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

13 LAURENCE VINO CUR,

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

**CONSENT TO JUDGMENT AS TO
DEFENDANT MARCO GROUP, INC.**

(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 defendants identified in Exhibit A (“Settling Defendants”), with Plaintiff and
5 the Settling Defendants 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 Defendants**

11 Each Settling Defendant employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California 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”) without the requisite Proposition 65 health
18 hazard 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 collectively referred to as the “Listed Chemical.” Plaintiff alleges that the
24 Listed Chemical escapes from foam padding, leading to human exposures.

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1.5 Product Description

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

1.6 Notices of Violation

Beginning in December 2012, Plaintiff served Settling Defendants and certain requisite public enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and workers in California that the Products expose users to one or more Listed Chemical. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

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 Defendants, 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. In October of 2013, Plaintiff also filed a Second Amended Complaint in the Superior Court in and for the County of Alameda augmenting and clarifying his allegations against certain defendants and Does 1 through 150.

1.8 No Admission

The Settling Defendants deny the material factual and legal allegations contained in Plaintiff's Notices and Complaints and maintain 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 a 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 any Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section

1 shall not diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and
2 duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

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

9 **2. DEFINITIONS**

10 **2.1 California Customers**

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

14 **2.2 Detectable**

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

20 **2.3 Effective Date**

21 "Effective Date" shall mean November 13, 2013.

22 **2.4 Private Label Covered Products**

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

26 **2.5 Reformulated Products**

27 "Reformulated Products" shall mean Products that contain no Detectable amount of
28 TDCPP.

1 2.6 **Reformulation Standard**

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

4 2.7 **Retailer**

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

7 **3. INJUNCTIVE RELIEF: REFORMULATION**

8 3.1 **Reformulation Commitment**

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

11 3.2 **Vendor Notification/Certification**

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

21 3.3 **Products No Longer in a Settling Defendant’s Control**

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

1 TDCPP and/or TCEP, chemicals known to the State of California to cause cancer," and request
2 that the recipient either: (a) label the Exemplar Products remaining in inventory for sale in
3 California, or to California Customers, pursuant to Section 3.5; or (b) return, at the Settling
4 Defendant's sole expense, all units of the Exemplar Product held for sale in California, or to
5 California Customers, to the Settling Defendant or a party the Settling Defendant has otherwise
6 designated. The Notification Letter shall require a response from the recipient within 20 days
7 confirming whether the Exemplar Product will be labeled or returned. The Settling Defendant
8 shall maintain records of all correspondence or other communications generated pursuant to this
9 Section for two years after the Effective Date and shall promptly produce copies of such records
10 upon Plaintiff's written request.

11 3.4 Current Inventory

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

16 3.5 Product Warnings

17 3.5.1 Product Labeling

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

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

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28 ¹ This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants' inventory as of December 31, 2013.

WARNING: This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.²

Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements set forth in this Section are addressed, including as to the required warning statement, Settling Defendants that elect not to utilize the template warnings remain free to provide a warning in any other manner meeting the requirements of 27 CCR § 25603.1.

3.5.2 Internet Website Warning

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

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

3.6 Alternatives to Interim Warnings

The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting

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

³ The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no 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 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.

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

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

8 **4. MONETARY PAYMENTS**

9 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

10 In settlement of all the claims referred to in this Consent Judgment, a Settling Defendant
11 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.⁵

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

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

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

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

1 4.1.3 Third Civil Penalty. On or before November 30, 2014, each Settling
2 Defendant shall make a third civil penalty payment in the amount identified on the Settling
3 Defendant's Exhibit A. The amount of the third penalty may be reduced according to any penalty
4 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

12 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
13 **Products Sold or Offered for Sale in California.**

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

22 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

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

1 of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
2 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies
3 to determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or
4 other authorized representative of a Settling Defendant that has exercised this election shall
5 provide Plaintiff with a written certification confirming compliance with such conditions, which
6 certification must be received by Plaintiff's counsel on or before November 15, 2014.

7 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
8 **Exemplar Products from the California Market.**

9 As shown on a Settling Defendant's Exhibit A, a portion of the second civil penalty shall be
10 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff
11 with written certification, by December 15, 2013, confirming that each individual or establishment
12 in California to which it supplied the Exemplar Product after October 28, 2011, has elected to
13 return all remaining Exemplar Products held for sale in California.⁶

14 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
15 **California of Unreformulated Inventory.**

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

21 **4.2 Representation**

22 Settling Defendant represents that the sales data and other information concerning its size,
23 knowledge of Listed Chemical, and prior reformulation and/or warning efforts, it provided to
24 Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs have relied to
25 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in

26 ⁶ For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs
27 have, prior to August 31, 2013, provided the Settling Defendants with test results from a NVLAP accredited laboratory
28 showing the presence of a Listed Chemical at a level in excess of 250 ppm pursuant to EPA testing methodologies 3545
or 8270C.

1 this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discover and present
2 to a Settling Defendant, evidence demonstrating that the preceding representation and warranty
3 was materially inaccurate, then a Settling Defendant shall have 30 days to meet and confer
4 regarding the Plaintiff's contention. Should this 30 day period pass without any such resolution
5 between the Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal
6 claim including, but not limited to, a claim for damages for breach of contract.

7 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
8 **Standard.**

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

25 ⁷ 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.

⁸ 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 from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the full
2 remedies provided pursuant to this Consent Judgment and at law.

3 **4.4 Reimbursement of Fees and Costs**

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

23 **4.5 Payment Procedures**

24 **4.5.1 Issuance of Payments.**

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

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

26 **5. CLAIMS COVERED AND RELEASED**

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

28 Plaintiff, acting on his own behalf and in the public interest, releases each 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,

1 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively,
2 “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on
3 unwarned exposures to the Listed Chemical in the Products, as set forth in the Notices.
4 *Coordinated defendant Office Depot, Inc. shall be considered a Releasee under this agreement to the extent,*
5 *and only to the extent, of Office Depot, Inc.’s sales of the Office-Stor Commercial Stacking chair. This*
6 *agreement shall not release or otherwise relieve Office Depot, Inc. of any legal liability or other obligation for*
7 *Office Depot, Inc.’s sale of any padded furniture other than the Office-Stor Commercial Stacking chair*
8 *supplied to Office Depot, Inc. by Marco Group, Inc.* Compliance with the terms of this Consent
9 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
10 Chemical from the Products, as set forth in the Notices. The Parties further understand and agree
11 that this Section 5.1 release shall not extend upstream to any entities, other than Settling
12 Defendants, that manufactured the Products or any component parts thereof, or any distributors
13 or suppliers who sold the Products or any component parts thereof to a Settling Defendant, except
14 that entities upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered
15 Product shall be released as to the Private Labeled Covered Products offered for sale in California,
16 or to California Customers, by the Retailer in question.

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 TDCPP
23 and/or TDBPP in the Products (as delineated on a Settling Defendant’s Exhibit A) manufactured,
24 imported, distributed, or sold by Settling Defendants prior to the Effective Date. The Parties
25 further understand and agree that this Section 5.2 release shall not extend upstream to any entities
26 that manufactured the Products, or any component parts thereof, or any distributors or suppliers
27 who sold the Products, or any component parts thereof to Settling Defendants, except that entities
28 upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered Product shall be

1 released as to the Private Labeled Covered Products offered for sale in California by the Retailer in
2 question. Nothing in this Section affects Plaintiff's rights to commence or prosecute an action
3 under Proposition 65 against a Releasee that does not involve a Settling Defendant's Products.

4 **5.3 Settling Defendants' Release of Plaintiff**

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

11 **6. COURT APPROVAL**

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

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7. GOVERNING LAW

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

8. NOTICES

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

To Settling Defendants:

At the address shown on Exhibit A

To Plaintiff:

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

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

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

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

11.1 Plaintiff and Settling Defendant(s) agree to support the entry of this agreement as a
3 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
4
5 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
6 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff
7 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and each
8 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.
9
10 This provision is a material component of the Consent Judgment and shall be treated as such in the
11 event of a breach.

12. MODIFICATION

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

13. AUTHORIZATION

17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective Parties and have read, understood, and agree to all of the terms and conditions of this
19 Consent Judgment.
20

21 AGREED TO:

22 Date: November 4, 2013

23 

24 Plaintiff Laurence Vinocur

21 AGREED TO:

22 Date: October 31, 2013

23 

24 Richard Davidson
25 Settling Defendant Marco Group, Inc.

EXHIBIT A

MARCO GROUP, INC.

Listed Chemical: TDCPP

Product: padded, upholstered furniture, including office/stacking chairs

Exemplar Product: Office-Stor Commercial Stacking Chair

Additional Product: none

Penalty 1 (Section 4.1.1) (due November 13, 2013): \$15,000

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 Releasees: Office Depot, Inc. (Office Depot, Inc. shall be considered a Releasee under this agreement to the extent, and only to the extent, of Office Depot, Inc.'s sales of the Office-Stor Commercial Stacking chair. This agreement shall not release or otherwise relieve Office Depot, Inc. of any legal liability or other obligation for Office Depot, Inc.'s sale of any padded furniture other than the Office-Stor Commercial Stacking chair supplied to Office Depot, Inc. by Marco Group, Inc.)

Section 4.4 fee and costs reimbursement (due November 13, 2013): \$35,000

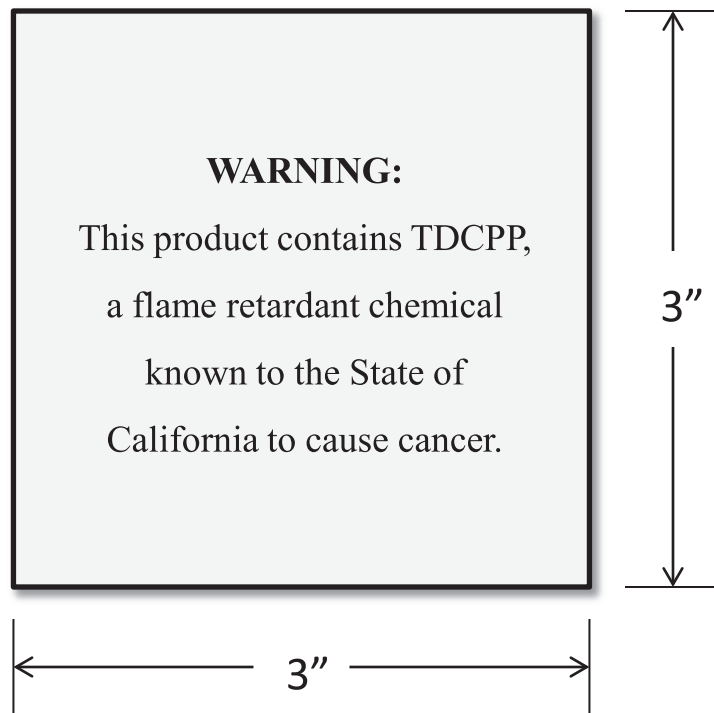
Supplemental fee for additional Releasees: (due November 13, 2013): \$8,000

Person(s) to receive Notices pursuant to Section 8

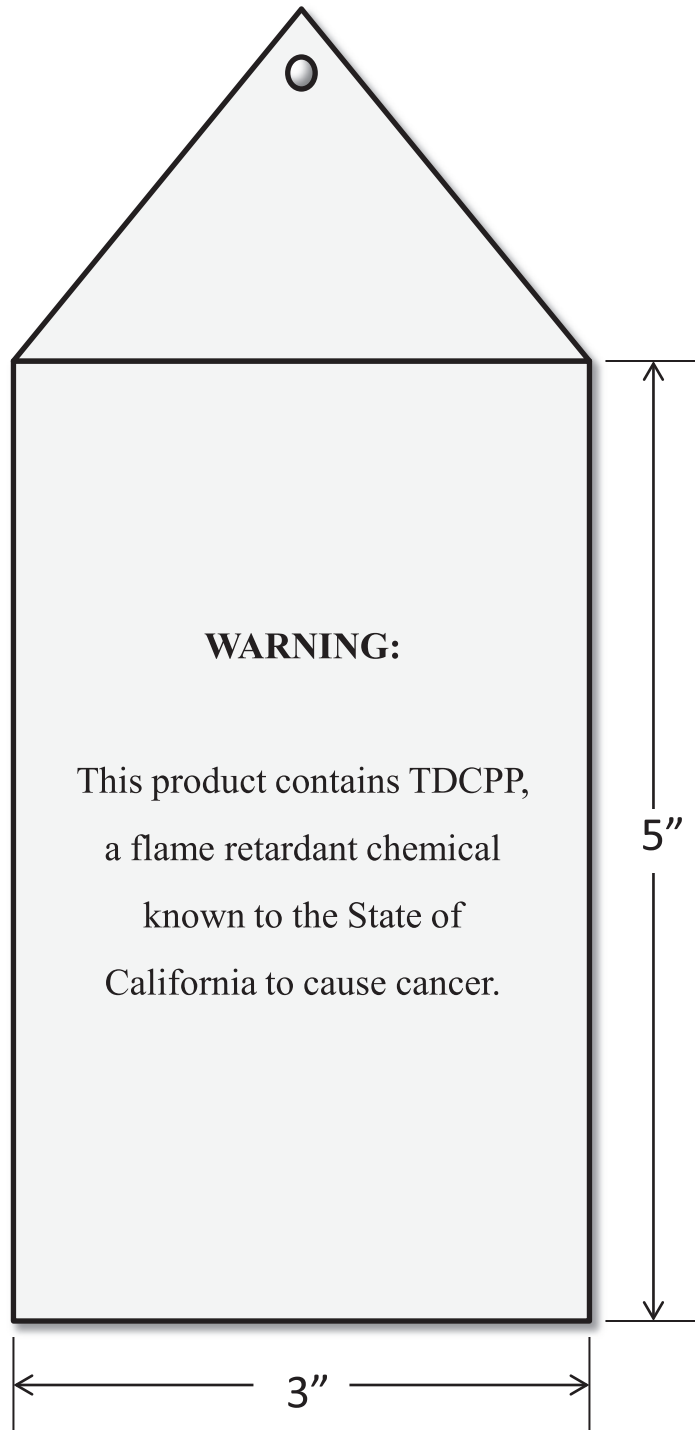
Richard Davidson
Marco Group, Inc.
5400 Doniphan Drive
Neosho, MO 64850

EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to
cause cancer.

11"

INSTRUCTIONS:

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