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16 Attorneys for Plaintiff  
17 CENTER FOR ENVIRONMENTAL HEALTH

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

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23  
24 CENTER FOR ENVIRONMENTAL  
25 HEALTH, a non-profit corporation,

26 Plaintiff,

27 v.

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

Case No. RG-13673582

**[PROPOSED] CONSENT  
JUDGMENT RE:  
LUMISOURCE, LLC**

**1. INTRODUCTION**

1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a non-profit corporation (“CEH”), and Defendant LumiSource, LLC (“Defendant”) to settle claims asserted by CEH against Defendant as set forth in the operative Complaint in the matter *Center for Ameriwood Industries, Inc., et al.*, Alameda County Superior Court Case No. RG-13673582 (the “Action”). CEH and Defendant are referred to collectively as the “Parties”.

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

8           1.3.    Defendant is a corporation that employs ten (10) or more persons and that  
9 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of  
10 California.

11           1.4.    For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
12 Court has jurisdiction over the allegations of violations contained in the Notice and Complaint  
13 and personal jurisdiction over Defendant as to the acts alleged in the Complaint; (ii) venue is  
14 proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent  
15 Judgment as a full and final resolution of all claims which were or could have been raised in the  
16 Complaint based on the facts alleged in the Notice and Complaint with respect to Covered  
17 Products manufactured, distributed, and/or sold by Defendant.

18           1.5.    The Parties enter into this Consent Judgment as a full and final settlement of all  
19 claims that were or which could have been raised in the Complaint arising out of the facts or  
20 conduct related to Defendant alleged therein. By execution of this Consent Judgment and  
21 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or  
22 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an  
23 admission by the Parties of any fact, conclusion of law, or violation of law. Defendant denies the  
24 material, factual, and legal allegations in the Notice and Complaint and expressly denies any  
25 wrongdoing whatsoever. Except as specifically provided herein, nothing in this Consent  
26

27 <sup>1</sup> As used herein, the term manufacture[d] shall have the meaning defined in Section 3(a)(10) of  
28 the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(10) (manufacture, produce, or assemble).

1 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense either Party  
2 may have in this or any other pending or future legal proceedings. This Consent Judgment is the  
3 product of negotiation and compromise and is accepted by the Parties solely for purposes of  
4 settling, compromising, and resolving issues disputed in this Action.

5 **2. DEFINITIONS**

6 2.1. "Chemical Flame Retardant" means any halogenated or phosphorous-based  
7 chemical compound used for the purpose of resisting or retarding the spread of fire. "Chemical  
8 Flame Retardant" does not include any chemical that has been rated as a Benchmark 4 chemical  
9 pursuant to Clean Production Action's GreenScreen ([http://www.cleanproduction.org/  
10 Green.Greenscreen.php](http://www.cleanproduction.org/Green.Greenscreen.php)).

11 2.2. "Covered Products" means foam-cushioned upholstered furniture manufactured,  
12 distributed, and/or sold by Defendant in California.

13 2.3. "Effective Date" means the date on which the Court enters this Consent Judgment  
14 or July 31, 2014, whichever is later.

15 2.4. "Listed Chemical Flame Retardants" means Tris(1,3-dichloro-2-propyl) phosphate  
16 ("TDCPP"), Tris(2-chloroethyl) phosphate ("TCEP"), and Tris(2,3-dibromopropyl)phosphate  
17 ("TDBPP").

18 2.5. "Manufacture Date" means the date the Covered Product was manufactured and  
19 as may be indicated on a tag attached to the Covered Product.

20 2.6. "TB 117" means Technical Bulletin No. 117, entitled "Requirements, Test  
21 Procedures and Apparatus for Testing the Flame Retardance of Filling Materials Used in  
22 Upholstered Furniture," dated March 2000.

23 2.7. "TB 117-2013" means Technical Bulletin 117-2013, entitled "Requirements, Test  
24 Procedures and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered  
25 Furniture," approved on November 21, 2013 by the California Bureau of Electronic and  
26 Appliance Repair, Home Furnishings and Thermal Insulation.

27 2.8. "TB 117-2013 Effective Date" means the date on which filling materials and cover  
28 fabrics in upholstered furniture are required to meet the fire retardant requirements in TB 117-

1 2013 pursuant to the amendments to Section 1374 of Article 2 of Title 4 of the California Code of  
2 Regulations.

3 2.9. “Treated” means the intentional addition or application of any Chemical Flame  
4 Retardant to any polyurethane foam, cushioning, or padding used as filling material in any  
5 Covered Product.

6 2.10. “Untreated Foam” means polyurethane foam that has not been Treated with any  
7 Chemical Flame Retardant.

### 8 **3. INJUNCTIVE RELIEF**

9 3.1. **Reformulation of Covered Products.** Defendant shall comply with the following  
10 requirements to reformulate the Covered Products to eliminate exposures to TDCPP arising from  
11 the use of the Covered Products:

12 3.1.1. **Listed Chemical Flame Retardants – All Covered Products.** As of the  
13 Effective Date, Defendant shall not distribute, sell, or offer for sale in California any Covered  
14 Product that has been Treated with any Listed Chemical Flame Retardant and which has a  
15 Manufacture Date that is on or later than the Effective Date.

16 3.1.1.1. To ensure compliance with the reformulation provisions of this  
17 Section, following the Effective Date, Defendant shall directly or through its supply chain issue  
18 specifications to its suppliers of polyurethane foam, cushioning, or padding used as filling  
19 material in any Covered Product requiring that such components have not been Treated with  
20 Listed Chemical Flame Retardants in accordance with the requirements of this Section 3.1.1.  
21 Defendant shall obtain and maintain written certification(s) from its suppliers of polyurethane  
22 foam, cushioning, or padding confirming that all such foam received by Defendant for  
23 distribution in California has not been Treated with Listed Chemical Flame Retardants.  
24 Defendant shall not be deemed in violation of the requirements of this Section 3.1.1 for any  
25 Covered Product to the extent: (a) it has relied on a written certification from its vendor that  
26 supplied a Covered Product or the polyurethane foam, cushioning, or padding used as filling  
27 material in the Covered Product that such Covered Product, foam, cushioning or padding is made  
28 with only Untreated Foam, and/or, if such certification is not relied on or has previously been

1 demonstrated to be invalid, (b) it has obtained a test result from an independent third party  
2 certified laboratory reporting that the Covered Product’s polyurethane foam, cushioning, or  
3 padding used as filling material has been made with no Listed Chemical Flame Retardants.

4 **3.1.2. Interim Compliance – Listed Chemical Flame Retardants.** Any  
5 Covered Products in which the polyurethane foam has been Treated with any Listed Chemical  
6 Flame Retardant and which is distributed, sold, or offered for sale by Defendant in California  
7 after the Effective Date shall be accompanied by a Clear and Reasonable Warning that complies  
8 with Section 3.1.4.

9 **3.1.3. Warnings for Products in the Stream of Commerce.** In an effort to  
10 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65  
11 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in  
12 accordance with Section 3.1.2, within 30 days following the Effective Date, Defendant shall  
13 either instruct its California retailers or distributors to discontinue the sale of the Covered  
14 Products in California or provide warning materials by certified mail that comply with Section  
15 3.1.4 to each of its California retailers or distributors to whom Defendant reasonably believes it  
16 sold Covered Products that contained or may have contained TDCPP on or after October 31,  
17 2011, if Defendant does not have actual knowledge that (i) the retailer or distributor is no longer  
18 holding such Covered Products in inventory for sale in California or (ii) a Proposition 65 warning  
19 is already provided for such Covered Products.

20 **3.1.4. Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
21 Consent Judgment shall state:

22 WARNING: This product contains “TDCPP” [and/or TCEP and/or TDBPP], a  
23 chemical[s] known to the State of California to cause cancer.<sup>2</sup>

24 \_\_\_\_\_  
25 <sup>2</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if  
26 Defendant had begun to use it, prior to the Effective Date. Should Defendant seek to use  
27 alternative warning language, other than the language specified above or the safe harbor warning  
28 specified in 27 CCR § 25603.2, or seek to use an alternate method of transmission of the warning,  
it 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. In the event that Defendant’s application for Court approval

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

10 **3.2. Optional Additional Reformulation – Use of Untreated Foam.** In order for  
11 Defendant to be eligible for a waiver of the additional penalty/payment in lieu of penalty  
12 payments set forth in Section 4.1.5 below, Defendant shall undertake the additional actions to  
13 reduce or eliminate the use of Chemical Flame Retardants set forth herein. As of the TB117-2013  
14 Effective Date, Defendant shall not manufacture for sale in California any Covered Product that  
15 has been Treated with any Chemical Flame Retardant. In order to avoid the additional payments,  
16 Defendant must provide written certification to CEH of its use of only Untreated Foam within 30  
17 days following the TB 117-2013 Effective Date.

18 **3.2.1. Specification To and Certification From Suppliers.** To ensure  
19 compliance with the provisions of this Section 3.2, to the extent that Defendant opts for additional  
20 reformulation, it shall directly or through its supply chain issue specifications to its suppliers of  
21 polyurethane foam, cushioning, or padding used as filling material in any Covered Product  
22 requiring that such components shall use only Untreated Foam. Defendant shall not be deemed in  
23 violation of the requirements of this Section 3.2 for any Covered Product to the extent: (a) it has  
24 relied on a written certification from its vendor that supplied a Covered Product or the

25  
26 of an alternative warning is contested by CEH, the prevailing party shall be entitled to its  
27 reasonable attorneys' fees associated with opposing or responding to the opposition to the  
28 application. No fees shall be recoverable for the initial application seeking an alternative  
warning.

1 polyurethane foam, cushioning, or padding used as filling material in the Covered Product is  
2 made with only Untreated Foam, and/or (b) it has obtained a test result from a certified laboratory  
3 reporting that the Covered Product's polyurethane foam, cushioning, or padding used as filling  
4 material has been made with Untreated Foam. Defendant shall obtain and maintain written  
5 certification(s) from its suppliers of polyurethane foam, cushioning, or padding confirming that  
6 all such foam received by Defendant for distribution in California is Untreated Foam.

7 **4. PENALTIES AND PAYMENT**

8 4.1. Defendant shall initially pay to CEH the total sum of thirty thousand dollars  
9 (\$30,000), which shall be allocated as follows:

10 4.1.1. \$3,300 shall constitute a penalty pursuant to Cal. Health & Safety Code §  
11 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code  
12 § 25249.12.

13 4.1.2. \$4,500 shall constitute a payment in lieu of civil penalty pursuant to Cal.  
14 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to  
15 continue its work of educating and protecting the public from exposures to toxic chemicals,  
16 including chemical flame retardants. CEH may also use a portion of such funds to monitor  
17 compliance with this Consent Judgment and to purchase and test Defendant's products to confirm  
18 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH  
19 will use four percent (4%) of such funds to award grants to grassroots environmental justice  
20 groups working to educate and protect the public from exposures to toxic chemicals. The method  
21 of selection of such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

22 4.1.3. \$22,200 shall constitute reimbursement of CEH's reasonable attorneys'  
23 fees and costs.

24 4.1.4. The payments required under Sections 4.1.1-4.1.3 shall be made in three  
25 separate checks, all to be delivered within 10 days following court entry of this Consent  
26 Judgment. The payments required pursuant to Sections 4.1.1 and 4.1.2 shall each be made  
27 payable CEH. The payment required pursuant to Section 4.1.3 shall be made payable to  
28

1 Lexington Law Group. All checks shall be delivered to Mark Todzo at Lexington Law Group at  
2 the address set forth in Section 8.

3 4.1.5. In the event that Defendant elects not to certify its compliance with Section  
4 3.2 in accordance with that Section, within 30 days following the TB 117-2013 Effective Date,  
5 Defendant must make an additional payment of \$10,000, which shall be paid in two separate  
6 checks, each payable to CEH, to be allocated as follows:

7 4.1.5.1. \$4,000 shall constitute a penalty pursuant to Cal. Health &  
8 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health  
9 & Safety Code § 25249.12.

10 4.1.5.2. \$6,000 shall constitute a payment in lieu of civil penalty  
11 pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such  
12 funds to continue its work of educating and protecting the public from exposures to toxic  
13 chemicals, including chemical flame retardants. CEH may also use a portion of such funds to  
14 monitor compliance with this Consent Judgment and to purchase and test Defendant's products to  
15 confirm compliance. In addition, as part of its Community Environmental Action and Justice  
16 Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental  
17 justice groups working to educate and protect the public from exposures to toxic chemicals. The  
18 method of selection of such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

## 19 **5. ENFORCEMENT OF CONSENT JUDGMENT**

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



1 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or  
2 application. This Consent Judgment may only be enforced by the Parties.

### 3 **6. MODIFICATION OF CONSENT JUDGMENT**

4 6.1. This Consent Judgment may only be modified by written agreement of CEH and  
5 Defendant, or upon motion of CEH or Defendant as provided by law.

### 6 **7. CLAIMS COVERED AND RELEASE**

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

17 7.2. CEH, for itself releases, waives, and forever discharges any and all claims alleged  
18 in the Complaint against Defendant and Downstream Defendant Releasees arising from any  
19 violation of Proposition 65 that have been or could have been asserted regarding the failure to  
20 warn about exposure to Listed Chemical Flame Retardants in connection with Covered Products  
21 manufactured, distributed, or sold by Defendant prior to the Effective Date.

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

### 26 **8. PROVISION OF NOTICE**

27 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the  
28 notice shall be sent by first class and electronic mail as follows:

1                   8.1.1. **Notices to Defendant.** The persons for Defendant to receive notices  
2 pursuant to this Consent Judgment shall be:

3                                 Steve Lee  
4                                 LumiSource, LLC  
5                                 2950 Old Higgins Rd.  
6                                 Elk Grove Village, IL 60007  
7                                 stevelee@lumisource.com

8                                 With a copy to:

9                                 Jeffrey S. Wilson  
10                                 Wilson & Associates  
11                                 2300 N. Barrington Rd., Suite 400  
12                                 Hoffman Estates, IL 60169-2036  
13                                 INTPROPLAW@aol.com

14                                 and

15                                 Sarah Esmaili  
16                                 Arnold & Porter LLP  
17                                 3 Embarcadero Center, 10<sup>th</sup> Floor  
18                                 San Francisco, CA 94111-4024  
19                                 Sarah.Esmaili@aporter.com

20                   8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
21 this Consent Judgment shall be:

22                                 Rick Franco  
23                                 Center for Environmental Health  
24                                 2201 Broadway, Suite 302  
25                                 Oakland, California 94612  
26                                 rick@ceh.org

27                                 Mark Todzo  
28                                 Lexington Law Group  
29                                 503 Divisadero Street  
30                                 San Francisco, CA 94117  
31                                 mtodzo@lexlawgroup.com

32                   8.2. Any Party may modify the person and address to whom the notice is to be sent by  
33 sending the other Parties notice by first class and electronic mail.

1           **9. COURT APPROVAL**

2           9.1. This Consent Judgment shall become effective on the date the Court enters this  
3 Consent Judgment, provided however, that CEH shall prepare and file a Motion for Approval of  
4 this Consent Judgment and Defendant shall support approval of such Motion.

5           9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or  
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
7 purpose.

8           **10. GOVERNING LAW AND CONSTRUCTION**

9           10.1. The terms and obligations arising from this Consent Judgment shall be construed  
10 and enforced in accordance with the laws of the State of California.

11           **11. ENTIRE AGREEMENT**

12           11.1. This Consent Judgment contains the sole and entire agreement and understanding  
13 of CEH and Defendant with respect to the entire subject matter hereof, and any and all prior  
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
15 merged herein and therein.

16           11.2. There are no warranties, representations, or other agreements between CEH and  
17 Defendant except as expressly set forth herein. No representations, oral or otherwise, express or  
18 implied, other than those specifically referred to in this Consent Judgment have been made by any  
19 Party hereto.

20           11.3. No other agreements not specifically contained or referenced herein, oral or  
21 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
22 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
23 any of the Parties hereto only to the extent that they are expressly incorporated herein.

24           11.4. No supplementation, modification, waiver, or termination of this Consent  
25 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

26           11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
27 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
28 such waiver constitute a continuing waiver.



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

Dated: \_\_\_\_\_, 2014

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