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LAURENCE VINOCUR

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA UNLIMITED CIVIL JURISDICTION

11 LAURENCE VINOCUR
12 Plaintiff,
13 v.
14 MOORECO, INC.; et al.,
15 Defendant.

) Case No. RG13702001
)
) Assigned for All Purposes to
) Judge Stephen Kaus, Department 514
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO MOORECO, INC.**
)
) **(Health & Safety Code § 25249.6 et seq.**
) **Notice Served: May 17, 2013)**

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and the defendant MooreCo, Inc. (“MooreCo”) with Vinocur and MooreCo
5 collectively referred to as the “Parties.”

6 **1.2 Laurence Vinocur**

7 Vinocur 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 MooreCo, Inc.**

11 MooreCo 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 Vinocur alleges that MooreCo manufactured, imported, sold and/or
16 distributed for sale in California, upholstered furniture with foam padding containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings. Vinocur alleges that TDCPP escapes from foam padding, leading to human exposures.

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
22 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 **1.5 Product Description**

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

1 **1.6 Notice of Violation**

2 On or about May 17, 2013, Vinocur served MooreCo and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients
4 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
5 consumers, and workers in California that certain Products expose users to TDCPP. To the best of
6 the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the
7 allegations set forth in the Notice.

8 **1.7 Complaint**

9 On November 5, 2013, Vinocur filed a Complaint in the Superior Court for the County of
10 Alameda against MooreCo and Does 1 through 150 in an action styled as *Vinocur v. MooreCo, Inc.*,
11 Case No. RG13702001, alleging violations of Proposition 65, based on the alleged unwarned
12 exposures to TDCPP contained in the Products.

13 **1.8 No Admission**

14 MooreCo denies the material factual and legal allegations contained in Vinocur’s Notice and
15 Complaint and maintains that all products it has manufactured, imported, distributed, and/or sold in
16 California, including the Products, have been and are in compliance with all laws. Nothing in this
17 Consent Judgment shall be construed as an admission by MooreCo of any fact, finding, conclusion,
18 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
19 construed as an admission by MooreCo of any fact, finding, conclusion, issue of law, or violation of
20 law. However, this section shall not diminish or otherwise affect MooreCo’s obligations,
21 responsibilities, and duties under this Consent Judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over MooreCo as to the allegations contained in the Complaints, that venue is proper in
25 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
26 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

27 **2. DEFINITIONS**

28 **2.1 California Customers**

1 “California Customer” shall mean any customer of MooreCo that MooreCo reasonably
2 understands is located in California, has a California warehouse or distribution center, maintains a
3 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

4 **2.2 Detectable**

5 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent
6 of .0025%) of any one chemical in any material, component, or constituent of a
7 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
8 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
9 determine the presence, and measure the quantity, of TDCPP in a solid substance.

10 **2.3 Effective Date**

11 “Effective Date” shall mean March 24, 2014.

12 **2.4 Private Label Covered Products**

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

16 **2.5 Reformulated Products**

17 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP,
18 and/or TCEP.

19 **2.6 Reformulation Standard**

20 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
21 TDCPP, and/or TCEP.

22 **2.7 Retailer**

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

25 **3. INJUNCTIVE RELIEF: REFORMULATION**

26 **3.1 Reformulation Commitment**

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28

1 Commencing on June 30, 2014, MooreCo shall not manufacture or import for distribution or
2 sale to California Customers, or cause to be manufactured or imported for distribution or sale to
3 California Customers, any Products that are not Reformulated Products.

4 **3.2 Vendor Notification/Certification**

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

15 **3.3 Products No Longer in MooreCo's Control**

16 No later than 45 days after the Effective Date, MooreCo shall send a letter, electronic or
17 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
18 October 28, 2011, supplied the item for resale in California described as an exemplar in each of the
19 Notice MooreCo received from Vinocur ("Exemplar Product(s)"); and (2) any California Customer
20 and/or Retailer that MooreCo reasonably understands or believes had any inventory for resale in
21 California of Exemplar Product(s) as of the relevant Notice's dates. The Notification Letter shall
22 advise the recipient that each Exemplar Product(s) contains TDCPP, a chemical known to the State
23 of California to cause cancer, as appropriate depending on the allegations in the Notice, and request
24 that the recipient either: (a) label the Exemplar Product(s) remaining in inventory for sale in
25 California, or to California Customers, pursuant to Section 3.5; or (b) return, at MooreCo's sole
26 expense, all units of the Exemplar Product(s) held for sale in California, or to California Customers,
27 to MooreCo or a party MooreCo has otherwise designated. The Notification Letter shall require a
28 response from the recipient within 15 days confirming whether the Exemplar Product(s) will be

1 labeled or returned. MooreCo shall maintain records of all correspondence or other
2 communications generated pursuant to this Section for two years after the Effective Date and shall
3 promptly produce copies of such records upon Vinocur's written request.

4 **3.4 Current Inventory**

5 Any Products in, or manufactured and en route to, MooreCo's inventory as of or after May
6 15, 2014, that do not qualify as Reformulated Products and that MooreCo has reason to believe may
7 be sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth
8 in Section 3.5 below unless Section 3.6 applies.

9 **3.5 Product Warnings**

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

16 The parties are informed and understand that MooreCo already began a labeling and
17 warning program prior to the Effective Date, however, on or before May 16, 2014 MooreCo shall
18 use the following language:

19
20 **WARNING:** This product contains TDCPP, a flame
21 retardant chemical known to the State
22 of California to cause cancer.¹
23
24

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26 ¹ If MooreCo seeks to use alternative warning language, other than the language specified above or the safe
27 harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it
28 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 27 CCR § 25601 *et seq.* and
shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b)
"cancer, birth defects or other reproductive harm."

1 **3.6 Alternatives to Interim Warnings**

2 The obligations of MooreCo under Section 3.3 shall be relieved provided MooreCo certifies
3 on or before April 24, 2014 that only Exemplar Products meeting the Reformulation Standard will
4 be offered for sale in California, or to California Customers for sale in California, after May 15,
5 2014. The obligations of MooreCo under Section 3.4 shall be relieved provided MooreCo certifies
6 on or before April 24, 2014 that, after June 30, 2014, it will only distribute or cause to be
7 distributed for sale in, or sell in California, or to California Customers for sale in California,
8 Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard. The
9 certifications provided by this Section are material terms and time is of the essence.

10 **4. MONETARY PAYMENTS**

11 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

12 In settlement of all the claims referred to in this Consent Judgment, MooreCo shall pay the
13 civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment
14 will be allocated in accordance with California Health & Safety Code
15 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
16 Health Hazard Assessment (“OEHHA”), 25% of the penalty remitted to Laurence Vinocur. Each
17 penalty payment shall be made within two business days of the date it is due and be delivered to the
18 addresses listed in Section 4.5 below. MooreCo shall be liable for payment of interest, at a rate of
19 10% simple interest, for all amounts due and owing under this Section that are not received within
20 two (2) business days of the due date.

21 4.1.1 Initial Civil Penalty. On or before the Effective Date, MooreCo shall make
22 an initial civil penalty payment in the amount identified on MooreCo’s Exhibit A to “Goodwin
23 Procter LLP.” Goodwin Procter LLP shall provide The Chanler Group with written confirmation
24 within five (5) days of receipt that the funds have been deposited in a trust account. Within five (5)
25 business days of the date that this Consent Judgment is approved by the Court, Goodwin Procter
26 LLP shall issue two separate checks for the initial civil penalty payment to “OEHHA” and “The
27 Chanler Group in Trust for Laurence Vinocur.”

28

1 4.1.2 Second Civil Penalty. On or before May 15, 2014, MooreCo shall make a
2 second civil penalty payment in the amount identified on MooreCo Exhibit A. The amount of the
3 second penalty may be reduced according to any penalty waiver MooreCo is eligible for under
4 Sections 4.1.4(i) and 4.1.4(iii), below.

5 4.1.3 Third Civil Penalty. On or before November 30, 2014, MooreCo shall make
6 a third civil penalty payment in the amount identified on MooreCo's Exhibit A. The amount of the
7 third penalty may be reduced according to any penalty waiver MooreCo is eligible for under
8 Sections 4.1.4(ii) and 4.1.4(iv), below.

9 4.1.4 Reductions to Civil Penalty Payment Amounts. MooreCo may reduce the
10 amount of the second and/or third civil penalty payments identified on MooreCo's Exhibit A by
11 providing Vinocur with certification of certain efforts undertaken to reformulate their Products or
12 limit the ongoing sale of non-reformulated Products in California. The options to provide a written
13 certification in lieu of making a portion of MooreCo's civil penalty payment constitute material
14 terms of this Consent Judgment, and with 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 MooreCo's Exhibit A, a portion of the second civil penalty shall be waived, to the
18 extent that it has agreed that, as of May 15, 2014, and continuing into the future, it shall only
19 manufacture or import for distribution or sale to California Customers or cause to be manufactured
20 or imported for distribution or sale to California Customers, Reformulated Products. An officer or
21 other authorized representative of MooreCo that has exercised this election shall provide Vinocur
22 with a written certification confirming compliance with such conditions, which certification must
23 be received by Vinocur's counsel on or before April 10, 2014.

24 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

25 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
26 MooreCo has agreed that, as of June 1, 2014, and continuing into the future, it shall only
27 manufacture or import for distribution or sale in California or cause to be manufactured or imported
28 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-

1 dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per million
2 (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject product,
3 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
4 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
5 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
6 representative of MooreCo that has exercised this election shall provide Vinocur with a written
7 certification confirming compliance with such conditions, which certification must be received by
8 Vinocur’s counsel on or before November 15, 2014.

9 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
10 **Exemplar Products from the California Market.**

11 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
12 other authorized representative of MooreCo provides Vinocur with written certification, by May 15,
13 2014, confirming that each individual or establishment in California to which it supplied the
14 Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products
15 held for sale in California.²

16 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
17 **California of Unreformulated Inventory.**

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

23 **4.2 Representations**

24 MooreCo represents that the sales data and other information concerning its size, knowledge
25 of TDCPP, and prior reformulation and/or warning efforts, it provided to Vinocur was truthful to its
26

27 ² For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Vinocur has, prior to August 31, 2013, provided MooreCo 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 knowledge and a material factor upon which Vinocur has relied to determine the amount of civil
2 penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment.

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

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

14 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
15 **Standard.**

16 If Vinocur provides notice and appropriate supporting information to MooreCo that levels of
17 TDCPP in excess of the Reformulation Standard have been detected in one or more Products
18 labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline
19 for meeting the Reformulation Standard has arisen for MooreCo under Sections 3.1 or 3.6 above,
20 MooreCo may elect to pay a stipulated penalty to relieve any further potential liability under
21 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
22 question.³ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm, and
23 \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount
24 in excess of the Reformulation Standards but under 250 ppm.⁴ Vinocur shall further be entitled to

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

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 reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the
2 stipulated penalty level. MooreCo under this Section must provide notice and appropriate
3 supporting information relating to the purchase (e.g. vendor name and contact information
4 including representative, purchase order, certification (if any) received from vendor for the
5 exemplar or subcategory of products), test results, and a letter from a company representative or
6 counsel attesting to the information provided, to Vinocur within 30 calendar days of receiving test
7 results from Vinocur's counsel. Any violation levels at or above 250 ppm shall be subject to the
8 full remedies provided pursuant to this Consent Judgment and at law.

9 4.4 Reimbursement of Fees and Costs

10 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
11 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
12 this fee reimbursement issue to be resolved after the material terms of the agreement had been
13 settled. Shortly after the other settlement terms had been finalized, MooreCo expressed a desire to
14 resolve the fee and cost issue. MooreCo then agreed to pay Vinocur and his counsel under general
15 contract principles and the private attorney general doctrine codified at California Code of Civil
16 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,
17 including the fees and costs incurred as a result of investigating, bringing this matter to MooreCo's
18 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In
19 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of
20 time Vinocur's counsel will incur to monitor various provisions in this agreement over the next two
21 years, with the exception of additional fees that may be incurred pursuant to MooreCo's election in
22 Section 11. MooreCo more specifically agreed, upon the Court's approval and entry of this
23 Consent Judgment, to pay Vinocur's counsel the amount of fees and costs indicated on MooreCo's
24 Exhibit A. MooreCo shall, within five (5) days of the mutual execution of this Consent Judgment
25 by the Parties, issue a check payable to "Goodwin Procter LLP" in the amount of fees and costs
26 indicated on Exhibit A to be held in trust by Goodwin Procter LLP for The Chanler Group.
27 Goodwin Procter LLP shall provide The Chanler Group with written confirmation within five (5)
28 days of receipt that the funds have been deposited in a trust account. Within five (5) business days

1 of the date this Consent Judgment is approved by the Court, Goodwin Procter LLP shall issue a
2 check payable to "The Chanler Group" at the address found in Section 8 below.

3
4 **4.5 Payment Procedures**

5 4.5.1 Issuance of Payments.

6 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
7 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

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

13 (b) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to
14 Section 4.1, shall be delivered directly to OEHHHA (Memo line "Prop 65 Penalties") at one
15 of the following addresses, as appropriate:

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

28 4.5.2 Proof of Payment to OEHHHA. A copy of each check payable to OEHHHA
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 OEHHHA.

4.5.3 Tax Documentation. MooreCo 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) OEHHHA, who shall be identified as "California Office of

1 Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be
2 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) “The
3 Chanler Group” (EIN: 94-3171522) to the address set forth in Section 4.3.1(a) above.

4 **5. CLAIMS COVERED AND RELEASED**

5 **5.1 Vinocur’s Release of Proposition 65 Claims**

6 Vinocur, acting on his own behalf and in the public interest, releases MooreCo, its parents,
7 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
8 attorneys, and each entity to whom MooreCo directly or indirectly distributes or sells Products,
9 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
10 franchisees, cooperative members, and licensees, including Staples, Inc., United Stationers Supply
11 Co. and S.P. Richards Company, a division of Genuine Parts Company (collectively, “Releasees”),
12 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
13 exposures to the TDCPP in the Products, as set forth in the Notice. Compliance with the terms of
14 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the
15 TDCPP from the Products, as set forth in the Notice. The Parties further understand and agree that
16 this Section 5.1 release shall not extend upstream to any entities, other than MooreCo, that
17 manufactured the Products or any component parts thereof, or any distributors or suppliers who
18 sold the Products or any component parts thereof to MooreCo, except that an entity upstream of
19 MooreCo that is a Retailer of a Private Labeled Covered Product shall be released as to the Private
20 Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer
21 in question.

22 **5.2 Vinocur’s Individual Releases of Claims**

23 Vinocur, in his individual capacity only and *not* in his representative capacity, provides a
24 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
25 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
26 liabilities, and demands of Vinocur of any nature, character, or kind, whether known or unknown,
27 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
28 TCEP and TDBPP in the Products or Additional Products (as defined in Section 11.1 and delineated

1 on MooreCo's Exhibit A) manufactured, imported, distributed, or sold by MooreCo prior to the
2 Effective Date. The Parties further understand and agree that this Section 5.2 release shall not
3 extend upstream to any entities that manufactured the Products or Additional Products, or any
4 component parts thereof, or any distributors or suppliers who sold the Products or Additional
5 Products, any component parts thereof to MooreCo, except that an entity upstream of MooreCo that
6 is a Retailer of a Private Labeled Covered Product (or Additional) Product shall be released as to
7 the Private Labeled Covered (or Additional) Products offered for sale in California by the Retailer
8 in question. Nothing in this Section affects Vinocur's right to commence or prosecute an action
9 under Proposition 65 against a Releasee that does not involve MooreCo's Products or Additional
10 Products.

11 **5.3 MooreCo's Release of Vinocur**

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

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
21 after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment,
22 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
23 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
24 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
25 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
26 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
27 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by
28 the Court and subsequently overturned by any appellate court, any monies that have been provided

1 to OEHHA, Vinocur or his counsel pursuant to Section 4, above, shall be refunded within 15 days
2 of the appellate decision becoming final. If the Court does not approve and enter the Consent
3 Judgment within one year of the Effective Date, any monies that have been provided to OEHHA or
4 held in trust for Vinocur or his counsel pursuant to Section 4, above, shall be refunded to MooreCo
5 within 15 days.

6 **7. GOVERNING LAW**

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

16 **8. NOTICES**

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

21

22 To MooreCo:

23 At the address shown on Exhibit A

24

25

26

To Vinocur:

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

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

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

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

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 In addition to the Products, where MooreCo has identified on Exhibit A additional
10 products that contain TDCPP and that are sold or offered for sale by it in California, or to California
11 Customers, (“Additional Products”), then by no later than March 24, 2014, MooreCo may provide
12 Vinocur with additional information or representations necessary to enable him to issue a 60-Day
13 Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety Code §
14 25249.7, that includes the Additional Products. Polyurethane foam that is supplied, shaped or
15 manufactured for use as a component of a product, such as upholstered furniture, is specifically
16 excluded from the definition of Additional Products and shall not be identified by MooreCo on
17 Exhibit A as an Additional Product. Except as agreed upon by Vinocur, MooreCo shall not include
18 a product, as an Additional Product, that is the subject of an existing 60-Day Notice issued by
19 Vinocur or any other private enforcer at the time of execution. After receipt of the required
20 information, Vinocur agrees to issue a supplemental 60-day notice in compliance with all statutory
21 and regulatory requirements for the Additional Products. Vinocur will, and in no event later than
22 October 1, 2014, prepare and file an amendment to this Consent Judgment to incorporate the
23 Additional Products within the defined term “Products” and serve a copy thereof and its supporting
24 papers (including the basis for supplemental stipulated penalties, if any) on the Office of the
25 California Attorney General upon the Court’s approval and finding that the supplemental stipulated
26 penalty amount, if any, is reasonable, the Additional Products shall become subject to Section 5.1 in
27 addition to Section 5.2. MooreCo shall, at the time it elects to utilize this Section and tenders the
28 additional information or representations regarding the Additional Products to Vinocur, tender to

1 Goodwin Procter LLP's trust account an amount not to exceed \$8,750 as stipulated penalties and
2 attorneys' fees and costs incurred by Vinocur in issuing the new notice and engaging in other
3 reasonably related activities, which may be released from the trust as awarded by the Court upon
4 Vinocur's application. Any fee award associated with the modification of the Consent Judgment to
5 include Additional Products shall not offset any associated supplemental penalty award, if any.
6 (Any tendered funds remaining in the trust thereafter shall be refunded to MooreCo within 15 days).
7 Such payment shall be made to "in trust for The Chanler Group" and delivered as per Section
8 4.5.1(a) above.

9 11.2 Vinocur and MooreCo agree to support the entry of this agreement as a Consent
10 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
11 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
12 is required to obtain judicial approval of this Consent Judgment, which Vinocur shall draft and file.
13 If any third party objection to the noticed motion is filed, Vinocur and MooreCo shall work together
14 to file a reply and appear at any hearing before the Court. This provision is a material component
15 of the Consent Judgment and shall be treated as such in the event of a breach.

16 **12. MODIFICATION**

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

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


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10 AGREED TO:

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13 _____
14 Plaintiff: Laurence Vinocur

15 Date: March 24, 2014

AGREED TO:

Defendant:
MooreCo, Inc.

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By: 
Name: Mikel S. Briggs
It's: President

Date: March 20, 2014

1 EXHIBIT A

2 I. Name of Settling Defendant: MOORECO, INC.

3 II. Names of Releasees (optional/partial): Staples, Inc., United Stationers Supply Co., S.P.
4 Richards, a division of Genuine Parts Company

5 III. Types of Covered Products Applicable to MooreCo, Inc.:

6 Upholstered Chairs with Foam padding containing TDCPP:

- 7 Nester Chair – Black with Casters, SKU 34426
8 Nester Chair – Black, SKU 34426-1
9 Ergo EX Chair, SKU 34434
10 Reflex Upholstered Chair – Black with 5 Star Base, SKU 34437
11 Seatflex Upholstered Task Chair, SKU 34448
12 Seatflex Upholstered Managerial Chair, SKU 34448
13 Seatflex Upholstered Executive Chair, SKU 34449
14 Stacking/Nesting Chair Upholstered – Black, SKU 34473
15 Spine Align Ergonomic Chair, SKU 34556
16 Posture Perfect Chair, SKU 34571
17 Titan Chair – Black, SKU 34663
18 Butterfly Chair – Black, SKU 34729
19 Champ Big & Tall Chair, SKU 34730
20 Olympus Big & Tall Chair, SKU 34731

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

22 V. MooreCo, Inc. Required Settlement Payments

23 A. Penalties of \$57,000, as follows:

24 \$15,000 initial payment due on or before the Effective Date;

25 \$24,000 second payment due on or before May 15, 2014, of which \$14,000
26 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived
27 pursuant to Section 4.1.4(iii); and

28 \$18,000 third payment due on or before November 30, 2014, of which
\$12,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be
waived pursuant to Section 4.1.4(iv).

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
totaling \$39,000, as follows:

Fees and Costs attributable to MooreCo, Inc.: \$39,000.

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

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Robert B. Bader
Name

Attorney
Title

Goodwin Procter LLP
Company/Firm Name

Address:

Three Embarcadero Center, 24th Floor
San Francisco, CA
94111