

1 Mark N. Todzo, State Bar No. 168389
2 Joseph Mann, State Bar No. 207968
3 503 Divisadero Street
4 San Francisco, CA 94117
5 Telephone: (415) 913-7800
6 Facsimile: (415) 759-4112
7 mtodzo@lexlawgroup.com
8 jmann@lexlawgroup.com

9 Rick Franco, State Bar No. 170970
10 Center for Environmental Health
11 2201 Broadway, Suite 302
12 Oakland, California 94612
13 Telephone: (510) 655-3900
14 Facsimile: (510) 655-9100
15 rick@ceh.org

16 Attorneys for Plaintiff
17 CENTER FOR ENVIRONMENTAL HEALTH

18
19
20 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF ALAMEDA

22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Case No. RG-13673582

**[PROPOSED] CONSENT
JUDGMENT RE: MONARCH
SPECIALTIES INC.**

AMERIWOOD INDUSTRIES, INC., *et al.*,
Defendants.

1. INTRODUCTION

1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a non-profit corporation (“CEH”), and Defendant Monarch Specialties Inc. (“Defendant”) to settle claims asserted by CEH against Defendant as set forth in the operative Complaint in the

1 matter *Center for Ameriwood Industries, Inc., et al.*, Alameda County Superior Court Case No.
2 RG-13673582 (the "Action"). CEH and Defendant are referred to collectively as the "Parties."

3 1.2. On July 17, 2013, CEH served a "Notice of Violation" (the "Notice") relating to
4 the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") on
5 Defendant, the California Attorney General, the District Attorneys of every County in the State of
6 California, and the City Attorneys for every City in State of California with a population greater
7 than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of tris
8 (1,3-dichloro-2-propyl) phosphate ("TDCPP") in foam-cushioned upholstered furniture
9 manufactured, distributed, and/or sold by Defendant.

10 1.3. Defendant is a corporation that employs ten (10) or more persons and that
11 manufactured, distributed, and/or sold Covered Products (as defined herein) in the State of
12 California. Defendant asserts that it no longer plans to distribute, sell, or offer for sale such
13 Covered Products in California.

14 1.4. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
15 Court has jurisdiction over the allegations of violations contained in the Notice and Complaint
16 and personal jurisdiction over Defendant as to the acts alleged in the Complaint; (ii) venue is
17 proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent
18 Judgment as a full and final resolution of all claims which were or could have been raised in the
19 Complaint based on the facts alleged in the Notice and Complaint with respect to Covered
20 Products manufactured, distributed, and/or sold by Defendant.

21 1.5. The Parties enter into this Consent Judgment as a full and final settlement of all
22 claims which were or could have been raised in the Complaint arising out of the facts or conduct
23 related to Defendant alleged therein. By execution of this Consent Judgment and agreeing to
24 comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law,
25 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
26 the Parties of any fact, conclusion of law, or violation of law. Defendant denies the material,
27 factual, and legal allegations in the Notice and Complaint and expressly denies any wrongdoing

28

1 whatsoever. Except as specifically provided herein, nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument, or defense either Party may have in this
3 or any other pending or future legal proceedings. This Consent Judgment is the product of
4 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
5 compromising, and resolving issues disputed in this Action.

6 **2. DEFINITIONS**

7 2.1. "Covered Products" means foam-cushioned upholstered furniture manufactured,
8 distributed, and/or sold by Defendant in California.

9 2.2. "Effective Date" means the date on which the Court enters this Consent Judgment.

10 2.3. "Listed Chemical Flame Retardants" means Tris(1,3-dichloro-2-propyl) phosphate
11 ("TDCPP"), Tris(2-chloroethyl) phosphate ("TCEP"), and Tris(2,3-dibromopropyl)phosphate
12 ("TDBPP").

13 2.4. "Manufacture Date" means the date the Covered Product was manufactured and
14 as may be indicated on a tag attached to the Covered Product.

15 2.5. "Treated" means the addition or application of any Chemical Flame Retardant to
16 any polyurethane foam used as filling material in any Covered Product.

17 **3. INJUNCTIVE RELIEF**

18 3.1. Defendant shall comply with the following requirements to eliminate or minimize
19 exposures to Listed Chemical Flame Retardants arising from the use of the Covered Products in
20 California:

21 3.1.1. **Reformulation of Covered Products.** As of the Effective Date,
22 Defendant shall not distribute, sell, or offer for sale in California any Covered Product that has
23 been Treated with any Listed Chemical Flame Retardant and which has a Manufacture Date that
24 is on or later than the Effective Date. The Parties agree that Defendant may satisfy this Section
25 3.1.1 by not distributing, selling, or offering for sale in California any Covered Products after the
26 Effective Date.

1 3.1.1.1. To ensure compliance with the reformulation provisions of
2 Section 3.1.1 should Defendant seek to distribute, sell, or offer for sale in California any Covered
3 Product after the Effective Date, Defendant shall directly or through its supply chain issue
4 specifications to its suppliers of polyurethane foam, cushioning, or padding used as filling
5 material in any Covered Product requiring that such components have not been Treated with
6 Listed Chemical Flame Retardants in accordance with the requirements of this Section 3.1.1.
7 Defendant shall obtain and maintain written certification(s) from its suppliers of polyurethane
8 foam, cushioning, or padding confirming that all such foam received by Defendant for
9 distribution in California has not been Treated with Listed Chemical Flame Retardants.

10 3.1.2. **Interim Compliance.** Any Covered Product with a Manufacture Date that
11 is earlier than the Effective Date, that contains polyurethane foam which has been Treated with
12 any Listed Chemical Flame Retardant, and that is distributed, sold, or offered for sale by
13 Defendant in California after the Effective Date shall be accompanied by a Clear and Reasonable
14 Warning that complies with Section 3.1.4. The Parties agree that Defendant may satisfy this
15 Section 3.1.2 by not distributing, selling, or offering for sale in California any Covered Products
16 after the Effective Date.

17 3.1.3. **Warnings for Products in the Stream of Commerce.** In an effort to
18 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65
19 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in
20 accordance with Section 3.1.2, within 30 days following the Effective Date, Defendant shall
21 provide warning materials by certified mail to each of its California retailers or distributors to
22 whom Defendant reasonably believes it sold Covered Products that contained or may have
23 contained any Listed Chemical Flame Retardant on or after October 31, 2011. Such warning
24 materials shall include a reasonably sufficient number of hang tags in order to permit the retailer
25 or distributor to place a warning tag on each Covered Product such customer has purchased from
26 Defendant. The hang tags shall contain the warning language set forth in Section 3.1.4. The
27
28

1 warning materials shall also include a letter of instruction for the placement of the hang tags, and
2 a Notice and Acknowledgment postcard.

3 3.1.4. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
4 Consent Judgment shall state:

5 WARNING: This product contains tris(1,3-dichloro-2-propyl) phosphate
6 (“TDCPP”) [and/or TCEP and/or TDBPP], a chemical[s] known to the State of
7 California to cause cancer.

8 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any
9 additional words or phrases that contradict, obfuscate, or otherwise undermine the warning. The
10 warning statement shall be prominently displayed on the Covered Product or the packaging of the
11 Covered Product with such conspicuousness, as compared with other words, statements, or
12 designs as to render it likely to be read and understood by an ordinary individual prior to sale.
13 For internet, catalog, or any other sale where the consumer is not physically present and cannot
14 see a warning displayed on the Covered Product or the packaging of the Covered Product prior to
15 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to
16 be read and understood prior to the authorization of or actual payment.

17 **4. PENALTIES AND PAYMENT**

18 4.1. Defendant shall pay to CEH the total sum of twenty thousand dollars (\$20,000),
19 which shall be allocated as follows:

20 4.1.1. \$2,200 shall constitute a penalty pursuant to Cal. Health & Safety Code §
21 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code
22 § 25249.12.

23 4.1.2. \$3,000 shall constitute a payment in lieu of civil penalty pursuant to Cal.
24 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to
25 continue its work of educating and protecting the public from exposures to toxic chemicals,
26 including chemical flame retardants. CEH may also use a portion of such funds to monitor
27 compliance with this Consent Judgment and to purchase and test Defendant’s products to confirm

28

1 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH
2 will use four percent (4%) of such funds to award grants to grassroots environmental justice
3 groups working to educate and protect the public from exposures to toxic chemicals. The method
4 of selection of such groups can be found at the CEH website at www.ceh.org/justicefund.

5 4.1.3. \$14,800 shall constitute reimbursement of CEH's reasonable attorneys'
6 fees and costs.

7 4.1.4. The payments required under Sections 4.1.1-4.1.3 shall be made in three
8 separate checks, all to be delivered within 10 days following the Effective Date. The payments
9 required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable CEH. The payment
10 required pursuant to Section 4.1.3 shall be made payable to Lexington Law Group. All checks
11 shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 8.

12 5. ENFORCEMENT OF CONSENT JUDGMENT

13 5.1. CEH may, by motion or application for an order to show cause before the Superior
14 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
15 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH
16 shall provide Defendant with a Notice of Violation and a copy of any test results which
17 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding
18 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,
19 including providing Defendant a reasonable opportunity of at least thirty (30) days to cure any
20 alleged violation. Should such attempts at informal resolution fail, CEH may file its enforcement
21 motion or application. The prevailing party on any motion to enforce this Consent Judgment
22 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
23 application. This Consent Judgment may only be enforced by the Parties.

24 6. MODIFICATION OF CONSENT JUDGMENT

25 6.1. This Consent Judgment may only be modified by written agreement of CEH and
26 Defendant, or upon motion of CEH or Defendant as provided by law.
27
28

1 **7. CLAIMS COVERED AND RELEASE**

2 7.1. This Consent Judgment is a full, final, and binding resolution between CEH acting
3 in the public interest and Defendant and Defendant’s parents, officers, directors, shareholders,
4 divisions, subdivisions, subsidiaries, partners, affiliated companies, and their respective
5 successors and assigns (“Defendant Releasees”) and all entities to whom they distribute or sell or
6 have distributed or sold Covered Products including, but not limited to, distributors, wholesalers,
7 customers, retailers, franchisees, cooperative members, and licensees (“Downstream Defendant
8 Releasees”), of all claims alleged in the Complaint in this Action arising from any violation of
9 Proposition 65 that have been or could have been asserted in the public interest against Defendant
10 Releasees and Downstream Defendant Releasees, regarding the failure to warn about exposure to
11 TDCPP in the Covered Products manufactured, distributed, or sold by Defendant prior to the
12 Effective Date.

13 7.2. CEH, for itself releases, waives, and forever discharges any and all claims alleged
14 in the Complaint against Defendant Releasees and Downstream Defendant Releasees arising from
15 any violation of Proposition 65 that have been or could have been asserted regarding the failure to
16 warn about exposure to TDCPP in connection with Covered Products manufactured, distributed,
17 or sold by Defendants prior to the Effective Date.

18 7.3. Compliance with the terms of this Consent Judgment by Defendant Releasees and
19 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by
20 Defendant Releasees and Downstream Defendant Releasees with respect to any alleged failure to
21 warn about any Listed Chemical Flame Retardants in Covered Products manufactured,
22 distributed, or sold by Defendant after the Effective Date.

23 **8. PROVISION OF NOTICE**

24 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the
25 notice shall be sent by first class and electronic mail as follows:

26 8.1.1. **Notices to Defendants.** The persons for Defendants to receive notices
27 pursuant to this Consent Judgment shall be:

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

David Zelnicker
Monarch Specialties Inc.
4155 Autoroute Chomedey
Laval, Québec H7P 0A8
davidz@monarchspeg.com

Rick R. Rothman
Bingham McCutchen LLP
355 South Grand Avenue, Suite 4400
Los Angeles, CA 90071
rick.rothman@bingham.com

8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to this Consent Judgment shall be:

Rick Franco
Center for Environmental Health
2201 Broadway, Suite 302
Oakland, California 94612
rick@ceh.org

Mark Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

8.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Parties notice by first class and electronic mail.

9. COURT APPROVAL

9.1. This Consent Judgment shall become effective on the Effective Date, provided however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and Defendant shall support approval of such Motion.

9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

10. GOVERNING LAW AND CONSTRUCTION

10.1. The terms and obligations arising from this Consent Judgment shall be construed and enforced in accordance with the laws of the State of California.

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

11. ENTIRE AGREEMENT

11.1. This Consent Judgment contains the sole and entire agreement and understanding of CEH and Defendant with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

11.2. There are no warranties, representations, or other agreements between CEH and Defendant except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

11.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

11.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. RETENTION OF JURISDICTION

12.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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

14. NO EFFECT ON OTHER SETTLEMENTS

14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

15. EXECUTION IN COUNTERPARTS

15.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

Dated: Feb 20, 2014 **CENTER FOR ENVIRONMENTAL HEALTH**



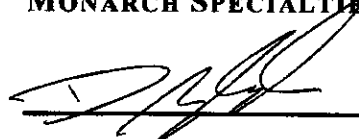
CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: Feb 10, 2014 **MONARCH SPECIALTIES INC.**



David zelnicker

Printed Name

v-p operations

Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED:**

Dated: _____, 2014

Judge of the Superior Court of the State of
California, County of Alameda