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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
16

17 LAURENCE VINO CUR,
18 Plaintiff,
19 v.
20 ERGONOM CORPORATION, CALIFORNIA
OFFICE FURNITURE, INC.; et al.
21 Defendants.
22
23
24
25

Case No. RG13675513
Assigned for All Purposes to
Judge George C. Hernandez, Department 17

**[PROPOSED]
CONSENT JUDGMENT
AS TO DEFENDANT
ERGONOM CORPORATION**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: April 15, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Plaintiff”) and Ergonom Corporation dba ERG International (“Ergonom”), with Plaintiff and
5 Ergonom collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Plaintiff is an individual residing in the State of California who seeks to promote awareness
8 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Ergonom**

11 Ergonom employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 **1.4.1** Plaintiff alleges that Ergonom manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings.

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

25 **1.5 Product Description**

26 The categories of products that are covered by this Consent Judgment as to Ergonom are
27 identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
28 manufactured for use as a component of another product, such as seat cushions, but which is not

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

3 1.6 Notice of Violation

4 On February 8, 2013, Plaintiff served Ergonom, California Office Furniture, Inc. and
5 requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided
6 the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to
7 warn customers, consumers, and workers in California that padded upholstered chairs expose users
8 to the Listed Chemical.

9 On October 4, 2013, Vinocur also served Ergonom and public enforcers with a document
10 entitled “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that provided
11 Ergonom and such public enforcers with notice of alleged violations of Proposition 65 for failing to
12 warn consumers, consumers, and workers in California that upholstered furniture as well as padded
13 upholstered chairs exposed users in California to the Listed Chemical. Until the sixty-sixth (66th)
14 day after the date of issuance of the Supplemental Notice, the definition of Products herein shall
15 only include padded upholstered chairs containing the Listed Chemical. After sixty-six (66) days
16 have passed from the date of the Supplemental Notice, the definition of Products herein shall be
17 deemed to also include upholstered furniture containing the Listed Chemical, provided that no
18 authorized public prosecutor has, prior to that date, filed a Proposition 65 enforcement action based
19 on the Supplemental Notice. If a public prosecutor intervenes before the 66th day, any funds paid
20 by Ergonom pursuant to Exhibit A, Section V.B. and Section VI.B in relation to the Supplemental
21 Notice will be refunded in their entirety to Ergonom. The Notice and Supplemental Notice are
22 referred to collectively herein as the “Notices.” To the best of the Parties’ knowledge, no public
23 enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

24 1.7 Complaint

25 On April 15, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County of
26 Alameda against Ergonom, California Office Furniture, Inc. and Does 1 through 150, *Laurence*
27 *Vinocur v. Ergonom Corporation, et al.*, Case No. RG 13-675513, alleging violations of
28 Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the

1 Products. Following the expiration of 66 days after the issuance of the Supplemental Notice
2 referred to in Section 1.6 above, the Complaint shall be deemed amended to include allegations that
3 the Products herein described contained the Listed Chemical.

4 **1.8 No Admission**

5 Ergonom denies the material factual and legal allegations contained in Plaintiff's Notices
6 and Complaint and maintain that all products that it has manufactured, imported, distributed, and/or
7 sold in California, including the Products, have been and are in compliance with all laws. Nothing
8 in this Consent Judgment shall be construed as an admission by Ergonom of any fact, finding,
9 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
10 constitute or be construed as an admission by Ergonom of any fact, finding, conclusion, issue of
11 law, or violation of law. However, this Section shall not diminish or otherwise affect Ergonom's
12 obligations, responsibilities, and duties under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Ergonom as to the allegations contained in the Complaint, that venue is proper in
16 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
17 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

18 **2. DEFINITIONS**

19 **2.1 California Customers**

20 "California Customer" shall mean any customer that Ergonom reasonably understands is
21 located in California, has a California warehouse or distribution center, maintains a place of
22 business open to the public or a retail outlet in California, or has made internet sales into California
23 on or after January 1, 2011.

24 **2.2 Detectable**

25 "Detectable" shall mean containing no more than 25 ppm for each of TDCPP and TCEP
26 when analyzed by a laboratory accredited by the State of California, a federal agency, American
27 Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board (ANAB) –
28 ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS), Laboratory

1 Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), International
2 Laboratory Accreditation Cooperation (ILAC), or similar nationally recognized accrediting
3 organization now or in the future (such laboratory referred hereinafter as an “Accredited Lab”)
4 pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by
5 federal or state agencies to determine the presence, and measure the quantity, of TDCPP and/or
6 tris(2-chloroethyl) phosphate (“TCEP”) in a solid substance.

7 **2.3 Effective Date**

8 “Effective Date” shall mean October 15, 2013.

9 **2.4 Private Label Covered Products**

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

13 **2.5 Reformulated Products**

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

16 **2.6 Reformulation Standard**

17 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
18 TDCPP and TCEP.

19 **2.7 Retailer**

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

22 **3. INJUNCTIVE RELIEF: REFORMULATION**

23 **3.1 Reformulation Commitment**

24 Commencing on March 31, 2014, Ergonom shall not manufacture or import for distribution
25 or sale to California Customers, or cause to be manufactured or imported for distribution or sale to
26 California Customers, any Products that are not Reformulated Products.

1 **3.2 Vendor Notification/Certification**

2 On or before the Effective Date, Ergonom shall provide written notice to all of its then-
3 current vendors of the Products that will be sold or offered for sale in California, or to California
4 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
5 Products for potential sale in California. In addressing the obligation set forth in the preceding
6 sentence, Ergonom shall not employ statements that will encourage a vendor to delay compliance
7 with the Reformulation Standard. Ergonom shall subsequently obtain written certifications, no later
8 than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products
9 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications
10 shall be held by Ergonom for at least two years after their receipt and shall be made available to
11 Plaintiff upon request.

12 **3.3 Products No Longer in Ergonom’s Control**

13 No later than 45 days after the Effective Date, Ergonom shall send a letter, electronic or
14 otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after
15 October 28, 2011, supplied the item for use or resale in California described as an exemplar in the
16 Notice Ergonom received from Plaintiff (“Exemplar Product”); and (2) any California Customer
17 and/or Retailer that Ergonom reasonably understands or believes had any inventory for use or resale
18 in California of Exemplar Products as of the Notice’s date. The Notification Letter shall advise the
19 recipient that the Exemplar Product “contains TDCPP, a chemical known to the State of California
20 to cause cancer,” and request that the recipient either: (a) label the Exemplar Products remaining in
21 inventory for sale in California, or to California Customers, pursuant to Section 3.5; or (b) return, at
22 Ergonom’s sole expense, all units of the Exemplar Product held for sale in California, or to
23 California Customers, to Ergonom or a party Ergonom has otherwise designated. The Notification
24 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar
25 Product will be labeled or returned. Ergonom shall maintain records of all correspondence or other
26 communications generated pursuant to this Section for two years after the Effective Date and shall
27 promptly produce copies of such records upon Plaintiff’s written request.

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1 set forth in this Section are addressed, including as to the required warning statement and method of
2 transmission as set forth above, Ergonom remains free not to utilize the template warnings.

3 **3.5.2 Internet Website Warning**

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

9 The warning text shall be the same type size or larger than the Product description text:

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

12 **3.6 Alternatives to Interim Warnings**

13 The obligations of Ergonom under Section 3.3 shall be relieved provided Ergonom certifies
14 on or before December 15, 2013 that only Exemplar Products meeting the Reformulation Standard
15 will be offered for sale in California, or to California Customers, after December 31, 2013. The
16 obligations of Ergonom under Section 3.4 shall be relieved provided Ergonom certifies on or before
17 December 15, 2013 that, after June 30, 2014, it will only distribute or cause to be distributed for
18 sale in, or sell in, California, or to California Customers, Products (i.e., Products beyond the
19 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
20 Section are material terms and time is of the essence.

21 **4. MONETARY PAYMENTS**

22 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

23 In settlement of all the claims referred to in this Consent Judgment, Ergonom shall pay the
24 civil penalties shown on Exhibit A in accordance with this Section. Each penalty payment will be
25 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75%
26 of the funds remitted to the California Office of Environmental Health Hazard Assessment

27
28 ³Footnote 1, *supra*, applies in this context as well.

1 (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for Laurence Vinocur.”

2 Each penalty payment shall be delivered to the addresses listed in Section 4.5 below. Ergonom
3 shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and
4 owing under this Section that are not received within two business days of the due date.

5 4.1.1 Initial Civil Penalty. On or before the Effective Date, Ergonom shall make
6 an initial civil penalty payment in the amount identified on Exhibit A.

7 4.1.2 Second Civil Penalty. On or before January 15, 2014, Ergonom shall make a
8 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
9 penalty may be reduced according to any penalty waiver for which Ergonom is eligible under
10 Sections 4.1.4(i) and 4.1.4(iii), below.

11 4.1.3 Third Civil Penalty. On or before November 30, 2014, Ergonom shall make
12 a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
13 penalty may be reduced according to any penalty waiver for which Ergonom is eligible under
14 Sections 4.1.4(ii) and 4.1.4(iv), below.

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

21 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
22 **Products Sold or Offered for Sale in California.**

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

3 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

4 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
5 Ergonom has agreed that, as of March 31, 2014, and continuing into the future, it shall only
6 manufacture or import for distribution or sale in California or cause to be manufactured or imported
7 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-
8 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million
9 ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product,
10 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
11 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
12 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
13 representative of Ergonom that has exercised this election shall provide Plaintiff with a written
14 certification confirming compliance with such conditions, which certification must be received by
15 Plaintiff's counsel on or before November 15, 2014.

16 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
17 **Exemplar Products from the California Market.**

18 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
19 other authorized representative of Ergonom provides Plaintiff with written certification, by
20 December 15, 2013, confirming that each individual or establishment in California to which it
21 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar
22 Products held for sale in California.⁴

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27 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Plaintiff has, prior to October 31, 2013, provided Ergonom with test results from a NVLAP
accredited laboratory showing the presence of TDCPP at a level in excess of 250 ppm pursuant to
EPA testing methodologies 3545 or 8270C.

1 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**
2 **California of Unreformulated Inventory.**

3 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
4 other authorized representative of Ergonom provides Plaintiff with written certification, on or
5 before November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to
6 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
7 Products.

8 4.2 **Representations**

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

19 Ergonom further represents that in implementing the requirements set forth in Sections 3.1
20 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
21 reformulation of its Products and Additional Products on a nationwide basis and not employ
22 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
23 goods intended for sale to California Consumers.

24 4.3 **Stipulated Penalties for Certain Violations of the Reformulation**
25 **Standard.**

26 If Plaintiff provides notice and appropriate supporting information to Ergonom that levels of
27 a Listed Chemical in excess of the Reformulation Standard have been detected in one or more
28 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a

1 deadline for meeting the Reformulation Standard has arisen for Ergonom under Sections 3.1 or 3.6
2 above, Ergonom may elect to pay a stipulated penalty to relieve any further potential liability under
3 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
4 question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000
5 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
6 excess of the Reformulation Standards but under 250 ppm.⁶ Plaintiff shall further be entitled to
7 reimbursement of their associated expense in an amount not to exceed \$5,000 regardless of the
8 stipulated penalty level. Ergonom under this Section must provide notice and appropriate
9 supporting information relating to the purchase (e.g. vendor name and contact information
10 including representative, purchase order, certification (if any) received from vendor for the
11 exemplar or subcategory of products), test results, and a letter from a company representative or
12 counsel attesting to the information provided, to Plaintiff within 30 calendar days of receiving test
13 results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the
14 full remedies provided pursuant to this Consent Judgment and at law.

15 4.4 Reimbursement of Fees and Costs

16 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
18 this fee reimbursement issue to be resolved after the material terms of the agreement had been
19 settled. Shortly after the other settlement terms had been finalized, Ergonom expressed a desire to
20 resolve the fee and cost issue. Ergonom then agreed to pay Plaintiff and his counsel under general
21 contract principles and the private attorney general doctrine codified at California Code of Civil
22 Procedure § 1021.5 for all work performed through the mutual execution of this agreement,
23

24 _____
25 ⁵ This Section shall not be applicable where the vendor in question had previously been
26 found by Ergonom to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
28 penalty for a second exceedance by Ergonom's vendor at a level between 100 and 249 ppm shall
not be available after July 1, 2015.

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

1 including the fees and costs incurred as a result of investigating, bringing this matter to Ergonom's
2 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In
3 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of
4 time Plaintiff's counsel will incur to monitor various provisions in this agreement over the next two
5 years, with the exception of additional fees that may be incurred pursuant to Ergonom's election in
6 Section 11. Ergonom more specifically agreed, upon the Court's approval and entry of this Consent
7 Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on Exhibit A. Ergonom
8 further agreed to tender and shall tender its full required payment under this Section to a trust
9 account at The Chanler Group (made payable "In Trust for The Chanler Group") within two
10 business days of the Effective Date. Such funds shall be released from the trust account upon the
11 Court's approval and entry of this Consent Judgment.

12 **4.5 Payment Procedures**

13 4.5.1 Issuance of Payments.

14 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
15 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
22 Sections 4.1 and 4.3 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties")
23 at one of the following addresses, as appropriate:

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 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

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

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

11 **5. CLAIMS COVERED AND RELEASED**

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

13 Plaintiff, acting on his own behalf and in the public interest, releases Ergonom, its parents,
14 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
15 attorneys, and each entity to whom Ergonom directly or indirectly distributes or sells Products,
16 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
17 franchisees, cooperative members, and licensees, including California Office Furniture, Inc.
18 (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective
19 Date based on unwarned exposures to the Listed Chemical in the Products manufactured, imported,
20 distributed and/or sold by Ergonom, as set forth in the Notice and, after the expiration of 66 days
21 after the issuance of the Supplemental Notice, the Notices. Upon entry of judgment in accordance
22 with the terms of the Consent Judgment, Plaintiff shall file a Request for Dismissal, without
23 prejudice, of the Complaint as to California Office Furniture, Inc. Compliance with the terms of
24 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the
25 Listed Chemical from the Products, as set forth in the Notice and, after the expiration of 66 days
26 after the issuance of the Supplemental Notice, the Notices. The Parties further understand and
27 agree that this Section 5.1 release shall not extend upstream to any entities, other than Ergonom,
28 that manufactured the Products or any component parts thereof, or any distributors or suppliers who

1 sold the Products or any component parts thereof to Ergonom, except that any entity upstream of
2 Ergonom that is a Retailer of a Private Labeled Covered Product shall be released as to the Private
3 Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer
4 in question.

5 **5.2 Plaintiff's Individual Releases of Claims**

6 Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a
7 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
8 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
9 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
10 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
11 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
12 delineated on Exhibit A) manufactured, imported, distributed, or sold by Ergonom prior to the
13 Effective Date.⁷ The Parties further understand and agree that this Section 5.2 release shall not
14 extend upstream to any entities that manufactured the Products or Additional Products, or any
15 component parts thereof, or any distributors or suppliers who sold the Products or Additional
16 Products, or any component parts thereof to Ergonom, except that any entities upstream of
17 Ergonom that is a Retailer of a Private Labeled Covered (or Additional) Product shall be released as
18 to the Private Labeled Covered (or Additional) Products offered for sale in California by the
19 Retailer in question. Nothing in this Section affects Plaintiff's rights to commence or prosecute an
20 action under Proposition 65 against a Releasee that does not involve Ergonom's Products or
21 Additional Products.

22 **5.3 Ergonom's Release of Plaintiff**

23 Ergonom, on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and assignees, hereby waives any and all claims against Plaintiff and his attorneys and
25 other representatives, for any and all actions taken or statements made (or those that could have
26

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

1 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course
2 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
3 respect to the Products and Additional Products (as defined in Section 11.1 and delineated on
4 Exhibit A).

5 **6. COURT APPROVAL**

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

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California.
23 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
24 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
25 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
26 inapplicable by reason of law generally as to the Products, then Ergonom may provide written
27 notice to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant
28 to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

1 Nothing in this Consent Judgment shall be interpreted to relieve Ergonom from any obligation to
2 comply with any pertinent state or federal law or regulation.

3 **8. NOTICES**

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

8 To Settling Defendants:

To Plaintiff:

9 At the address shown on Exhibit A

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

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

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

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

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

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

22 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

23 11.1 In addition to the Products, where Ergonom has identified on Exhibit A additional
24 products that contain the Listed Chemical and that are sold or offered for sale by it in California, or
25 to California Customers, (“Additional Products”), then by no later than October 31, 2013, Ergonom
26 may provide Plaintiff with additional information or representations necessary to enable them to
27 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &
28 Safety Code § 25249.7, that includes the Additional Products. Polyurethane foam that is supplied,

1 shaped or manufactured for use as a component of a product, such as padded upholstered chairs, is
2 specifically excluded from the definition of Additional Products and shall not be identified by
3 Ergonom on Exhibit A as an Additional Product. Except as agreed upon by Plaintiff, Ergonom
4 shall not include a product, as an Additional Product, that is the subject of an existing 60-day notice
5 issued by Plaintiff or any other private enforcer at the time of execution. After receipt of the
6 required information, Plaintiff agrees to issue a supplemental 60-day notice in compliance with all
7 statutory and regulatory requirements for the Additional Products. Plaintiff will, and in no event
8 later than October 1, 2014, prepare and file an amendment to this Consent Judgment to incorporate
9 the Additional Products within the defined term “Products” and serve a copy thereof and its
10 supporting papers (including the basis for supplemental stipulated penalties, if any) on the Office of
11 the California Attorney General; upon the Court’s approval and finding that the supplemental
12 stipulated penalty amount, if any, is reasonable, the Additional Products shall become subject to
13 Section 5.1 in addition to Section 5.2. Ergonom shall, at the time it elects to utilize this Section and
14 tenders the additional information or representations regarding the Additional Products to Plaintiff,
15 tender to The Chanler Group’s trust account an amount not to exceed \$8,750 as stipulated penalties
16 and attorneys’ fees and costs incurred by Plaintiff in issuing the new notice and engaging in other
17 reasonably related activities, which may be released from the trust as awarded by the Court upon
18 Plaintiff’s application. Any fee award associated with the modification of the Consent Judgment to
19 include further Additional Products shall not offset any associated supplemental penalty award, if
20 any. (Any tendered funds remaining in the trust thereafter shall be refunded to Ergonom within 15
21 days). Such payment shall be made to “in trust for The Chanler Group” and delivered as per
22 Section 4.5.1(a) above.

23 11.2 Plaintiff and Ergonom agree to support the entry of this agreement as a Consent
24 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
25 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
26 is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft and file.
27 If any third party objection to the noticed motion is filed, Plaintiff and Ergonom shall work together
28

1 to file a reply and appear at any hearing before the Court. This provision is a material component
2 of the Consent Judgment and shall be treated as such in the event of a breach.

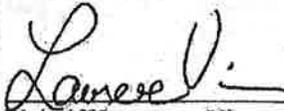
3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

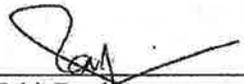
8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood, and agree to all of the terms and conditions of this
10 Consent Judgment.

11 AGREED TO:

12 
13 _____
14 Plaintiff Laurence Vinocur

15 Date: October 9, 2013

AGREED TO:

16 
17 _____
18 Roy Zaki, President
19 Defendant Ergonom Corporation
20 dba ERG International

21 Date: October 11, 2013

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EXHIBIT A

I. Name of Settling Defendant (Mandatory)

Ergonom Corporation dba ERG International
361 North Bernoulli Circle
Oxnard, CA 93030

II. Names of Releasees (Optional; May be Partial)

California Office Furniture, Inc.
1724 10th Street
Sacramento, CA 95811

III. Types of Covered Products Applicable to Ergonom
(Check All That Match 60-Day Notice or Supplemental Notice Received)

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

Upholstered furniture

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

Car seats, strollers

Other (specify): Foam-filled padded upholstered chairs.

IV. Types of Additional Products Ergonom Elects to Address (if any):

Upholstered furniture

V. Ergonom Corporation's Required Settlement Payments

A. Penalties for Ergonom as a De Minimis Defendant are \$53,000, as follows:

\$15,000 initial payment due on or before the Effective Date;

\$24,000 second payment due on or before January 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iv).

B. Additional Civil Penalties:

\$3,750 supplemental civil penalty for the Additional Type of Covered Products identified as Upholstered Furniture in Exhibit A, Section IV and a Supplemental 60-Day Notice of Violation received by Ergonom.

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

A. Fees and Costs for Ergonom Corporation as a De Minimis Settling Defendant are: \$35,000.

B. Additional Fees and Costs:

\$8,000 supplemental fee for each entity who has received a 60-Day Notice of Violation issued by Plaintiff before the Effective Date that is released by Ergonom's participation in the Consent Judgment.

\$5,000 supplemental fee for the Supplemental 60-Day Notice of Violation issued by Plaintiff on October 4, 2013 that is released by Ergonom's participation in the Consent Judgment.

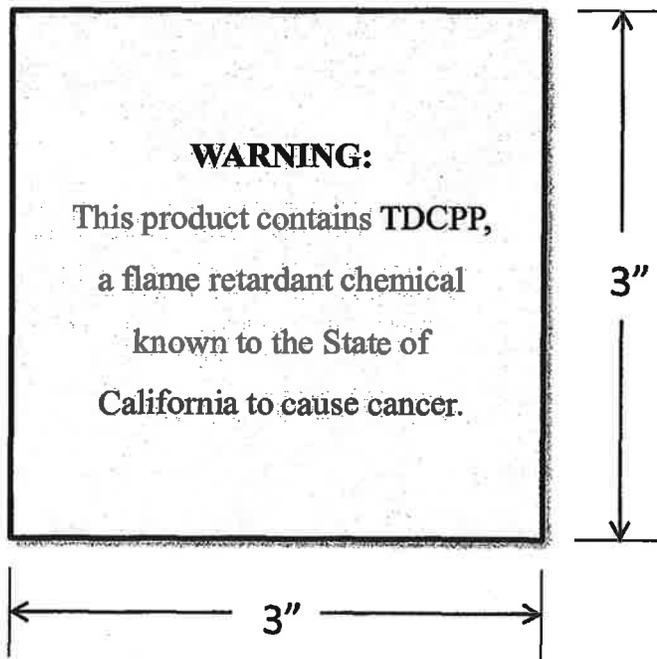
VII. Person(s) to receive notices on behalf of Ergonom pursuant to Section 8:

Roy Zaki, President
Ergonom Corporation
dba ERG International
361 North Bernoulli Circle
Oxnard, CA 93030

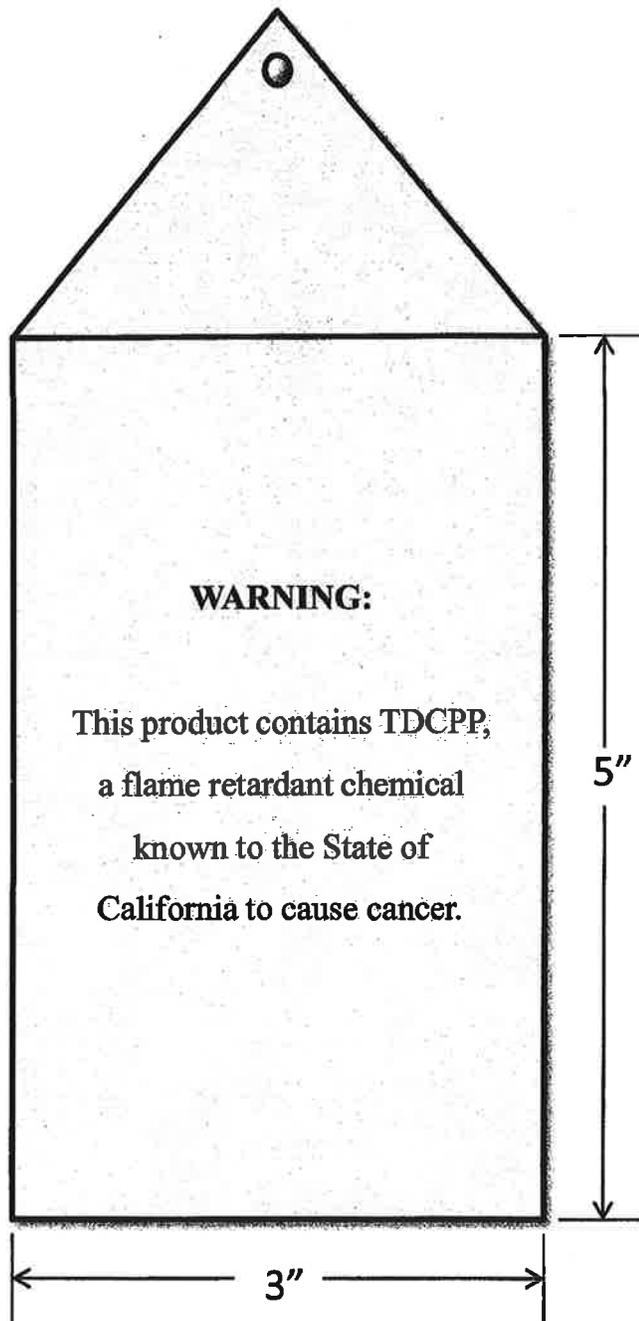
Rey S. Yang, Esq.
POOLE & SHAFFERY, LLP
400 S. Hope Street, Suite 1100
Los Angeles, CA 90071
*Attorneys for Ergonom Corporation
dba ERG International*

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



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

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to

cause cancer.



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