

1 Mark N. Todzo, State Bar No. 168389
2 Joseph Mann, State Bar No. 207968
3 503 Divisadero Street
4 San Francisco, CA 94117
5 Telephone: (415) 913-7800
6 Facsimile: (415) 759-4112
7 mtodzo@lexlawgroup.com
8 jmann@lexlawgroup.com

9 Rick Franco, State Bar No. 170970
10 Center for Environmental Health
11 2201 Broadway, Suite 302
12 Oakland, California 94612
13 Telephone: (510) 655-3900
14 Facsimile: (510) 655-9100
15 rick@ceh.org

16 Attorneys for Plaintiff
17 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

APR 15 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADAputy

18 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF ALAMEDA

20 CENTER FOR ENVIRONMENTAL
21 HEALTH, a non-profit corporation,
22 Plaintiff,
23 v.

24 AMERIWOOD INDUSTRIES, INC., *et al.*,
25 Defendants.

Case No. RG-13673582

~~PROPOSED~~ CONSENT
JUDGMENT RE: MONARCH
SPECIALTIES INC.

26 **1. INTRODUCTION**

27 1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental
28 Health, a non-profit corporation ("CEH"), and Defendant Monarch Specialties Inc. ("Defendant")
to settle claims asserted by CEH against Defendant as set forth in the operative Complaint in the

1 matter *Center for Ameriwood Industries, Inc., et al.*, Alameda County Superior Court Case No.
2 RG-13673582 (the "Action"). CEH and Defendant are referred to collectively as the "Parties."

3 1.2. On July 17, 2013, CEH served a "Notice of Violation" (the "Notice") relating to
4 the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") on
5 Defendant, the California Attorney General, the District Attorneys of every County in the State of
6 California, and the City Attorneys for every City in State of California with a population greater
7 than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of tris
8 (1,3-dichloro-2-propyl) phosphate ("TDCPP") in foam-cushioned upholstered furniture
9 manufactured, distributed, and/or sold by Defendant.

10 1.3. Defendant is a corporation that employs ten (10) or more persons and that
11 manufactured, distributed, and/or sold Covered Products (as defined herein) in the State of
12 California. Defendant asserts that it no longer plans to distribute, sell, or offer for sale such
13 Covered Products in California.

14 1.4. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
15 Court has jurisdiction over the allegations of violations contained in the Notice and Complaint
16 and personal jurisdiction over Defendant as to the acts alleged in the Complaint; (ii) venue is
17 proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent
18 Judgment as a full and final resolution of all claims which were or could have been raised in the
19 Complaint based on the facts alleged in the Notice and Complaint with respect to Covered
20 Products manufactured, distributed, and/or sold by Defendant.

21 1.5. The Parties enter into this Consent Judgment as a full and final settlement of all
22 claims which were or could have been raised in the Complaint arising out of the facts or conduct
23 related to Defendant alleged therein. By execution of this Consent Judgment and agreeing to
24 comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law,
25 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
26 the Parties of any fact, conclusion of law, or violation of law. Defendant denies the material,
27 factual, and legal allegations in the Notice and Complaint and expressly denies any wrongdoing

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

6 **2. DEFINITIONS**

7 2.1. "Covered Products" means foam-cushioned upholstered furniture manufactured,
8 distributed, and/or sold by Defendant in California.

9 2.2. "Effective Date" means the date on which the Court enters this Consent Judgment.

10 2.3. "Listed Chemical Flame Retardants" means Tris(1,3-dichloro-2-propyl) phosphate
11 ("TDCPP"), Tris(2-chloroethyl) phosphate ("TCEP"), and Tris(2,3-dibromopropyl)phosphate
12 ("TDBPP").

13 2.4. "Manufacture Date" means the date the Covered Product was manufactured and
14 as may be indicated on a tag attached to the Covered Product.

15 2.5. "Treated" means the addition or application of any Chemical Flame Retardant to
16 any polyurethane foam used as filling material in any Covered Product.

17 **3. INJUNCTIVE RELIEF**

18 3.1. Defendant shall comply with the following requirements to eliminate or minimize
19 exposures to Listed Chemical Flame Retardants arising from the use of the Covered Products in
20 California:

21 3.1.1. **Reformulation of Covered Products.** As of the Effective Date,
22 Defendant shall not distribute, sell, or offer for sale in California any Covered Product that has
23 been Treated with any Listed Chemical Flame Retardant and which has a Manufacture Date that
24 is on or later than the Effective Date. The Parties agree that Defendant may satisfy this Section
25 3.1.1 by not distributing, selling, or offering for sale in California any Covered Products after the
26 Effective Date.

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1 3.1.1.1. To ensure compliance with the reformulation provisions of
2 Section 3.1.1 should Defendant seek to distribute, sell, or offer for sale in California any Covered
3 Product after the Effective Date, Defendant shall directly or through its supply chain issue
4 specifications to its suppliers of polyurethane foam, cushioning, or padding used as filling
5 material in any Covered Product requiring that such components have not been Treated with
6 Listed Chemical Flame Retardants in accordance with the requirements of this Section 3.1.1.
7 Defendant shall obtain and maintain written certification(s) from its suppliers of polyurethane
8 foam, cushioning, or padding confirming that all such foam received by Defendant for
9 distribution in California has not been Treated with Listed Chemical Flame Retardants.

10 3.1.2. **Interim Compliance.** Any Covered Product with a Manufacture Date that
11 is earlier than the Effective Date, that contains polyurethane foam which has been Treated with
12 any Listed Chemical Flame Retardant, and that is distributed, sold, or offered for sale by
13 Defendant in California after the Effective Date shall be accompanied by a Clear and Reasonable
14 Warning that complies with Section 3.1.4. The Parties agree that Defendant may satisfy this
15 Section 3.1.2 by not distributing, selling, or offering for sale in California any Covered Products
16 after the Effective Date.

17 3.1.3. **Warnings for Products in the Stream of Commerce.** In an effort to
18 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65
19 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in
20 accordance with Section 3.1.2, within 30 days following the Effective Date, Defendant shall
21 provide warning materials by certified mail to each of its California retailers or distributors to
22 whom Defendant reasonably believes it sold Covered Products that contained or may have
23 contained any Listed Chemical Flame Retardant on or after October 31, 2011. Such warning
24 materials shall include a reasonably sufficient number of hang tags in order to permit the retailer
25 or distributor to place a warning tag on each Covered Product such customer has purchased from
26 Defendant. The hang tags shall contain the warning language set forth in Section 3.1.4. The
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1 warning materials shall also include a letter of instruction for the placement of the hang tags, and
2 a Notice and Acknowledgment postcard.

3 3.1.4. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
4 Consent Judgment shall state:

5 WARNING: This product contains tris(1,3-dichloro-2-propyl) phosphate
6 (“TDCPP”) [and/or TCEP and/or TDBPP], a chemical[s] known to the State of
7 California to cause cancer.

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

17 **4. PENALTIES AND PAYMENT**

18 4.1. Defendant shall pay to CEH the total sum of twenty thousand dollars (\$20,000),
19 which shall be allocated as follows:

20 4.1.1. \$2,200 shall constitute a penalty pursuant to Cal. Health & Safety Code §
21 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code
22 § 25249.12.

23 4.1.2. \$3,000 shall constitute a payment in lieu of civil penalty pursuant to Cal.
24 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to
25 continue its work of educating and protecting the public from exposures to toxic chemicals,
26 including chemical flame retardants. CEH may also use a portion of such funds to monitor
27 compliance with this Consent Judgment and to purchase and test Defendant’s products to confirm

1 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH
2 will use four percent (4%) of such funds to award grants to grassroots environmental justice
3 groups working to educate and protect the public from exposures to toxic chemicals. The method
4 of selection of such groups can be found at the CEH website at www.ceh.org/justicefund.

5 4.1.3. \$14,800 shall constitute reimbursement of CEH's reasonable attorneys'
6 fees and costs.

7 4.1.4. The payments required under Sections 4.1.1-4.1.3 shall be made in three
8 separate checks, all to be delivered within 10 days following the Effective Date. The payments
9 required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable CEH. The payment
10 required pursuant to Section 4.1.3 shall be made payable to Lexington Law Group. All checks
11 shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 8.

12 5. ENFORCEMENT OF CONSENT JUDGMENT

13 5.1. CEH may, by motion or application for an order to show cause before the Superior
14 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
15 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH
16 shall provide Defendant with a Notice of Violation and a copy of any test results which
17 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding
18 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,
19 including providing Defendant a reasonable opportunity of at least thirty (30) days to cure any
20 alleged violation. Should such attempts at informal resolution fail, CEH may file its enforcement
21 motion or application. The prevailing party on any motion to enforce this Consent Judgment
22 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
23 application. This Consent Judgment may only be enforced by the Parties.

24 6. MODIFICATION OF CONSENT JUDGMENT

25 6.1. This Consent Judgment may only be modified by written agreement of CEH and
26 Defendant, or upon motion of CEH or Defendant as provided by law.

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1 **7. CLAIMS COVERED AND RELEASE**

2 7.1. This Consent Judgment is a full, final, and binding resolution between CEH acting
3 in the public interest and Defendant and Defendant’s parents, officers, directors, shareholders,
4 divisions, subdivisions, subsidiaries, partners, affiliated companies, and their respective
5 successors and assigns (“Defendant Releasees”) and all entities to whom they distribute or sell or
6 have distributed or sold Covered Products including, but not limited to, distributors, wholesalers,
7 customers, retailers, franchisees, cooperative members, and licensees (“Downstream Defendant
8 Releasees”), of all claims alleged in the Complaint in this Action arising from any violation of
9 Proposition 65 that have been or could have been asserted in the public interest against Defendant
10 Releasees and Downstream Defendant Releasees, regarding the failure to warn about exposure to
11 TDCPP in the Covered Products manufactured, distributed, or sold by Defendant prior to the
12 Effective Date.

13 7.2. CEH, for itself releases, waives, and forever discharges any and all claims alleged
14 in the Complaint against Defendant Releasees and Downstream Defendant Releasees arising from
15 any violation of Proposition 65 that have been or could have been asserted regarding the failure to
16 warn about exposure to TDCPP in connection with Covered Products manufactured, distributed,
17 or sold by Defendants prior to the Effective Date.

18 7.3. Compliance with the terms of this Consent Judgment by Defendant Releasees and
19 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by
20 Defendant Releasees and Downstream Defendant Releasees with respect to any alleged failure to
21 warn about any Listed Chemical Flame Retardants in Covered Products manufactured,
22 distributed, or sold by Defendant after the Effective Date.

23 **8. PROVISION OF NOTICE**

24 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the
25 notice shall be sent by first class and electronic mail as follows:

26 8.1.1. **Notices to Defendants.** The persons for Defendants to receive notices
27 pursuant to this Consent Judgment shall be:

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1 David Zelnicker
2 Monarch Specialties Inc.
3 4155 Autoroute Chomedey
4 Laval, Québec H7P 0A8
5 davidz@monarchspec.com

6 Rick R. Rothman
7 Bingham McCutchen LLP
8 355 South Grand Avenue, Suite 4400
9 Los Angeles, CA 90071
10 rick.rothman@bingham.com

11 8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to
12 this Consent Judgment shall be:

13 Rick Franco
14 Center for Environmental Health
15 2201 Broadway, Suite 302
16 Oakland, California 94612
17 rick@ceh.org

18 Mark Todzo
19 Lexington Law Group
20 503 Divisadero Street
21 San Francisco, CA 94117
22 mtodzo@lexlawgroup.com

23 8.2. Any Party may modify the person and address to whom the notice is to be sent by
24 sending the other Parties notice by first class and electronic mail.

25 9. COURT APPROVAL

26 9.1. This Consent Judgment shall become effective on the Effective Date, provided
27 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
28 Defendant 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.

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11. ENTIRE AGREEMENT

11.1. This Consent Judgment contains the sole and entire agreement and understanding of CEH and Defendant 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 CEH and Defendant 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 of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties 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.

12. RETENTION OF JURISDICTION

12.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

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14. NO EFFECT ON OTHER SETTLEMENTS

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

15. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

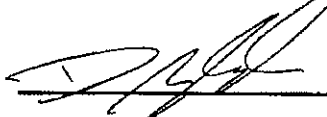
Dated: Feb 20, 2014 **CENTER FOR ENVIRONMENTAL HEALTH**



CHARLIE PIZARRO
Printed Name

ASSOCIATE DIRECTOR
Title

Dated: Feb 10, 2014 **MONARCH SPECIALTIES INC.**



David zelnicker
Printed Name

v-p operations
Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED:**

Dated: APR 15, 2014 **GEORGE C. HERNANDEZ, JR.**

Judge of the Superior Court of the State of
California, County of Alameda