

1 Josh Voorhees, State Bar No. 241436
2 Rachel S. Doughty, State Bar No. 255904
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 LAURENCE VINOCUR

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR,

Plaintiff,

v.

DIONO, LLC; et al.

Defendants.

Case No. RG 13-684497

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**[PROPOSED] CONSENT JUDGMENT AS
TO DIONO, LLC**

(Health & Safety Code § 25249.6 *et seq.*)

Complaint Filed: June 20, 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 defendant Diono, LLC (“Settling Defendant”), with Plaintiff and the Settling
5 Defendant 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 Settling Defendant**

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

14 **1.4 General Allegations**

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

18 Pursuant to Proposition 65, on October 28, 2011, California identified and listed TDCPP as
19 a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning”
20 requirements of Proposition 65 one year later on October 28, 2012. Cal. Code Regs., tit. 27, §
21 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

22 Plaintiff alleges that TDCPP escapes from foam padding, leading to human exposures.

23 Pursuant to Proposition 65, on October 24, 2003, California identified and listed di(2-
24 ethylhexyl)phthalate (“DEHP”) as a chemical known to cause birth defects and other reproductive
25 harm. DEHP became subject to the “clear and reasonable warning” requirements of Proposition 65
26 one year later on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§
27 25249.8 and 25249.10(b).

28 Plaintiff alleges that DEHP escapes from vinyl/plastic, leading to human exposures.

1 **1.5 Product Description**

2 The categories of products that are covered by this Consent Judgment as to the Settling
3 Defendant (collectively, the “Products”) are:

- 4 a. Upholstered Children’s Car Seats with Foam Padding (“Car Seats”);
5 b. Vinyl/PVC Rain Covers (“Covers”); and
6 c. Those items identified on Exhibit A.

7 Polyurethane foam that is supplied, shaped or manufactured for use as a component of another
8 product, such as upholstered furniture, but which is not itself a finished product, is specifically
9 excluded from the definition of Products and shall not be identified by the Settling Defendant on
10 Exhibit A as a Product.

11 **1.6 Notice of Violation**

12 On or around April 3, 2013, Plaintiff served Settling Defendant and certain requisite public
13 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients
14 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
15 consumers, and workers in California that its Car Seats expose users to TDCPP.

16 Based on his further investigation, on or around July 24, 2013, Plaintiff also issued a
17 supplemental 60-day notice to the Settling Defendant (“Supplemental Notice”) alleging that the
18 Covers contain and expose Californians to DEHP. DEHP and other phthalates including butyl
19 benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as
20 chemicals known to cause birth defects and other reproductive harm.

21 To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
22 prosecuting the allegations set forth in the Notice or the Supplemental Notice.

23 **1.7 Complaint**

24 On June 20, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County of
25 Alameda against the Settling Defendant, *Laurence Vinocur v. Diono, LLC, et al.*, Case No. RG 13-
26 684497, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to
27 TDCPP contained in the Products (“Complaint”). Upon entry of this Consent Judgment, the
28

1 Complaint shall be deemed amended *nunc pro tunc* to include the violations of Proposition 65
2 alleged by Plaintiff in the Supplemental Notice.

3 **1.8 No Admission**

4 The Settling Defendant denies the material factual and legal allegations contained in
5 Plaintiff's Notice and Complaint and maintains that all products that is has manufactured, imported,
6 distributed, and/or sold in California, including the Products, have been and are in compliance with
7 all laws. Nothing in this Consent Judgment shall be construed as an admission by the Settling
8 Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
9 with this Consent Judgment constitute or be construed as an admission by the Settling Defendant of
10 any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not
11 diminish or otherwise affect the Settling Defendant's obligations, responsibilities, and duties under
12 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 the Settling Defendant as to the allegations contained in the Complaint, that venue
16 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
17 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
18 Procedure section 664.6.

19 **2. DEFINITIONS**

20 **2.1 California Customers**

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

24 **2.2 Detectable**

25 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
26 of .0025%) each of TDCPP and/or tris(2-chloroethyl) phosphate ("TCEP") in any material,
27 component, or constituent of a subject product, when analyzed by a NVLAP-accredited laboratory
28 pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by

1 federal or state agencies to determine the presence, and measure the quantity, of TDCPP and/or
2 TCEP in a solid substance.

3 **2.3 Effective Date**

4 “Effective Date” shall mean October 7, 2013.

5 **2.4 Private Label Covered Products**

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

9 **2.5 Reformulated Products**

10 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
11 or TCEP, and no more than 1,000 ppm each of DEHP, BBP, and DBP when analyzed pursuant to
12 EPA sample preparation and test methodologies 3580A and 8270C.

13 **2.6 Reformulation Standard**

14 The “Reformulation Standard” shall mean containing no Detectable amount of TDCPP
15 and/or TCEP and no more than 1,000 ppm each of DEHP, BBP, and DBP when analyzed pursuant
16 to EPA sample preparation and test methodologies 3580A and 8270C.

17 **2.7 Retailer**

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

20 **3. INJUNCTIVE RELIEF: REFORMULATION**

21 **3.1 Reformulation Commitment**

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

25 **3.2 Vendor Notification/Certification**

26 On or before the Effective Date, the Settling Defendant shall provide written notice to all of
27 its then-current vendors of the Products that will be sold or offered for sale in California, or to
28 California Customers, instructing each such vendor to use reasonable efforts to provide only

1 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
2 preceding sentence, a Settling Defendant shall not employ statements that will encourage a vendor
3 to delay compliance with the Reformulation Standard. The Settling Defendant shall subsequently
4 obtain written certifications, no later than April 1, 2014, from such vendors, and any newly engaged
5 vendors, that the Products manufactured by such vendors are in compliance with the Reformulation
6 Standard. Certifications shall be held by the Settling Defendant for at least two years after their
7 receipt and shall be made available to Plaintiff upon request.

8 **3.3 Products No Longer in a Settling Defendant's Control**

9 No later than thirty days after the Effective Date, the Settling Defendant shall send a letter,
10 electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer to
11 which it, after October 28, 2011, supplied any item for resale in California described as an exemplar
12 in the Notice and the Supplemental Notice ("Exemplar Product"); and (2) any California Customer
13 and/or Retailer that the Settling Defendant reasonably understands or believes had any inventory for
14 resale in California of any Exemplar Product(s) as of April 3, 2013. The Notification Letter shall
15 advise the recipient that the Exemplar Product(s) contains TDCPP, a chemical known to the State of
16 California to cause cancer, and/or DEHP, a chemical known to the State of California to cause birth
17 defects and other reproductive harm, as appropriate depending on the allegations in the Notice and
18 Supplemental Notice, and request that the recipient either: (a) label the Exemplar Products
19 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or
20 (b) return, at the Settling Defendant's sole expense, all units of the Exemplar Product(s) held for
21 sale in California, or to California Customers, to the Settling Defendant or a party the Settling
22 Defendant has designated. The Notification Letter shall require a response from the recipient
23 within twenty days confirming whether the Exemplar Product(s) will be labeled or returned. The
24 Settling Defendant shall maintain records of all correspondence or other communications generated
25 pursuant to this Section for two years after the Effective Date and shall promptly produce copies of
26 such records upon Plaintiff's written request.

1 **3.4 Current Inventory**

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

6 **3.5 Product Warnings**

7 **3.5.1 Product Labeling**

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

14 A warning provided pursuant to this Consent Judgment shall state, as appropriate:

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

17 or

18 **WARNING:** This product contains DEHP, a
19 phthalate chemical known to the State
 of California to cause birth defects and
 other reproductive harm.

20 or

21 **WARNING:** This product contains DEHP, a
22 phthalate chemical known to the State
23 of California to cause birth defects and
 other reproductive harm, and TDCPP,
 a flame retardant chemical known to
24 the State of California to cause
 cancer.¹

25 ¹ The regulatory safe harbor warning language specified in California Code of Regulations, title 27,
26 section 25603.2 ("Section 25603.2") may also be used if the Settling Defendant had begun to use it, prior to
27 the Effective Date. A Settling Defendant that seeks to use alternative warning language, other than the
28 language specified above or the safe harbor warning specified in Section 25603.2, or that seeks to use an
alternate method of transmission of the warning, must obtain the Court's approval of its proposed alternative
and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to
comment or object before the Court acts on the request. The Parties agree that the following warning
language shall not be deemed to meet the requirements of California Code of Regulations, title 27, section

Warnings with the following characteristics will be deemed to be clear and reasonable for purposes of this Consent Judgment: (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 that 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.

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, hyperlink and/or pop-up box text shall be the same type size or larger than the Product description text, and consist of the following language, as appropriate: ²

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

or

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

or

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm, and TDCPP, a flame retardant chemical known to the State of California to cause cancer

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.”

² The preceding footnote applies in this context as well.

1 **3.6 Alternatives to Interim Warnings**

2 The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the
3 Settling Defendant certifies on or before December 15, 2013, that only Exemplar Products meeting
4 the Reformulation Standard will be offered for sale in California, or to California Customers for
5 sale in California, after December 31, 2013.

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

12 **4. MONETARY PAYMENTS**

13 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

23 **4.1.1 Initial Civil Penalty**

24 On or before the Effective Date, the Settling Defendant shall make an initial civil penalty
25 payment in the amount identified on Exhibit A.

26 **4.1.2 Second Civil Penalty**

27 On or before January 15, 2014, the Settling Defendant shall make a second civil penalty
28 payment in the amount identified on Exhibit A. The amount of the second penalty may be reduced

1 according to any penalty waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and
2 4.1.4(iii), below.

3 **4.1.3 Third Civil Penalty**

4 On or before November 30, 2014, the Settling Defendant shall make a third civil penalty
5 payment in the amount identified on Exhibit A. The amount of the third penalty may be reduced
6 according to any penalty waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and
7 4.1.4(iv), below.

8 **4.1.4 Reductions to Civil Penalty Payment Amounts**

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

15 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of** 16 **Products Sold or Offered for Sale in California**

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

25 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation**

26 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
27 the Settling Defendant has agreed that, as of March 15, 2014, and continuing into the future, it shall
28 only manufacture or import for distribution or sale in California or cause to be manufactured or

1 imported for distribution or sale in California, Reformulated Products which also do not contain
2 tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per
3 million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject
4 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
5 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
6 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
7 representative of the Settling Defendant, upon its exercise of this election, shall provide Plaintiff
8 with a written certification confirming compliance with such conditions, which certification must
9 be received by Plaintiff’s counsel on or before November 15, 2014.

10 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
11 **Exemplar Products from the California Market**

12 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
13 other authorized representative of the Settling Defendant provides Plaintiff with written
14 certification, by December 15, 2013, confirming that each individual or establishment in California
15 to which it supplied the Exemplar Product(s) after October 28, 2011, has elected, pursuant to
16 Section 3.3, to return all Exemplar Product(s) held for sale in California.

17 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
18 **California of Unreformulated Inventory**

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

24 **4.2 Representation**

25 The Settling Defendant represents that the sales data and other information concerning its
26 size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided to
27 Plaintiff was truthful to its knowledge and a material factor upon which Plaintiff has relied to
28 determine the amount of civil penalties assessed pursuant to Health & Safety Code section 25249.7
in this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers and

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

6 The Settling Defendant further represents that in implementing the requirements set forth in
7 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to
8 achieve reformulation of its Products on a nationwide basis and not employ statements that will
9 encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for
10 sale to California Consumers.

11 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard**

12 If Plaintiff provides notice and appropriate supporting information to the Settling Defendant
13 that levels of TDCPP, TDBPP, TCEP, or DEHP in excess of the Reformulation Standard have been
14 detected in one or more Products labeled or otherwise marked in an identifiable manner as
15 manufactured or imported after a deadline for meeting the Reformulation Standard has arisen under
16 Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated penalty to relieve
17 any further potential liability under Proposition 65 or sanction under this Consent Judgment as to
18 Products sourced from the vendor in question.³ The stipulated penalty shall be \$1,500 if the
19 violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249
20 ppm, this being applicable for any amount in excess of the Reformulation Standards but under 250
21 ppm.⁴ Plaintiff shall further be entitled to reimbursement of his associated expense in an amount
22 not to exceed \$5,000 regardless of the stipulated penalty level. The Settling Defendant must
23 provide notice and appropriate supporting information relating to the purchase (e.g. vendor name
24

25 ³ This Section shall not be applicable where the vendor in question had previously been
26 found by the Settling Defendant to have provided unreliable certifications as to meeting the
27 Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing,
a stipulated penalty for a second exceedance by the Settling Defendant's vendor at a level between
100 and 249 ppm shall not be available after July 1, 2015.

28 ⁴ 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 and contact information including representative, purchase order, certification (if any) received
2 from vendor for the exemplar or subcategory of products), test results, and a letter from a company
3 representative or counsel attesting to the information provided, to Plaintiff within thirty calendar
4 days of receiving test results from Plaintiff's counsel. Any violation levels at or above 250 ppm
5 shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

6 **4.4 Reimbursement of Fees and Costs**

7 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
8 without reaching terms on the amount of fees and costs to be reimbursed to him, thereby leaving
9 this fee reimbursement issue to be resolved after the material terms of the agreement had been
10 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant
11 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay
12 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
13 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
14 mutual execution of this agreement, including the fees and costs incurred as a result of
15 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in
16 the public interest, and seeking court approval of the same. The Settling Defendant more
17 specifically agreed, upon the Court's approval and entry of this Consent Judgment, to pay
18 Plaintiff's counsel the amount of fees and costs indicated on Exhibit A. The Settling Defendant
19 further agreed to tender and shall tender its full required payment under this Section to a trust
20 account at The Chanler Group (made payable "In Trust for The Chanler Group") within two
21 business days of the Effective Date. Such funds shall be released from the trust account upon the
22 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 his counsel, pursuant to Sections
26 4.1 and 4.2 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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1, shall be delivered directly to OEHHA (Memo line “Prop 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

4.5.2 Proof of Payment to OEHHA

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

4.5.3 Tax Documentation

The Settling Defendant shall issue a separate 1099 form for each payment required by this Section to: (a) Laurence Vinocur, whose address and tax identification number shall be furnished upon request after this Consent Judgment 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 95814, and (c) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

5. CLAIMS COVERED AND RELEASED

5.1 Plaintiff’s Release of Proposition 65 Claims

Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents

1 employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
2 distributes or sells Products, including, but not limited, to downstream distributors, wholesalers,
3 customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”),
4 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
5 exposures to the TDCPP and DEHP in the Products, as set forth in the Notice, Supplemental
6 Notice, and Complaint. Compliance with the terms of this Consent Judgment constitutes
7 compliance with Proposition 65 with respect to exposures to TDCPP and DEHP from the Products,
8 as set forth in the Notice, Supplemental Notice, and Complaint. The Parties further understand and
9 agree that this Section 5.1 release shall not extend upstream to any entities.

10 **5.2 Plaintiff’s Individual Releases of Claims**

11 Plaintiff, in his individual capacity only and *not* in his representative capacity, provide a
12 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
13 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
14 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
15 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
16 TCEP, TDBPP, DEHP, DBP, and BBP in the Products manufactured, imported, distributed, or sold
17 by the Settling Defendant prior to the Effective Date. The Parties further understand and agree that
18 this Section 5.2 release shall not extend upstream to any entities that manufactured the Products, or
19 any component parts thereof, or any distributors or suppliers who sold the Products, or any
20 component parts thereof, to Settling Defendant.

21 Nothing in this Section 5 affects Plaintiff’s right to commence or prosecute an action under
22 Proposition 65 against a Releasee that does not involve the Settling Defendant’s Products.

23 **5.3 Settling Defendant’s Release of Plaintiff**

24 The Settling Defendant, on behalf of itself, its past and current agents, representatives,
25 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his
26 attorneys and other representatives, for any and all actions taken or statements made (or those that
27 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in
28

1 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
2 matter with respect to the Products.

3 **6. COURT APPROVAL**

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

19 **7. GOVERNING LAW**

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

1 **8. NOTICES**

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

6 To Settling Defendant:

To Plaintiff:

7 At the address shown on Exhibit A

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

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

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

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

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

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

20 **11. POST EXECUTION ACTIVITIES**

21 Plaintiff and Settling Defendant agree to support the entry of this agreement as a Consent
22 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
23 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
24 motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft
25 and file. If any third party objection to the noticed motion is filed, Plaintiff and the Settling
26 Defendant shall work together to file a reply and appear at any hearing before the Court. This
27 provision is a material component of the Consent Judgment and shall be treated as such in the event
28 of a breach.

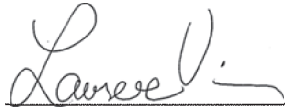
1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9
10 AGREED TO:

11 

12 Plaintiff Laurence Vinocur

13
14 Date: October 7, 2013

10 AGREED TO:

11 

12 Diono, LLC
13 President, Brad Keller

14 Date: October 4, 2013

EXHIBIT A

I. Name of Settling Defendant (Mandatory) Diono, LLC

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

III. Types of Covered Products Applicable to Settling Defendant (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

x Car seats, strollers

x Other (specify): PVC stroller rain covers

IV. Settling Defendant's Required Settlement Payments

Civil Penalties of \$74,500, as follows:

\$24,500 initial payment due on or before the Effective Date;

\$30,000 second payment due on or before January 15, 2014, of which \$20,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(iii); and

\$20,000 third payment due on or before November 30, 2014, of which \$12,000 may be waived pursuant to Section 4.1.4(ii) and \$8,000 may be waived pursuant to Section 4.1.4(iv).

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

Fees and Costs for Settling Defendant: \$40,500.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI. Person(s) to receive Notices pursuant to Section 8

Brad Keller	Melissa Jones
_____ Name	_____ Name
President	Partner
_____ Title	_____ Title
Address:	Address:
_____ Diono, LLC	_____ Stoel Rives, LLP
_____ 418 Valley Ave. NW, Suite 100	_____ Capitol Mall, Ste. 1600
_____ Puyallup, WA 98371	_____ Sacramento, CA 95814
_____	_____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28