual and legal allegations contained in
17 Plaintiff's Notice and Complaint and maintains that it did not knowingly or intentionally expose
18 California Customers to TDCPP through reasonably foreseeable use of the Products or otherwise
19 contends that all Products that it has manufactured, imported, distributed, and/or sold in California,
20 including the Products, have been and are in compliance with all laws. Nothing in this Consent
21 Judgment shall be construed as an admission by the Settling Defendant of any fact, finding,
22 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
23 constitute or be construed as an admission by the Settling Defendant of any fact, finding,
24 conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise
25 affect the Settling Defendant's obligations, responsibilities, and duties under this Consent
26 Judgment.

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1 **1.9 Consent to Jurisdiction**

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

7 **2. DEFINITIONS**

8 **2.1 California Customers**

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

12 **2.2 Detectable**

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

18 **2.3 Effective Date**

19 “Effective Date” shall mean December 20, 2013.

20 **2.4 Private Label Covered Products**

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

24 **2.5 Reformulated Products**

25 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
26 or TCEP.

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2.6 Reformulation Standard

The "Reformulation Standard" shall mean containing no more than 25 ppm for TDCPP and TCEP.

2.7 Retailer

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

3. INJUNCTIVE RELIEF: REFORMULATION

3.1 Reformulation Commitment

Commencing on May 31, 2014, the Settling Defendant shall not manufacture or import for distribution or sale to California Customers, or cause to be manufactured or imported for distribution or sale to California Customers, any Products that are not Reformulated Products.

3.2 Vendor Notification/Certification

On or before January 31, 2014, the Settling Defendant shall provide written notice to all of its then-current vendors of the Products that will be sold or offered for sale in California, or to California Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated Products for potential sale in California. In addressing the obligation set forth in the preceding sentence, the Settling Defendant shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. The Settling Defendant shall subsequently obtain written certifications, no later than May 31, 2014, from such vendors, and any newly engaged vendors, that the Products manufactured by such vendors are in compliance with the Reformulation Standard. Certifications shall be held by the Settling Defendant for at least two years after their receipt and shall be made available to Plaintiff upon request.

3.3 Products No Longer in the Settling Defendant's Control

No later than 45 days after the Effective Date, the Settling Defendant shall send a letter, electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer, if any, which it, after October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice the Settling Defendant received from Plaintiff ("Exemplar Product"); and (2) any California Customer and/or Retailer that the Settling Defendant reasonably understands or

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

12 **3.4 Current Inventory**

13 Any Exemplar Product in, or manufactured and en route to, the Settling Defendant’s
14 inventory as of or after December 31, 2013, that do not qualify as Reformulated Products and that
15 the Settling Defendant has reason to believe may be sold or distributed for sale in California, shall
16 contain a clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.
17 Any Product other than the Exemplar Product in, or manufactured and en route to, the Settling
18 Defendant’s inventory as of or after March 31, 2014, that do not qualify as Reformulated Products
19 and that the Settling Defendant has reason to believe may be sold or distributed for sale in
20 California, shall contain a clear and reasonable warning as set forth in Section 3.5 below unless
21 Section 3.6 applies.

22 **3.5 Product Warnings**

23 **3.5.1 Product Labeling**

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

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

4 **WARNING:** This product contains TDCPP, a flame
5 retardant chemical known to the State of California to
6 cause cancer.¹

7 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be
8 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
9 set forth in this Section are addressed, including as to the required warning statement and method of
10 transmission as set forth above, Settling Defendant remains free not to utilize the template
11 warnings.

11 3.5.2 Internet Website Warning

12 A warning shall be given in conjunction with the sale of the Products to California, or
13 California Customers, via the internet, which warning shall appear on one or more web pages
14 displayed to a purchaser during the checkout process. The following warning statement shall be
15 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
16 the Product; (b) appear as a pop-up box or (c) otherwise appear automatically to the consumer. .
17 The warning text shall be the same type size or larger than the Product description text:
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19 _____
20 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
21 used if the Settling Defendant had begun to use it, prior to the Effective Date. A Settling Defendant
22 that seeks to use alternative warning language, other than the language specified above or the safe
23 harbor warning specified in 27 CCR § 25603.2, or that seeks to use an alternate method of
24 transmission of the warning, must obtain the Court's approval of its proposed alternative and
25 provide all Parties and the Office of the Attorney General with timely notice and the opportunity to
26 comment or object before the Court acts on the request. The Parties agree that the following
27 warning language shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and
28 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."

25 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag
26 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
27 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
28 8.5" x. 11", with no less than 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.

WARNING: This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.³

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3 **3.6 Alternatives to Interim Warnings**

4 The obligations of the Settling Defendant under Section 3.3 shall be relieved provided the
5 Settling Defendant certifies on or before December 31, 2013, that only Exemplar Products meeting
6 the Reformulation Standard will be offered for sale in California, or to California Customers for
7 sale in California, after December 31, 2013. The obligations of the Settling Defendant under
8 Section 3.4 shall be relieved provided the Settling Defendant certifies on or before December 31,
9 2013, that, after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in,
10 California, or to California Customers for sale in California, Products (i.e., Products beyond the
11 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
12 Section are material terms and time is of the essence.

13 **4. MONETARY PAYMENTS**

14 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

15 In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant
16 shall pay or cause to be paid the civil penalties shown for it on Exhibit A in accordance with this
17 Section. Each penalty payment will be allocated in accordance with California Health & Safety
18 Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of
19 Environmental Health Hazard Assessment (“OEHHHA”) and 25% of the penalty remitted to “The
20 Chanler Group in Trust for Laurence Vinocur.” Each penalty payment shall be made within fifteen
21 (15) days of the date it is due and be delivered to the addresses listed in Section 4.5 below. The
22 Settling Defendant shall be liable for payment of interest, at a rate of 10% simple interest, for all
23 amounts due and owing under Section 4 that are not received within fifteen (15) business days of
24 the due date.

25 4.1.1 Initial Civil Penalty. On or before December 31, 2013, the Settling
26 Defendant shall make or cause to be made an initial civil penalty payment in the amount identified
27 on the Settling Defendant’s Exhibit A.

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³ Footnote 1 applies in this context as well.

1 4.1.2 Second Civil Penalty. On or before April 15, 2014, the Settling Defendant
2 shall make or cause to be made a second civil penalty payment in the amount identified on the
3 Settling Defendant's Exhibit A. The amount of the second penalty may be reduced according to
4 any penalty waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii),
5 below.

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

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

18 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
19 **Products Sold or Offered for Sale in California.**

20 As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall
21 be waived, to the extent that it has agreed that, as of April 15, 2014, and continuing into the future,
22 it shall only manufacture or import for distribution or sale to California Customers or cause to be
23 manufactured or imported for distribution or sale to California Customers, Reformulated Products.
24 An officer or other authorized representative of the Settling Defendant that has exercised this
25 election shall provide Plaintiff with a written certification confirming compliance with such
26 conditions, which certification must be received by Plaintiff's counsel on or before January 31,
27 2014.

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4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.

As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, to the extent that it has agreed that, as of May 31, 2014, and continuing into the future, it shall only manufacture or import for distribution or sale in California or cause to be manufactured or imported for distribution or sale in California, Reformulated Products, which also do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product, when analyzed by a NVLAP accredited laboratory 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 TDBPP in a solid substance. An officer or other authorized representative of the Settling Defendant that has exercised this election shall provide Plaintiff with a written certification confirming compliance with such conditions, which certification must be received by Plaintiff's counsel on or before November 15, 2014.

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

As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff with written certification, by June 14, 2014, confirming that each Settling Defendant establishment in California has elected to remove all remaining Exemplar Products from its store shelves in California.⁴

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

As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff with written certification, on or before December 31, 2014, confirming that, as of July 1, 2014, it

⁴ For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiff has, prior to August 31, 2013, provided the Settling Defendant with test results from a NVLAP or similarly 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 has and will continue to distribute, offer for sale, or sell in California, or to California Customers,
2 only Reformulated Products.

3 **4.2 Representations Regarding Sales Volume**

4 The Settling Defendant represents that the sales data and other information concerning its
5 size, knowledge of the Listed Chemical, and prior reformulation and/or warning efforts, it provided
6 to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiff has relied to
7 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
8 Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers and presents to
9 the Settling Defendant, evidence demonstrating that the preceding representation and warranty was
10 materially inaccurate, then the Settling Defendant shall have 30 days to meet and confer regarding
11 the Plaintiff's contention. Should this 30 day period pass without any such resolution between the
12 Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal claim including,
13 but not limited to, a claim for damages for breach of contract.

14 Each Settling Defendant further represents that in implementing the requirements set forth
15 in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts
16 to achieve reformulation of its Products and Additional Products on a nationwide basis and not
17 employ statements that will encourage a vendor to limit its compliance with the Reformulation
18 Standard to goods intended for sale to California Consumers.

19 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

20 If Plaintiff provides notice and appropriate supporting information, including, without
21 limitation, sampling data as required under Section 2.2, above, to the Settling Defendant that levels
22 of the Listed Chemical in excess of the Reformulation Standard have been detected in one or more
23 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a
24 deadline for meeting the Reformulation Standard has arisen for the Settling Defendant under
25 Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated penalty to relieve
26 any further potential liability under Proposition 65 or sanction under this Consent Judgment as to
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1 Products sourced from the vendor in question.⁵ The stipulated penalty shall be \$1,500 if the
2 violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249
3 ppm, this being applicable for any amount in excess of the Reformulation Standards but under 250
4 ppm.⁶ Plaintiff shall further be entitled to reimbursement of his associated expense in an amount
5 not to exceed \$5,000 regardless of the stipulated penalty level. The Settling Defendant under this
6 Section must provide notice and appropriate supporting information relating to the purchase (e.g.
7 vendor name and contact information including representative, purchase order, certification (if any)
8 received from vendor for the exemplar or subcategory of products), test results, and a letter from a
9 company representative or counsel attesting to the information provided, to Plaintiff within 30
10 calendar days of receiving test results from Plaintiff's counsel. Any violation levels at or above 250
11 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

12 4.4 Reimbursement of Fees and Costs

13 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
15 this fee reimbursement issue to be resolved after the material terms of the agreement had been
16 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant
17 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay, or
18 cause to be paid to, Plaintiff and his counsel under general contract principles and the private
19 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
20 performed through the mutual execution of this agreement, including the fees and costs incurred as
21 a result of investigating, bringing this matter to the Settling Defendant's attention, negotiating a
22 settlement in the public interest, and seeking court approval of the same. In addition, the negotiated
23 fee and cost figure expressly includes the anticipated significant amount of time plaintiffs' counsel
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25 ⁵ This Section shall not be applicable where the vendor in question had previously been
26 found by the Settling Defendant to have provided unreliable certifications as to meeting the
27 Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing,
a stipulated penalty for a second exceedance by a Settling Defendant's vendor at a level between
100 and 249 ppm shall not be available after July 1, 2015.

28 ⁶ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 will incur to monitor various provisions in this agreement over the next two years, with the
2 exception of additional fees that may be incurred pursuant to a Settling Defendant's election in
3 Section 11. The Settling Defendant more specifically agreed, upon the Court's approval and entry
4 of this Consent Judgment, to pay, or cause to be paid to, Plaintiff's counsel the amount of fees and
5 costs indicated on the Settling Defendant's Exhibit A. The Settling Defendant further agreed to
6 tender and shall tender its full required payment under this Section to a trust account at The Chanler
7 Group (made payable "In Trust for The Chanler Group") within fifteen (15) business days of the
8 Effective Date. Such funds shall be released from the trust account upon the Court's approval and
9 entry of this Consent Judgment.

10 **4.5 Payment Procedures**

11 4.5.1 Issuance of Payments.

12 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
13 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

20 For United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
27 1001 I Street
Sacramento, CA 95814

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1 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
2 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
3 Section 4.5.1(a) above, as proof of payment to OEHHA.

4 4.5.3 Tax Documentation. The Settling Defendant shall issue or cause to be issued
5 a separate 1099 form for each payment required by this Section to: (a) Laurence Vinocur, whose
6 address and tax identification number shall be furnished upon request after this Consent Judgment
7 has been fully executed by the Parties; (b) OEHHA, who shall be identified as “California Office of
8 Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered
9 directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) “The Chanler Group” (EIN:
10 94-3171522) to the address set forth in Section 4.5.1(a) above.

11 **5. CLAIMS COVERED AND RELEASED**

12 **5.1 Plaintiff’s Release of Proposition 65 Claims**

13 Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant,
14 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents,
15 employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
16 distributes or sells Products, including, but not limited, to downstream distributors, wholesalers,
17 customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”),
18 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
19 exposures to the Listed Chemical in the Products, as set forth in the Notice. Compliance with the
20 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
21 exposures to the Listed Chemical from the Products, as set forth in the Notice. The Parties further
22 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other
23 than the Settling Defendant, that manufactured the Products or any component parts thereof, or any
24 distributors or suppliers who sold the Products or any component parts thereof to a Settling
25 Defendant, except that if the Settling Defendant is a Retailer of a Private Labeled Covered Product,
26 entities upstream of said Settling Defendant shall be released as to the Private Labeled Covered
27 Products offered for sale in California, or to California Customers, by the Retailer in question.

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5.2 Plaintiff's Individual Releases of Claims

Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP, TCEP and, in the event that Settling Defendant qualifies for the partial penalty waiver set forth in Section 4.1.4(ii), TDBPP, in the Products manufactured, imported, distributed, or sold by Settling Defendant prior to the Effective Date.⁷ The Parties further understand and agree that this Section 5.2 release shall not extend upstream to any entities that manufactured the Products or Additional Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Settling Defendant, except that if the Settling Defendant is a Retailer of a Private Labeled Covered Product, entities upstream of said Settling Defendant shall be released as to the Private Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer in question. Nothing in this Section affects Plaintiff's rights to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Settling Defendant's Products or Additional Products.

5.3 Settling Defendant's Release of Plaintiff

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

⁷ The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

1 **6. COURT APPROVAL**

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

17 **7. GOVERNING LAW**

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

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1 **8. NOTICE**

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

6 To Settling Defendant:

7 At the address shown on Exhibit A

To Plaintiff:

8 Proposition 65 Coordinator
9 The Chanler Group
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710-2565

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

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

14 This Consent Judgment may be executed in counterparts and by facsimile or portable
15 document format (“pdf”) signature, each of which shall be deemed an original, and all of which,
16 when taken together, shall constitute one and the same document. A facsimile or pdf signature shall
17 be as valid as the original.

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

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

21 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

22 11.1 In addition to the Products, where the Settling Defendant has identified on Exhibit A
23 additional products that contain TDCPP, TCEP, TDBPP and/or any Proposition 65-listed
24 chemical(s) and that are sold or offered for sale by it in California, or to California Customers,
25 (“Additional Products”), then by no later than October 15, 2013, the Settling Defendant may
26 provide Plaintiff with additional information or representations necessary to enable him to issue a
27 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety
28 Code section 25249.7, that includes the Additional Products. Polyurethane foam that is supplied,

1 shaped or manufactured for use as a component of a product, such as upholstered furniture, is
2 specifically excluded from the definition of Additional Products and shall not be identified by the
3 Settling Defendant on Exhibit A as an Additional Product. Except as agreed upon by Plaintiff,
4 Settling Defendant shall not include a product, as an Additional Product, that is the subject of an
5 existing 60-day notice issued by Plaintiff or any other private enforcer at the time of execution.

6 After receipt of the required information, Plaintiff agrees to issue a supplemental 60-day
7 notice in compliance with all statutory and regulatory requirements for the Additional Products.
8 Plaintiff will, and in no event later than October 1, 2014, prepare and file an amendment to this
9 Consent Judgment to incorporate the Additional Products within the defined term "Products" and,
10 upon the Court's approval thereof and finding that the supplemental stipulated penalty amount, if
11 any, is reasonable, the Additional Products shall become subject to Sections 5.1 and 5.2. The
12 Settling Defendant shall, at the time it elects to utilize this Section and tenders the additional
13 information or representations regarding the Additional Products to Plaintiff, tender to The Chanler
14 Group's trust account an amount not to exceed \$8,750 as stipulated penalties and attorneys' fees
15 and costs incurred by Plaintiff in issuing the new notice and engaging in other reasonably related
16 activities, which may be released from the trust as awarded by the Court upon Plaintiff's
17 application. Any fee award associated with the modification of the Consent Judgment to include
18 Additional Products shall not offset any associated supplemental penalty award, if any. (Any
19 tendered funds remaining in the trust thereafter shall be refunded to the Settling Defendant within
20 15 days). Such payment shall be made to "In trust for The Chanler Group" and delivered as per
21 Section 4.5.1(a) above.

22 11.2 Plaintiff and Settling Defendant agree to support the entry of this agreement as a
23 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
24 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
25 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff
26 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and the
27 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.

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1 This provision is a material component of the Consent Judgment and shall be treated as such in the
2 event of a breach.

3 **12. MODIFICATION**

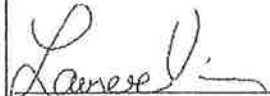
4 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
5 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
6 of any party and entry of a modified Consent Judgment by the Court.

7 **13. AUTHORIZATION**

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

11 AGREED TO:

AGREED TO:

12 
13 _____
14 Laurence Vinocur

OfficeMax Incorporated

15 Date: December 12, 2013

16 Date: December __, 2013

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3 12. MODIFICATION

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11 AGREED TO:

AGREED TO:

12
13 _____
14 Laurence Vinocur


15 _____
16 OfficeMax Incorporated

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Date: December ____, 2013

Date: December 23, 2013

1 EXHIBIT A

2 I. Name of Settling Defendant: OfficeMax Incorporated

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4 II. Names of Releasees: OfficeMax Incorporated, its subsidiaries, affiliated entities under
5 common ownership, directors, officers, agents, employees, attorneys, and each entity to
6 whom OfficeMax directly or indirectly distributes or sells Products.

6 III. Types of Covered Products Applicable to Settling Defendant:

7 Foam-cushioned pads for children and infants to lie on, such as rest mats

8 Upholstered furniture

9 Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

10 Car seats, strollers

11 Other (specify): chairs with padded seats

12 IV. Types of Additional Products the Settling Defendant Elects to Address (if any): None

13 V. Settling Defendant's Required Settlement Payments

14 A. Civil Penalties for Settling Defendant as follows:

15 \$20,000 initial payment due on or before December 31, 2013;

16 \$42,000 second payment due on or before April 15, 2014, of which \$23,000 may be
17 waived pursuant to Section 4.1.4(i) and \$19,000 may be waived pursuant to Section
18 4.1.4(iii); and

18 \$24,000 third payment due on or before November 30, 2014, of which \$14,000 may
19 be waived pursuant to Section 4.1.4(ii) and \$10,000 may be waived pursuant to
20 Section 4.1.4(iv).

20 VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

21 A. Fees and Costs for Settling Defendant: \$50,000.

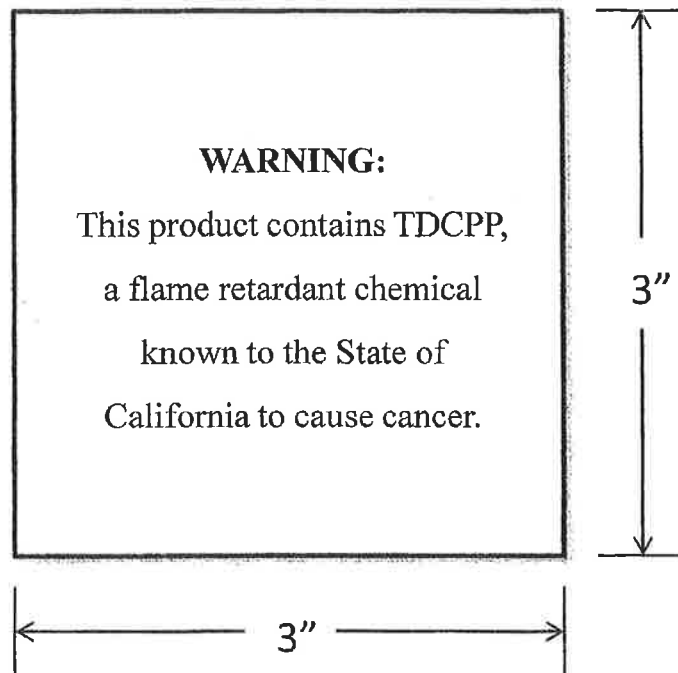
22 VII. Person(s) to receive Notice pursuant to Section 8

23 Elisa D. Garcia C.
24 Executive Vice President and
25 Chief Legal Officer
26 Office Depot, Inc.
27 6600 Military Trail
28 Boca Raton, FL 33496

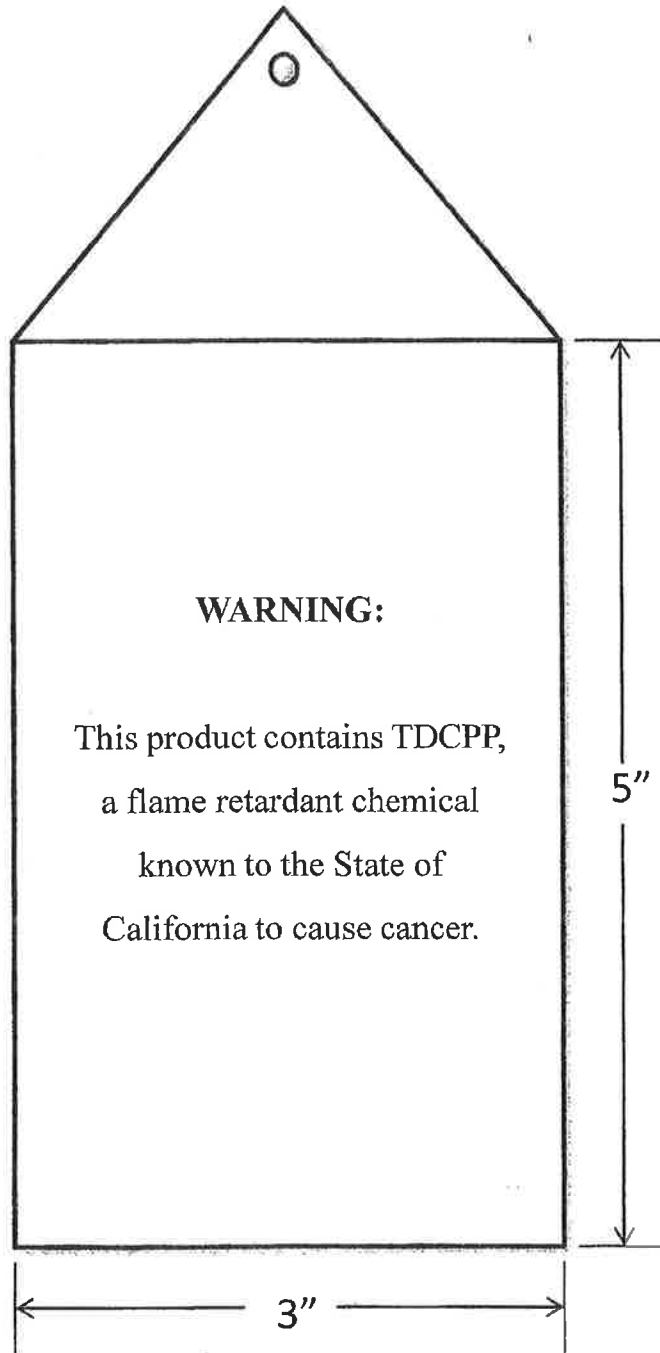
Tracy R. Oneale
Associate General Counsel
OfficeMax Incorporated
1111 West Jefferson Street, Ste.
510
Boise, ID 83702

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.



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