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

14 LAURENCE VINOCUR

15 Plaintiff,

16 v.

17 KEYSTONE FOAM CORPORATION, et
18 al.

19 Defendants.

Case No. RG13691443

*Assigned for All Purposes to
The Hon. George C. Hernandez, Jr.
Department 17*

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT KEYSTONE FOAM
CORPORATION**

(Health & Safety Code § 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and defendant Keystone Foam Corporation (“Keystone”), with Vinocur and
5 Keystone each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Vinocur is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating
9 harmful substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Keystone 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,
13 California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Vinocur alleges that Keystone manufactured, imported, sold and/or
16 distributed for sale in California, upholstered furniture with foam padding containing
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without providing the clear and
18 reasonable health hazard warnings required by Proposition 65.

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

25 **1.5 Product Description**

26 The categories of products that are covered by this Consent Judgment are
27 identified on Exhibit A (hereinafter “Products”). This Consent Judgment applies only to
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1 Products sold by Keystone and those downstream in its chain of distribution. It
2 specifically excludes any foam provided in “buns” or in bulk to Keystone, as well as any
3 entity or individual who provided such foam to Keystone.

4 **1.6 Notice of Violation**

5 On May 3, 2013, Vinocur served Keystone and certain requisite public
6 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that
7 Keystone violated Proposition 65 when it failed to warn its customers, consumers and
8 workers in California that the Products expose users to TDCPP. To the best of the
9 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
10 allegations set forth in the Notice.

11 **1.7 Complaint**

12 On August 12, 2013, Vinocur commenced the instant action (“Complaint”),
13 naming Keystone as a defendant, and stating a single cause of action for the alleged
14 violations that are the subject of the Notice.

15 **1.8 No Admission**

16 Keystone denies the material, factual, and legal allegations contained in the
17 Notice and Complaint and maintains that all of the products that it has sold or distributed
18 for sale in California, including the Products, have been and are in compliance with all
19 laws. Nothing in this Consent Judgment shall be construed as an admission by Keystone
20 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
21 compliance with this Consent Judgment constitute or be construed as an admission by
22 Keystone of any fact, finding, conclusion of law, issue of law, or violation of law. This
23 Section shall not, however, diminish or otherwise affect Keystone’s obligations,
24 responsibilities, and duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court
27 has jurisdiction over Keystone as to the allegations contained in the Complaint, that
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1 venue is proper in the County of Alameda, and that the Court has jurisdiction to enter and
2 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and
3 California Code of Civil Procedure section 664.6.

4 **2. DEFINITIONS**

5 **2.1 California Customer**

6 “California Customer” means any customer of Keystone that Keystone reasonably
7 understands is located in California, has a California warehouse or distribution center,
8 maintains a retail outlet in California, or has distributed Products for sale in California,
9 online via the internet or by any other means, on or after January 1, 2011.

10 **2.2 No Detectable Amount**

11 “No Detectable Amount” is defined as no more than 25 parts per million (“ppm”)
12 (the equivalent of .0025%) of any one chemical in any material, component, or
13 constituent of a subject product, when analyzed by an accredited laboratory pursuant to
14 EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by
15 federal or state agencies to determine the presence, or measure the amount, of TDCPP or
16 TCEP in a solid substance.

17 **2.3 Effective Date**

18 “Effective Date” means the date that the Court grants the motion for approval of
19 this Consent Judgment contemplated by Section 6.

20 **2.4 Private Label Covered Products**

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

24 **2.5 Reformulated Products**

25 “Reformulated Products” are Products that contain No Detectable Amount of
26 TDCPP or TCEP.

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1 **2.6 Reformulation Standard**

2 The “Reformulation Standard” is defined as containing no more than 25 ppm for
3 each of TDCPP or TCEP.

4 **2.7 Retailer**

5 “Retailer” means a person that offers a Product for sale to consumers in
6 California.

7 **3. INJUNCTIVE RELIEF: REFORMULATION**

8 **3.1 Reformulation Commitment**

9 Commencing on August 1, 2014, and continuing thereafter, Keystone shall not
10 manufacture or import for distribution or sale to California Customers for sale in
11 California, or cause to be manufactured or imported for distribution or sale to California
12 Customers for sale in California, any Products that are not Reformulated Products.

13 **3.2 Vendor Notification/Certification**

14 No later than 30 days after the Effective Date, Keystone shall provide written
15 notice to all of its then-current vendors of Products that are sold or offered for sale in
16 California, or to California Customers, instructing each such vendor to use reasonable
17 efforts to provide only Reformulated Products. In addressing the obligation set forth in
18 the preceding sentence, Keystone shall not employ statements to encourage a vendor to
19 delay compliance with the Reformulation Standard. No later than August 1, 2014,
20 Keystone shall obtain a written certification from each such vendor, and any other
21 vendors engaged as of that date, that the Products it manufactures comply with the
22 Reformulation Standard. Such certifications shall be held by Keystone for at least two
23 years from receipt, and shall be made available to Vinocur upon request.

24 **3.3 Products No Longer in Keystone’s Control**

25 To the extent it has not already done so, no later than 30 days after the Effective
26 Date Keystone shall send a letter (“Notification Letter”), electronic or otherwise, to: (1)
27 each California Customer and/or Retailer which it, after October 28, 2011, supplied the
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1 item for resale in California described as an exemplar in the Notice (“Exemplar
2 Product”); and (2) any California Customer and/or Retailer which it, before October 28,
3 2011, supplied the Exemplar Product for resale in California and that Keystone believes
4 is reasonably likely to have any inventory of Exemplar Products for resale in California
5 as of the January 1, 2013. Keystone certifies that as of the Effective Date it does not
6 supply products for sale or resale to Customers or Retailers in California, and that it is not
7 aware of any California Customers other than Master Manufacturing Co., Inc. which
8 supplied the Exemplar Product for sale or resale in California. However, in the event that
9 at a future date Keystone becomes aware of another Customer or Retailer offering the
10 Exemplar Product for sale or resale in California, it will send the Notification Letter
11 within 30 days. The Notification Letter shall advise the recipient that the Exemplar
12 Product “contains TDCPP, a chemical known to the State of California to cause cancer,”
13 and request that the recipient either: (a) label the Exemplar Products remaining in
14 inventory prior to offering them for sale in California, or to California Customers,
15 pursuant to Section 3.5; or (b) return, at Keystone’s expense, all units of the Exemplar
16 Product held for sale in California, or to California Customers, to Keystone or a party
17 Keystone has otherwise designated. The Notification Letter shall require a response from
18 the recipient within 20 days confirming whether the Exemplar Product will be labeled or
19 returned. The Settling Defendant shall maintain records of all Notification Letters and
20 responses for two years after the Effective Date and shall promptly produce copies of
21 such records upon Vinocur’s written request.

22 3.4 Current Inventory

23 Any Products in, or manufactured and en route to, Keystone’s inventory as of or
24 after March 1, 2014, that do not qualify as Reformulated Products, and that Keystone has
25 reason to believe may be sold or distributed for sale in California, shall contain a clear
26 and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.

1 purchase, or during the “checkout” process. The following warning statement shall be
2 used and shall: (a) appear adjacent to or immediately following the display, description,
3 or price of the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically
4 to the consumer. The warning text shall be the same type size or larger than the Product
5 description text, and shall state:

6 **WARNING:** This product contains
7 [TDCPP and/or TCEP],
8 flame retardant chemicals
9 known to the State of
10 California to cause cancer.²

11 3.6 Alternatives to Interim Warnings

12 Keystone’s obligation under Section 3.3 shall be relieved if it provides Vinocur
13 with written notice on or before April 15, 2014 certifying that only Exemplar Products
14 meeting the Reformulation Standard will be offered for sale in California, or to California
15 Customers for sale in California, after May 1, 2014. The obligations of Keystone under
16 Section 3.4 shall be relieved upon Vinocur’s receipt of Keystone’s written certification
17 on or before April 15, 2014, that, as of August 1, 2014, it will only distribute or cause to
18 be distributed for sale, or sell in California, or to California Customers for sale in
19 California, Products (i.e., Products beyond the Exemplar Product) meeting the
20 Reformulation Standard. The certifications provided by this Section are material terms
21 and time is of the essence.

22 4. MONETARY PAYMENTS

23 4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

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

28 ² The preceding footnote applies in this context as well.

1 Assessment (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for
2 Laurence Vinocur.” Each penalty payment shall be delivered within two business days of
3 the date it is due at the addresses provided in Section 4.5, below. Keystone shall be liable
4 for payment of simple interest at a rate of 10% for all amounts due and owing that are not
5 received within two business days of the date they are due, if any.

6 **4.1.1 Initial Civil Penalty.** Within five days of the date that this
7 Consent Judgment is fully executed by the Parties, Keystone shall make an initial civil
8 penalty payment in the amount identified on Exhibit A.

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

13 **4.1.3 Third Civil Penalty.** On or before December 31, 2014, Keystone
14 shall make a third civil penalty payment in the amount identified on Exhibit A. The
15 amount of the third penalty may be reduced according to any penalty waiver for which
16 Keystone is eligible under Sections 4.1.4(ii) and 4.1.4(iv), below.

17 **4.1.4 Reductions to Civil Penalty Payment Amounts.** Keystone may
18 reduce the amount of the second and/or third civil penalty payments identified on Exhibit
19 A by providing Vinocur with certification of certain efforts undertaken to reformulate its
20 Products or limit the ongoing sale of non-reformulated Products in California. The
21 option to provide a written certification in lieu of making a portion of Keystone’s second
22 or third civil penalty payments constitutes a material term of this Consent Judgment and,
23 with regard to such term, time is of the essence.

24 **4.1.4(i) Partial Penalty Waiver for Accelerated**
25 **Reformulation of Products Sold or Offered for Sale**
26 **in California.**

26 If Keystone so Elects on Exhibit A, a portion of the second civil penalty shall be
27 waived, if, as of May 15, 2014, and continuing thereafter, Keystone agrees that it will
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1 only manufacture or import for distribution or sale to California Customers for sale in
2 California or cause to be manufactured or imported for distribution or sale to California
3 Customers for sale in California, Reformulated Products. An officer or other authorized
4 representative shall provide Vinocur with a written certification confirming compliance
5 with such conditions, no later than June 15, 2014.

6 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

7 If Keystone so Elects on Exhibit A, a portion of the third civil penalty shall be
8 waived, if, as of August 1, 2014, and continuing thereafter, Keystone agrees that it will
9 only manufacture or import for distribution or sale in California or cause to be
10 manufactured or imported for distribution or sale in California, Reformulated Products
11 which also do not contain tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable
12 amount of more than 25 parts per million (“ppm”) (the equivalent of .0025%) in any
13 material, component, or constituent of a subject product, when analyzed by pursuant to
14 EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by
15 federal or state agencies to determine the presence, and measure the quantity, of TDBPP
16 in a solid substance. An officer or other authorized representative shall provide Vinocur
17 with a written certification confirming compliance with such conditions, no later than
18 December 31, 2014.

19 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Non-**
20 **Reformulated Exemplar Products from the**
21 **California Market.**

22 As shown on Keystone’s Exhibit A, a portion of the second civil penalty shall be
23 waived, if an officer or other authorized representative of Keystone provides Vinocur
24 with written certification, by May 15, 2014, confirming that each California Customer or
25 Retailer to which it supplied the Exemplar Product for resale in California after October
26 28, 2011, has elected, pursuant to Section 3.3, to return all Exemplar Products held for
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1 sale in California.³

2 4.1.4(iv) **Partial Penalty Waiver for Termination of**
3 **Distribution to California of Inventory of Non-**
4 **Reformulated Products.**

5 As shown on Keystone's Exhibit A, a portion of the third civil penalty shall be
6 waived, if an officer or other authorized representative of Keystone provides Vinocur
7 with written certification, on or before December 31, 2014, confirming that, as of August
8 1, 2014, it has and will continue to distribute, offer for sale, or sell in California, or to
9 California Customers, only Reformulated Products.

10 4.2 **Representations and Warranties**

11 Keystone represents that the sales data and other information concerning its size,
12 knowledge of TDCPP/TCEP presence, and prior reformulation and/or warning efforts
13 provided to Vinocur were true and accurate based on its knowledge and are material
14 factors upon which Vinocur relied to determine the amount of civil penalties assessed
15 pursuant to Health and Safety Code section 25249.7(b). If, within nine months of the
16 Effective Date, Vinocur discovers and presents to Keystone evidence demonstrating that
17 the preceding representation and warranty was materially inaccurate, then Keystone shall
18 have 30 days to meet and confer regarding Vinocur's contention. Should this 30 day
19 period pass without any resolution between Vinocur and Keystone, Vinocur shall be
20 entitled to file a formal legal claim including, but not limited to, a claim for damages for
21 breach of contract. Keystone further represents that in implementing the requirements set
22 forth in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ
23 commercial best efforts to achieve reformulation of its Products on a nationwide basis
24 and not employ statements that will encourage a vendor to limit its compliance with the
25 Reformulation Standard to goods intended for sale to California Consumers.

26 ³ For purposes of this Section, the term Exemplar Products shall further include
27 Products for which Vinocur has, prior to August 31, 2013, provided Keystone with test
28 results from a NVLAP accredited laboratory showing the presence of a Listed Chemical
at a level in excess of 250 ppm pursuant to EPA testing methodologies 3545 or 8270C.

1 **4.3 Penalties for Certain Violations of the Reformulation**
2 **Standard.**

3 If Vinocur provides notice and credible supporting information to Keystone that
4 levels of TDCPP in excess of the Reformulation Standard have been detected in one or
5 more Products labeled or otherwise marked in an identifiable manner as manufactured or
6 imported after a deadline for meeting the Reformulation Standard under Sections 3.1 or
7 3.6 above has commenced, then Keystone may elect to pay a stipulated penalty to relieve
8 any further potential liability under Proposition 65 or sanction under this Consent
9 Judgment as to Products sourced from the vendor in question.⁴ The stipulated penalty
10 shall be \$1,000 if the violation level is below 100 ppm and \$2,000 if the violation level is
11 between 100 ppm and 249 ppm, this being applicable for any amount in excess of the
12 Reformulation Standards but under 250 ppm.⁵ Vinocur shall further be entitled to
13 reimbursement of his associated expenses in an amount not to exceed \$3,000 regardless
14 of the stipulated penalty level. If the Parties proceed under this Section, Keystone must
15 provide notice and appropriate supporting information relating to the purchase (e.g.,
16 vendor name and contact information including representative, purchase order,
17 certification (if any) received from vendor for the exemplar or subcategory of products),
18 test results, and a letter from a company representative or counsel attesting to the
19 information provided to Vinocur within 30 calendar days of receiving notice and credible
20 supporting evidence from Vinocur's counsel. Any violation levels at or above 250 ppm
21 shall be subject to the full remedies provided pursuant to this Consent Judgment and at
22 law.

23 ⁴ This Section shall not be applicable where the vendor in question had previously
24 provided unreliable certifications as to its meeting the Reformulation Standard on two or
25 more occasions. Notwithstanding the foregoing, a stipulated penalty for a second
exceedance by Keystone's vendor at a level between 100 and 249 ppm shall not be
available after July 1, 2015.

26 ⁵ Any stipulated penalty payments made pursuant to this Section should be
27 allocated and remitted in the same manner as set forth in Sections 4.1 and 4.5,
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4.4 Reimbursement of 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, thereby leaving the fee issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Keystone expressed a desire to resolve Vinocur’s outstanding fees and costs 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, including the fees and costs incurred as a result of investigating, bringing this matter to Keystone’s attention, negotiating a settlement in the public interest, and seeking court approval of the same. In addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of time Vinocur’s counsel will incur to monitor various provisions in this agreement over the next two years, with the exception of additional fees that may be incurred pursuant to Keystone’s election under Section 11, if any. Keystone agreed to pay Vinocur, upon the Court’s approval and entry of this Consent Judgment, the amount of fees and costs indicated on Exhibit A.

4.5 Payment Procedures

4.5.1 Payment Addresses.

(a) All payments and tax documentation for Vinocur and his counsel under this Consent Judgment shall be delivered to the following address:

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

(b) All payments and tax documentation for OEHHA under this Consent Judgment shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the following addresses, as appropriate:

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Vinocur’s Release of Proposition 65 Claims**

3 Vinocur, acting on his own behalf and in the public interest, releases Keystone, its
4 parents, subsidiaries, affiliated entities under common ownership, directors, officers,
5 agents employees, attorneys, and each entity to whom Keystone directly or indirectly
6 distributes or sells the Products, including, but not limited, to downstream distributors,
7 wholesalers, customers, retailers (including, without limitation, Master Manufacturing
8 Co., Inc. and OfficeMax, Inc.), franchisees, cooperative members, and licensees
9 (collectively, “Releasees”), from all claims alleging violations of Proposition 65 through
10 the Effective Date based on unwarned exposures to the Listed Chemicals in the Products,
11 as set forth in the Notices. Compliance with the terms of this Consent Judgment
12 constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the
13 Products, as set forth in the Notice. The Parties further understand and agree that this
14 Section 5.1 release shall not extend upstream to any entity that manufactured the Products
15 or any component parts thereof, or any distributor or supplier who sold the Products or
16 any component parts thereof to Keystone, except that entities upstream who provided a
17 Private Labeled Covered Product to Keystone, if any, shall be released as to the Private
18 Labeled Covered Products Keystone has offered for sale in California, or to California
19 Customers.

20 **5.2 Vinocur’s Individual Release of Claims**

21 Vinocur, in his individual capacity only and *not* in any representative capacity,
22 provides a release to Keystone and Releasees which shall be effective as a full and final
23 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
24 expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of any nature,
25 character, or kind, whether known or unknown, suspected or unsuspected, limited to and
26 arising out of alleged or actual exposures to TDCPP, TCEP, and/or TDBPP in Products
27 manufactured, imported, distributed, or sold by Keystone prior to the Effective Date. The
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1 Parties further understand and agree that this Section 5.2 release shall not extend
2 upstream to any entity that manufactured any Products or any component parts thereof, or
3 any distributors or suppliers who sold any Products or any component parts thereof,
4 except to the extent, and solely to the extent, those Products, or any component parts
5 thereof, were offered for sale in California by Keystone, including but not limited to
6 Private Labeled Covered Products offered for sale in California by Keystone. Nothing in
7 this Section affects Vinocur's right to commence or prosecute an action under
8 Proposition 65 against a Releasee that does not involve Keystone's Products or
9 Additional Products.

10 5.3 Keystone's Release of Vinocur

11 Keystone, on its own behalf, and on behalf of its past and current agents,
12 representatives, attorneys, successors, and assignees, hereby waives any and all claims
13 against Vinocur and his attorneys and other representatives, for any and all actions taken
14 or statements made (or those that could have been taken or made) by Vinocur and his
15 attorneys and other representatives, whether in the course of investigating claims,
16 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
17 Products.

18 6. COURT APPROVAL

19 This Consent Judgment is not effective until it is approved in its entirety and
20 entered by the Court and shall be null and void if, for any reason, it is not approved and
21 entered by the Court within one year after it has been fully executed by all Parties.

22 Vinocur and Keystone agree to support the entry of this agreement as a Consent
23 Judgment and to obtain approval of the Consent Judgment by the Court in a timely
24 manner. The Parties acknowledge that, pursuant to California Health and Safety Code
25 section 25249.7(f), a noticed motion is required for judicial approval of this Consent
26 Judgment, which motion Vinocur shall draft and file and Keystone shall support,
27 appearing at the hearing if so requested. If any third-party objection to the motion is
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1 filed, Vinocur and Keystone agree to work together to file a reply and appear at any
2 hearing. This provision is a material component of the Consent Judgment and shall be
3 treated as such in the event of a breach.

4 If the Court does not approve the Consent Judgment, the Parties shall meet and
5 confer as to whether to modify the language or appeal the ruling. If the Parties do not
6 jointly agree on a course of action to take, then the case shall proceed in its normal course
7 on the Court's trial calendar. If the Court's approval is ultimately overturned by an
8 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
9 Consent Judgment. If the Parties do not jointly agree on a course of action to take, then
10 the case shall proceed in its normal course on the Court's trial calendar. In the event that
11 this Consent Judgment is entered by the Court and subsequently overturned by any
12 appellate court, any monies that have been provided to OEHHA, Vinocur, or his counsel
13 pursuant to Section 3, above, shall be refunded within 15 days of the appellate decision
14 becoming final. If the Court does not approve and enter the Consent Judgment within
15 one year of the Effective Date, any monies that have been provided to OEHHA or held in
16 trust for Vinocur or his counsel pursuant to Section 3, above, shall be refunded to the
17 Keystone within 15 days.

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California. In the event that Proposition 65 is repealed, preempted, or is otherwise
21 rendered inapplicable by reason of law generally, or as to the Products, then Keystone
22 may provide Vinocur with notice of any asserted change in the law, and shall have no
23 further obligations pursuant to this Consent Judgment with respect to, and to the extent
24 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted
25 to relieve Keystone from its obligation to comply with any pertinent state or federal law
26 or regulation.

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required pursuant to this
3 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) a recognized overnight
5 courier to any Party by the other at the following addresses:

6 To Keystone:

To Vinocur:

7 At the address shown on Exhibit A

8 Attn: Proposition 65 Coordinator
9 The Chanler Group
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710-2565

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

13 **10. DISMISSAL OF PENDING RELATED ACTION**

14 Vinocur agrees that within five days of the date that this Consent Judgment is
15 fully executed by the Parties, he will file a request for dismissal of the action pending
16 against Keystone's customer, Master Mfg. Co, Inc., and OfficeMax Incorporated, a
17 second entity in Keystone's chain of distribution, in the related action presently pending
18 in Alameda Superior Court, *Vinocur v. Master Mfg. Co., Inc., et al.*, Case No.
19 RG13679859.

20 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

21 This Consent Judgment may be executed in counterparts, and by facsimile or
22 portable document format (pdf) signature, each of which shall be deemed as valid as an
23 original, and all of which, when taken together, shall constitute one and the same
24 document.

1 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 Vinocur and his counsel agree to comply with the reporting form requirements
3 referenced in California Health and Safety Code section 25249.7(f).

4 **12. MODIFICATION**


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

8 **13. AUTHORIZATION**

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

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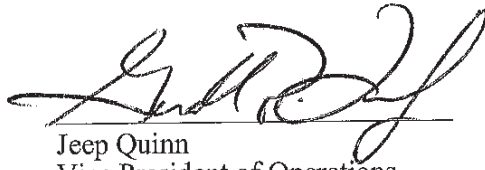
AGREED TO:



Plaintiff LAURENCE VINO CUR

Dated: February 28, 2014

AGREED TO:



Jeep Quinn
Vice President of Operations
Defendant KEYSTONE FOAM
CORPORATION

Dated: 2-28-14

EXHIBIT A

I. Settling Defendant: **Keystone Foam Corporation (“Keystone”)**

II. Types of Covered Products: Foam products manufactured or distributed by Keystone (including, but not limited to foam products used in ottomans, footstools, and other furniture that utilizes polyurethane foam) and replacement parts and components manufactured or distributed by Keystone for the same.

III. Downstream Entities Released: The downstream entities covered by the Release in Section 5 include, but are not limited to, Master Manufacturing Co., Inc. and OfficeMax, Inc.

IV. Keystone’s Settlement Payments:

A. Initial Settlement Payments: \$34,000

1. Initial Civil Penalty: \$6,000
2. Attorneys’ Fees and Costs: \$ 28,000

B. Second Civil Penalty: \$12,000

1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: \$8,000
2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: \$4,000

C. Third Civil Penalty: \$5,000

1. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: \$3,000
2. Section 4.1.4(iv) Partial Penalty Waiver, if applicable: \$2,000

V. Persons to receive notice under Section 8:

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