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11 Attorneys for Plaintiff  
12 LAURENCE VINO CUR

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 22 2016

CLERK OF THE SUPERIOR COURT  
By Christina Momon, Deputy

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

13  
14 LAURENCE VINO CUR, *et al.*,  
15 Plaintiffs,  
16 v.  
17 ABAD FOAM, INC., *et al.*,  
18 Defendants.

Case No. RG14710984

**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AND CONSENT  
JUDGMENT AS TO DEFENDANT  
POMONA QUALITY FOAM, INC.**

Date: March 22, 2016  
Time: 2:30 p.m.  
Dept.: 17  
Judge: Hon. George C. Hernandez, Jr.

Reservation No. R-1706857

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In the captioned action, plaintiff Laurence Vinocur and defendant Pomona Quality Foam, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent Judgment (“Consent Judgment”), and following this Court’s issuance of an Order approving this Proposition 65 settlement and Consent Judgment on March 22, 2016;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

**IT IS SO ORDERED.**

Dated: 3/22/16

GEORGE C. HERNANDEZ, JR.  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT A**

1 Brian C. Johnson, State Bar No. 235965  
2 THE CHANLER GROUP  
3 2560 Ninth Street  
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8 Attorneys for Plaintiff  
9 LAURENCE VINOCUR

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
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16 LAURENCE VINOCUR, *et al.*,

17 Plaintiffs,

18 v.

19 ABAD FOAM, INC., *et al.*,

20 Defendants.  
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Case No. RG14710984

[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT POMONA QUALITY  
FOAM, INC.

CONSENT JUDGMENT AS TO DEFENDANT POMONA QUALITY FOAM, INC.

1                   **1. INTRODUCTION**

2           1.1.    This Consent Judgment is entered into by plaintiff Laurence Vinocur (“Vinocur”) and  
3 defendant Pomona Quality Foam, Inc. (“Pomona”) to settle claims asserted by Vinocur against  
4 Pomona as set forth in the Complaint filed in the captioned action. Vinocur and Pomona are referred  
5 to individually as a “Party” and collectively as the “Parties.”

6           1.2.    On June 14, 2013, Vinocur served a 60-Day Notice of Violation, on Pomona, the  
7 California Attorney General, and the other requisite public enforcers, alleging that Pomona violated  
8 Proposition 65 when it failed to warn its customers and consumers in California of the health hazards  
9 associated with exposures to tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), a toxic flame retardant  
10 chemical applied to certain “Foam” (as defined herein) used as padding in upholstered furniture and  
11 other consumer products sold by Pomona in California.

12           1.3.    Pomona is a “person in the course of doing business” as that phrase is defined by  
13 Proposition 65, that employs ten (10) or more persons, and that manufactures, distributes, and/or sells  
14 Covered Products (as defined in Section 2.2 herein) containing Foam (as defined in Section 2.4  
15 herein) in the State of California.

16           1.4.    For purposes of this Consent Judgment only, the Parties stipulate that: (i) this Court has  
17 jurisdiction over the allegations of violations contained in the Notice and Complaint and personal  
18 jurisdiction over Pomona as to the acts alleged in the Complaint; (ii) venue is proper in the County of  
19 Alameda; and (iii) this Court has jurisdiction to enter this Consent Judgment as a full and final  
20 resolution of all claims which were or could have been raised in the Complaint based on the facts  
21 alleged in the Notice and Complaint with respect to Foam manufactured, sold and/or distributed for  
22 Sale in California by Pomona.

23           1.5.    The Parties enter into this Consent Judgment as a full and final settlement of all claims  
24 which were or could have been raised in the Complaint or Notice arising out of the facts or conduct  
25 related to Pomona alleged therein. By execution of this Consent Judgment and agreeing to comply  
26 with its terms, the Parties do not admit any fact, conclusion of law, or violation of law, nor shall  
27 compliance with the Consent Judgment constitute or be construed as an admission by the Parties of  
28 any fact, conclusion of law, or violation of law. Pomona denies the material, factual, and legal

1 allegations in the Notice and Complaint and expressly denies any wrongdoing whatsoever. Except as  
2 specifically and expressly provided herein, nothing in this Consent Judgment shall prejudice, waive,  
3 or impair any right, remedy, argument, or defense either Party may have in this or any other pending  
4 or future legal proceedings. This Consent Judgment is the product of negotiation and compromise and  
5 is accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed  
6 in this Action.

7 **2. DEFINITIONS**

8 2.1. "Covered Products" means Foam containing TDCPP used as padding in upholstered  
9 furniture manufactured, distributed, and/or sold by Pomona in California.

10 2.2. "Effective Date" means the date on which the Court enters this Consent Judgment.

11 2.3. "Foam" means polyurethane foam manufactured, distributed and/or sold by Pomona  
12 for use as a raw material in the manufacture or fabrication of various consumer products sold in  
13 California, including, but not limited to (1) foam-cushioned upholstered furniture, such as, by way of  
14 example only, foam-cushioned chairs, ottomans, sofas, futons, and back cushions; (2) foam-cushioned  
15 pads for infants and children to lie on, such as foam-cushioned pads and mats used for sleeping or  
16 resting, diaper changing pads, infant walkers, and/or car safety seats; and (3) foam-cushioned mattress  
17 toppers.

18 2.4. "Listed Chemical Flame Retardants" means Tris(1,3-dichloro-2-propyl) phosphate  
19 ("TDCPP"), Tris(2-chloroethyl) phosphate ("TCEP"), and Tris(2,3-dibromopropyl)phosphate  
20 ("TDBPP").

21 **3. INJUNCTIVE RELIEF**

22 3.1. **Reformulation of Foam and Covered Products.** Pomona shall comply with the  
23 following requirements to reformulate the Foam and Covered Products:

24 3.1.1. **TDCPP in Covered Products.** As of the Effective Date, Pomona shall not  
25 distribute, sell, or offer for sale in California any Covered Product that has been treated with any  
26 TDCPP and which has a manufacture date that is on or later than the Effective Date.

27 3.1.2. **TDCPP in Foam.** As of the Effective Date, Pomona shall not distribute, sell,  
28 or offer for sale in California any Foam for use in products that, to Pomona's knowledge will be, or

1 are reasonably likely to be, sold in California that have been treated with TDCPP and which have a  
2 manufacture date that is on or later than the Effective Date.

3           **3.1.3. Interim Compliance – TDCPP.** Any Covered Products manufactured prior to  
4 the Effective Date, and in which the polyurethane foam has intentionally added TDCPP and which is  
5 distributed, sold, or offered for sale by Pomona in California after the Effective Date shall be  
6 accompanied by a Clear and Reasonable Warning that complies with Section 3.1.6.

7           **3.1.4. Warnings for Covered Products in the Stream of Commerce.** Within 30  
8 days following the Effective Date, to the extent it has not already done so, Pomona shall provide clear  
9 and reasonable Proposition 65 warning materials to each of its California retailers or distributors to  
10 whom Pomona reasonably believes it sold Covered Products that contained or may have contained  
11 intentionally added TDCPP within the twelve (12) months prior to the Effective Date. Such warning  
12 materials shall include a reasonably sufficient number of warning labels in order to permit the retailer  
13 or distributor to place a warning label on each Covered Product such customer has purchased from  
14 Pomona. The warning label shall contain the warning language set forth in Section 3.1.6. The  
15 warning materials shall also include a letter of instruction for the placement of the warning label, and  
16 a Notice and Acknowledgment postcard.

17           **3.1.5. Warning Letter to Foam Customers.** Within 30 days following the Effective  
18 Date, Pomona shall provide a warning letter to each of its customers that are located in California, as  
19 well as its customers located outside California, that Pomona reasonably believes sell products  
20 containing Foam in California, to whom Pomona reasonably believes it sold Foam that contained  
21 intentionally added TDCPP within the 12 months prior to the Effective Date, to the extent that such  
22 notice has not already been provided. The warning letter shall inform the customer that, to the extent  
23 the customer purchased Foam to meet California fire safety standards, the Foam sold by Pomona  
24 contains tris(1,3-dichloro-2-propyl) phosphate ("TDCPP"), a chemical known to the State of  
25 California to cause cancer. The letter shall further inform the customer that to the extent it sells  
26 products containing Foam in California, the products containing Foam must be accompanied by clear  
27 and reasonable Proposition 65 warnings as set forth in Section 3.1.6.

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1                   3.1.6. **Proposition 65 Warnings.** A clear and reasonable warning under this Consent  
2 Judgment shall state:

3                   **WARNING:** This product contains tris (1,3-dichloro-2-propyl)  
4   phosphate ("TDCPP"), a chemical known to the  
  State of California to cause cancer.<sup>1</sup>

5 A clear and reasonable warning shall not be preceded by, surrounded by, or include any additional  
6 words or phrases that contradict, obfuscate, or otherwise undermine the warning. The warning  
7 statement shall be prominently displayed on the Covered Product or the packaging of the Covered  
8 Product with such conspicuousness, as compared with other words, statements, or designs as to render  
9 it likely to be read and understood by an ordinary individual prior purchase. For internet, catalog, or  
10 any other sale where the consumer is not physically present and cannot see a warning displayed on the  
11 Covered Product or the packaging of the Covered Product prior to purchase or payment, the warning  
12 statement shall be displayed in such a manner that it is likely to be read and understood prior to the  
13 authorization of or actual payment.

14                   3.2 **Optional Additional Reformulation for Listed Chemical Flame Retardants in**  
15 **Covered Products.** In order for Pomona to be eligible for a waiver of the additional penalty/payment  
16 in lieu of penalty payments set forth in Section 4.1.5 below, Pomona shall undertake the additional  
17 actions to reduce or eliminate the use of, in addition to TDCPP, TCEP and TDBPP. Pomona shall not  
18 manufacture for sale in California any Covered Product that has been treated with TDCPP, TCEP or  
19 TDBPP after the Effective Date. In order to avoid the additional payments, within 150 days following  
20 the Effective Date, Pomona must provide written certification to Vinocur of its commitment to no  
21 longer sell in California any Covered Product that has been treated with TDCPP, TCEP, and/or  
22 TDBPP. The written certification may be satisfied by letter to Vinocur, c/o The Chanler Group.

23                   **4. PENALTIES AND PAYMENT**

24                   4.1. Pomona shall pay to Vinocur the total sum of thirteen thousand dollars (\$13,000),  
25 which shall be allocated as follows:

26 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Pomona employed it for  
27 Covered Products prior to the Effective Date. If Pomona seeks to use alternative warning language, other than the  
28 language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of  
transmission of the warning, it must obtain the Court's approval of any proposed alternative and provide all Parties and the  
Office of the Attorney General with timely notice and the opportunity to comment or object before the Court acts on its  
request. (Warning notices sent by Pomona prior to the Effective Date have been provided to plaintiff's counsel and  
approved, and will satisfy the warning language required in this section.)

1                   4.1.1. \$2,000 shall constitute a civil penalty pursuant to California Health & Safety  
2 Code § 25249.7(b), such money to be apportioned by Vinocur in accordance with Cal. Health &  
3 Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty payment going to the California Office  
4 of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid  
5 to Vinocur.

6                   4.1.2. \$11,000 shall constitute reimbursement of Vinocur's reasonable attorneys' fees  
7 and costs.

8                   4.1.3. The payments required under Sections 4.1.1-4.1.2 shall be made in three  
9 separate checks, all to be delivered within 10 days following the Effective Date. The payments  
10 required pursuant to Sections 4.1.1 shall each be in the form of two checks for the following amounts  
11 made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Laurence Vinocur, Client Trust  
12 Account" in the amount of \$500. The payment required pursuant to Section 4.1.2 shall be made  
13 payable to The Chanler Group. All settlement payments shall be tendered in accordance with Section  
14 8 of this Consent Judgment.

15                   4.1.4. In the event that Pomona elects not to certify its compliance with Section 3.2 in  
16 accordance with that Section, within 150 days following the Effective Date, Pomona must make an  
17 additional civil penalty payment of \$4,000. The additional penalty payment shall be allocated  
18 according to Health & Safety Code § 25249.12(c) (1) and (d), and provided in two checks made  
19 payable to: (a) "OEHHA" in the amount of \$3,000; and (b) "Laurence Vinocur, Client Trust Account"  
20 in the amount of \$1,000.

21           **5.       ENFORCEMENT OF CONSENT JUDGMENT**

22                   5.1.    Vinocur may, by motion or application for an order to show cause before the Superior  
23 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
24 Prior to bringing any motion or application to enforce the requirements of Section 3 above, Vinocur  
25 shall provide Pomona with a Notice of Violation and a copy of any test result(s) which purportedly  
26 support Vinocur's Notice of Violation. The Parties shall then meet and confer regarding the basis for  
27 Vinocur's anticipated motion or application in an attempt to resolve the alleged violation informally,  
28 including providing Pomona a reasonable opportunity of at least thirty (30) days to cure any alleged

1 violation. Should the Parties' attempts at an informal resolution fail, Vinocur may file his  
2 enforcement motion or application. The prevailing party on any motion to enforce this Consent  
3 Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result of such  
4 motion or application. This Consent Judgment may only be enforced by the Parties.

5 **6. MODIFICATION OF CONSENT JUDGMENT**

6 6.1. This Consent Judgment may only be modified by a written agreement of the Parties,  
7 and entry of a modified consent judgment by the Court thereon, or upon a motion or application  
8 brought by any Party, and entry of a modified consent judgment by a Court thereon.

9 **7. CLAIMS COVERED AND RELEASES**

10 7.1. This Consent Judgment is a full, final, and binding resolution and release between  
11 Vinocur acting in the public interest and Pomona and Pomona's parents, officers, directors,  
12 shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, entities under common  
13 ownership, and their respective successors and assigns (inclusively and collectively, the "Defendant  
14 Releasees") and all entities to whom Defendant Releasees directly or indirectly distribute or sell, or  
15 have distributed or sold, Covered Products, including, but not limited to, distributors, wholesalers,  
16 customers, retailers, franchisees, cooperative members, and licensees ("Downstream Releasees"), of  
17 all claims alleged in the Notice or Complaint in this Action arising from any violation of Proposition  
18 65 that have been or could have been asserted in the public interest against Pomona, Defendant  
19 Releasees, and Downstream Releasees, regarding the failure to warn about exposures to TDCPP in  
20 Covered Products manufactured, distributed, or sold by Pomona prior to the Effective Date.

21 7.2. This Consent Judgment is also a full, final, and binding resolution and release between  
22 Vinocur acting in the public interest and Pomona with regard to Pomona's manufacture, distribution  
23 and sale of Foam of all claims alleged in the Notice or Complaint in this Action arising from any  
24 violation or alleged violation of Proposition 65 that have been or could have been asserted in the  
25 public interest against Pomona, Defendant Releasees, and Downstream Releasees regarding the failure  
26 to warn about exposures to TDCPP in Foam manufactured, distributed, or sold by Pomona prior to the  
27 Effective Date. Compliance with the terms of this Consent Judgment by Pomona shall constitute  
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1 compliance with Proposition 65 with respect to any alleged failure to warn about TDCPP in Covered  
2 Products and Foam manufactured, distributed, or sold by Pomona after the Effective Date.

3 7.3. This is a full and final release applying to all unknown and unanticipated injuries or  
4 damages relating to or arising out of the claims alleged in the Notice and Complaint, as well as those  
5 now known, whether or not disclosed, and Vinocur, on his own behalf only, hereby relinquishes and  
6 waives all rights or benefits conferred upon him by the provisions of Section 1542 of the California  
7 Civil Code, which reads as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
9 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN  
10 HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY  
AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

11 **8. PROVISION OF NOTICE**

12 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the  
13 notice shall be sent by first class mail as follows:

14 8.1.1. **Notice to Pomona.** The persons for Pomona to receive notices pursuant to this  
15 Consent Judgment shall be:

16 Damien Morozumi, Esq.  
17 The Law Offices of Damien Morozumi  
44 Montgomery Street, Suite 1750  
18 San Francisco, CA 94104

19 8.1.2. **Notice to Vinocur.** The persons for Vinocur to receive notices pursuant to this  
20 Consent Judgment shall be:

21 Atn: Prop 65 Coordinator  
22 The Chanler Group  
2560 Ninth Street  
23 Parker Plaza Suite 214  
24 Berkeley, CA 94710

25 8.2. Any Party may, from time to time, modify the person and/or address to whom the  
26 notice is to be sent by sending notice to the other Party by first class and electronic mail.

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**9. COURT APPROVAL**

9.1. This Consent Judgment shall become effective on the Effective Date, provided however, that Vinocur shall prepare and file a Motion for Approval of this Consent Judgment and Pomona shall support approval of such Motion.

9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

**10. GOVERNING LAW AND CONSTRUCTION**

10.1. The terms and obligations arising from this Consent Judgment shall be construed and enforced in accordance with the laws of the State of California.

**11. ENTIRE AGREEMENT**

11.1. This Consent Judgment contains the sole and entire agreement and understanding of Vinocur and Pomona with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

11.2. There are no warranties, representations, or other agreements between Vinocur and Pomona except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

11.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any Party. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any Party hereto only to the extent that they are expressly incorporated herein.

11.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

1       **12.   RETENTION OF JURISDICTION**

2           12.1.   This Court shall retain jurisdiction of this matter to enforce or modify this Consent  
3 Judgment pursuant to the agreement of the Parties, Proposition 65 and Code of Civil Procedure §  
4 664.6.

5       **13.   AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

6           13.1.   Each signatory to this Consent Judgment certifies that he or she is fully authorized by  
7 the Party he or she represents to stipulate to this Consent Judgment, and to enter into and execute the  
8 Consent Judgment on behalf of the Party represented and to legally bind that Party.

9       **14.   NO EFFECT ON OTHER SETTLEMENTS**

10          14.1.   Nothing in this Consent Judgment shall preclude Vinocur from resolving any claim  
11 against another entity on terms that are different from those contained in this Consent Judgment.

12       **15.   EXECUTION IN COUNTERPARTS**

13          15.1.   The stipulations to this Consent Judgment may be executed in counterparts and by  
14 means of facsimile, which taken together shall be deemed to constitute one document.

15       **AGREED TO:**

16  
17       Dated:   December 7   , 2015

  
\_\_\_\_\_  
Plaintiff LAURENCE VINO CUR

18  
19       **AGREED TO:**

20  
21       Dated:   NOV. 19   , 2015

  
\_\_\_\_\_  
Defendant POMONA QUALITY FOAM, INC.  
SALVADOR GONZALES  
Printed Name  
PRESIDENT  
Title