

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1. Parties

This settlement agreement (“Settlement Agreement”) is entered into by and between Laurence Vinocur (“Vinocur”) on the one hand, and IKEA Holding US, Inc. and IKEA North America Services, LLC (collectively, “IKEA”) on the other hand, with Vinocur and IKEA collectively referred to as the “Parties.”

Vinocur is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. IKEA is a company that employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”).

#### 1.2. General Allegations

Vinocur alleges that IKEA has manufactured, distributed, and/or sold in the State of California changing pads with polyurethane foam containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”). TDCPP is a flame retardant added to both soft and rigid polyurethane foam, which is used as cushioning in a variety of products, including changing pads.

Pursuant to Proposition 65, on October 28, 2011, California identified and listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

#### 1.3. Product Description

This Settlement Agreement covers changing pads including, but not limited to, the Gullunge Changing Pad (455.689.00), that are manufactured, imported, distributed, and/or sold in the State of California by IKEA (“Products”). In the event that IKEA elects to accept the credit for Nationwide Reformulation set forth in Section 3.1.3, then the definition of Products shall,

after November 1, 2013, include all changing pads that are manufactured, imported, shipped, sold, and/or distributed in the United States by IKEA.

**1.4. Notice of Violation**

On or about January 28, 2013, Vinocur served IKEA and the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of Vinocur’s allegation that IKEA was in violation of Proposition 65 for failing to warn its customers and consumers in the State of California that its changing pads expose users to TDCPP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission**

IKEA denies the material factual and legal allegations contained in the Notice, and maintains that all of the products that it has manufactured, imported, distributed and/or sold in the State of California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by IKEA of any fact, finding, conclusion of law, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by IKEA of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by IKEA. This Section shall not, however, diminish or otherwise affect IKEA'S obligations, responsibilities and duties under this Settlement Agreement.

**1.6. Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean September 30, 2013.

## **2. INJUNCTIVE RELIEF**

### **2.1. Reformulation of Products Containing Listed Flame Retardants<sup>1</sup>**

IKEA agrees, as of March 31, 2014, to only manufacture, import, ship, sell, and distribute for sale in California, Products that contain no greater than 25 parts per million (“ppm,” or 0.0025 % by weight) each of TDCPP, tris(2,3-dibromopropyl)phosphate (“TDBPP”), or tris(2-chlorethyl) phosphate (“TCEP”) (“Listed Flame Retardants”) in any Products (including in the polyurethane foam or other filling material components of any Products) when analyzed pursuant to EPA testing methodologies 3545 and 8270 (“Reformulation Standard”).

### **2.2. Violations of the Reformulation Standard<sup>2</sup>**

In the event that Vinocur identifies a Product manufactured, imported, shipped, sold, and/or distributed in California after the Effective Date that contains the Listed Flame Retardants in amounts greater than the Reformulation Standard but less than 200 ppm each (“Noncompliant Product”), then Vinocur shall notify IKEA in writing of the violation of the Reformulation Standard, and shall provide the test result(s) that demonstrate the exceedance of the standard. Upon receipt of Vinocur’s notice, IKEA shall:

- a) Promptly provide to Vinocur the name, address, and telephone number of the supplier of the Noncompliant Product or the component of the Noncompliant Product found to be in violation of the Reformulation Standard, as well as test results and any correspondence showing that, before production of the Noncompliant Product or component, IKEA obtained sample results from that supplier which showed that the Noncompliant Product or component was not in violation of the Reformulation Standard;
- b) Send correspondence to the supplier of the Noncompliant Product or component notifying the supplier of the violation of the Reformulation Standard and

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<sup>1</sup> In the event that IKEA elects to accept the credit for Nationwide Reformulation set forth in Section 3.1.3, then the requirements of this Section 2.1 shall extend to changing pads manufactured, imported, shipped, sold, and distributed throughout the United States.

<sup>2</sup> In the event that IKEA elects to accept the credit for Nationwide Reformulation set forth in Section 3.1.3, then the requirements of this Section 2.2 shall extend to changing pads manufactured, imported, shipped, sold, and distributed throughout the United States.

demanding that the Reformulation Standard be achieved; and

c) Remove the Noncompliant Product from sale in California.

Within fourteen days of Vinocur's demand, IKEA's correspondence with the supplier of the Noncompliant Product shall be provided to Vinocur by IKEA.

Notwithstanding this provision, the procedure described in this Section 2.2 for violations of the Listed Flame Retardant Reformulation Standard shall in no case be available for Products containing any one or more of the Listed Flame Retardants each in an amount greater than 200 ppm.

IKEA may elect to exercise the procedures described by this Section 2.2 once for any one supplier or two times altogether, and Vinocur agrees in those instances to forgo enforcement for breach of the injunctive relief agreed to in this Settlement Agreement, subject to IKEA's compliance with this Section 2.2. Upon any other or subsequent violation of the terms of this Settlement Agreement Vinocur may pursue all remedies available at law to enforce the terms of this agreement.

In the event that Vinocur identifies three or more Products in violation of the Reformulation Standard, the Credit for Accelerated Reformulation, if received by IKEA, is forfeited and IKEA shall, promptly upon written notification from Vinocur, remit payment to Vinocur and OEHHA of the balance of the Second Civil Penalty.

In no case may the procedure described in this Section 2.2 be used after November 1, 2014.

### **3. MONETARY PAYMENTS**

#### **3.1. Civil Penalties Pursuant to Health & Safety Code Section 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, IKEA shall pay a total of \$60,000 in civil penalties in accordance with this Section. Each penalty payment shall be apportioned in accordance with Health & Safety Code section 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount to be remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent

(25%) of the amount to be remitted to Vinocur. IKEA shall provide civil penalty payments in two checks as follows: (a) to “OEHHA” and (b) to “The Chanler Group in Trust for Laurence Vinocur.” All penalty payments shall be delivered to the addresses listed in Section 3.3.1. The certifications in lieu of full payment required by this Section are material terms, and time is of the essence.

**3.1.1. Initial Civil Penalty**

On or before the Effective Date, IKEA shall pay an initial civil penalty of \$22,000.

**3.1.2. Second Civil Penalty and Credit for Accelerated Reformulation**

On or before the November 1, 2013, IKEA shall pay a second civil penalty of \$24,000.

The second civil penalty shall be waived in its entirety, if an officer of IKEA provides Vinocur with written certification on or before the November 1, 2013, confirming that as of the Effective Date and thereafter IKEA has only manufactured, imported, shipped, sold, and/or distributed for sale in California Products that achieve the Reformulation Standard, and shall in the future only manufacture, import, ship, sale, and/or distribute for sale in California Products that achieve the Reformulation Standard.

**3.1.3. Final Civil Penalty and Credit for Nationwide Reformulation**

On or before February 1, 2014, IKEA shall pay a final civil penalty of \$14,000.

The Final Civil penalty shall be waived in its entirety, if an officer of IKEA provides Vinocur with written certification, confirming that as of November 1, 2013, IKEA has only manufactured, imported, shipped, sold, and/or distributed for sale in the United States Products that achieve the Reformulation Standard, and shall in the future only manufacture, import, ship, sale, and/or distribute for sale in the United States Products that achieve the Reformulation (“Nationwide Reformulation”). Such certification must be received by Vinocur on or before February 1, 2014.

**3.1.4. Sales Data**

IKEA, and any other entity released by this Agreement, understands that the sales data provided by IKEA to Vinocur is a material factor upon which Vinocur has relied to determine the

amount of civil penalties assessed pursuant to Health & Safety Code section 25249.7 in this Agreement. To the best of IKEA's knowledge the sales data provided by IKEA to Vinocur is full and complete, and is a true and accurate reflection of any and all sales of the Products in California during the relevant period.

For purposes of the penalty assessment under this Agreement, Vinocur is relying entirely upon IKEA and its counsel for accurate, good faith reporting to Vinocur of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Vinocur discovers and presents to IKEA evidence that prior to execution of this Agreement Products have been distributed by IKEA in sales volumes materially different than those identified by IKEA prior to execution of this Agreement, then IKEA may be liable for an additional penalty amount as well as additional attorney fees expended by Vinocur in the public interest. In the event Vinocur finds evidence that the Products have been distributed by IKEA in sales volumes materially different than those identified by IKEA, Vinocur shall notify IKEA of its finding and provide IKEA with copies of evidence to support its findings and a written demand for additional penalties and attorney fees under this Section. After service of such demand, IKEA shall have thirty (30) days to meet and confer regarding the demand and submit such payment to Vinocur in accordance with the method of payment of penalties identified in this Section 3. Should this thirty (30) day period pass without any such resolution between the Parties and payment of such additional penalties and fees, Vinocur shall be entitled to file a formal legal claim for damages for breach of this contract and the prevailing party in a breach of contract action shall be entitled to all reasonable attorney fees and costs relating to that action.

### **3.2. Reimbursement of Vinocur's Fees and Costs**

The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, IKEA expressed a desire to resolve the fee and cost issue. The Parties then attempted to (and did) reach an accord on the compensation due to

Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this agreement. Under these legal principles, IKEA shall pay \$39,000 for fees and costs incurred as a result of investigating, bringing this matter to Ikea's attention, and negotiating a settlement in the public interest. IKEA shall make the check payable to "The Chanler Group" and shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1.1.

Each time that IKEA exercises the procedure described in Section 2.2, IKEA shall at the same time remit payment of \$3,000 to The Chanler Group to cover the fees and costs associated with identifying such violation and bringing it to the attention of IKEA.

### **3.3. Payment Procedures**

#### **3.3.1. Issuance of Payments**

##### **3.3.1.1. Payments to Vinocur**

All payments owed to Vinocur and his counsel, pursuant to Sections 3.1 and 3.2 shall be delivered to the following payment address:

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

##### **3.3.1.2. Payments to OEHHA**

All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1, shall be delivered directly to OEHHA (Subject Line: "Proposition 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

### **3.3.2. Proof of Payment**

A copy of each check payable to OEHHA shall be mailed to The Chanler Group at the address set forth in Section 3.3.1.1, as proof of payment to OEHHA.

### **3.3.3. Tax Documentation**

IKEA shall issue a separate 1099 form for each payment required by this Section to: (a) Vinocur, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95812-4010; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 3.3.1.1.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1. Vinocur’s Private Release of Ikea**

This Settlement Agreement is a full, final, and binding resolution between Vinocur and IKEA of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees only (and not on behalf of the public interest), against IKEA, its parents, subsidiaries, directors, officers, employees, attorneys, and each entity to whom IKEA directly or indirectly distributes or sells the Products including, but not limited to, customers (collectively, “Releasees”), based on the alleged failure to warn about exposures to TDCPP, TDBPP, and TCEP, contained in the Products manufactured, sold, and/or distributed for sale by IKEA in the State of California before the Effective Date as set forth in the Notice. This release does not apply to any entities upstream of IKEA.

### **4.2. IKEA’s Release of Vinocur**

IKEA waives any and all claims against Vinocur, his attorneys, and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by

Vinocur and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it and the Releasees in this matter and/or with respect to the Products.

**5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the complete execution of this Settlement Agreement by the Parties, IKEA may send Vinocur a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, adding a release in the public interest for exposures to TDCPP occurring before the Effective Date and without a warning pursuant to Proposition 65, as alleged in the Notice, and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to California Health & Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Vinocur agrees to reasonably cooperate with IKEA and to use his best efforts, and that of his counsel, to obtain approval of the Parties' settlement by a Superior Court in California and an entry of judgment in accordance with the terms set forth herein.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, IKEA will reimburse Vinocur and his counsel for the reasonable fees and costs incurred in drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement, in an amount not to exceed \$18,000, exclusive of fees and costs that may be incurred on any appeal. Within ten (10) days after its receipt of monthly invoices from Vinocur for work performed under this Section, IKEA will remit payment to The Chanler Group at the address set forth in Section 3.3.1.1.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Settlement Agreement 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 Settlement Agreement 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 IKEA shall provide written notice to Vinocur of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve IKEA or any Releasee from any obligation to comply with any pertinent state or federal law, including all toxic control laws.

## **8. NOTICES**

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

For IKEA:

John J. Allen  
Allen Matkins Leck Gamble Mallory & Natsis LLP  
515 South Figueroa Street, 9th Floor  
Los Angeles, CA 90071-3398

For Vinocur:

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/PDF SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

Vinocur agrees to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: August 30, 2013

Date: \_\_\_\_\_

By:   
Laurence Vinocur

By: \_\_\_\_\_  
\_\_\_\_\_, TITLE  
IKEA Holding US, Inc.  
IKEA North America Services, LLC

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**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 9/3/2013

By: \_\_\_\_\_  
Laurence Vinocur

By: [Signature]  
\_\_\_\_\_, TITLE Secretary  
IKEA Holding US, Inc.  
IKEA North America Services, LLC