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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12

13 LAURENCE VINOUCUR

14 Plaintiff,

15 v.

16 CORT BUSINESS SERVICES
17 CORPORATION; et al.

18 Defendants.
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Case No. RG15769810

*Assigned for all Purposes to the Honorable
George C. Hernandez, Superior Court Judge,
Department 17*

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT CORT BUSINESS
SERVICES CORPORATION**

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and defendant CORT Business Services Corporation (“CORT”), with Vinocur and
5 CORT 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 harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 CORT 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 and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that CORT sells and distributes for sale in California, upholstered furniture
16 with foam padding containing tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”), and that it does so
17 without providing a health hazard warning in violation of Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are upholstered furniture with foam
20 padding containing TDCPP that are distributed, sold and/or offered for sale or use in California by
21 CORT including, but not limited to, the *Godiva Dining Chair*, #938641149, #4035037,
22 (collectively, “Products”).

23 **1.6 Notice of Violation**

24 On February 27, 2015, Vinocur served CORT and the requisite public enforcement agencies
25 with a Supplemental 60-Day Notice of Violation (“Notice”), alleging that CORT violated
26 Proposition 65 when it failed to warn its customers and consumers in California that the Products
27 expose users to TDCPP. To the best of the Parties’ knowledge, no public enforcer has commenced
28 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On May 11, 2015, Vinocur filed a Complaint in the Superior Court in and for the County of
3 Alameda against CORT, and Does 1 through 150, *Laurence Vinocur v. CORT Business Services*
4 *Corporation., et al.*, Case No. RG15769810 (“Complaint”), alleging violations of Proposition 65,
5 based in part on the alleged unwarned exposures to the TDCPP contained in the Products.

6 **1.8 No Admission**

7 CORT denies the material factual and legal allegations contained in the Notice and
8 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
9 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
10 Judgment shall be construed as an admission by CORT of any fact, finding, conclusion of law,
11 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
12 construed as an admission by CORT of any fact, finding, conclusion of law, issue of law, or
13 violation of law. This Section shall not, however, diminish or otherwise affect CORT’s obligations,
14 responsibilities, and duties under this Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over CORT as to the allegations in the Complaint, that venue is proper in Alameda
18 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
19 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

23 **2. INJUNCTIVE SETTLEMENT TERMS**

24 **2.1 Reformulation Commitment**

25 Commencing July 15, 2015, and continuing thereafter, CORT shall only import or purchase
26 for distribution, sale, or use in California, Reformulated Products. For purposes of this Consent
27 Judgment, “Reformulated Products” are defined as Products with a maximum TDCPP, tris(2-
28 chloroethyl) phosphate (“TCEP”) and/or tris (2,3-dibromopropyl) phosphate (“TDBPP”)

1 concentration of no more than 25 parts per million when analyzed pursuant to U.S. Environmental
2 Protection Agency testing methodologies 8141, 3545 and/or 8270C, or other methodologies utilized
3 by state or federal agencies for the purpose of determining TDCPP, TCEP and/or TDBPP content in
4 a solid substance.

5 **2.2 Product Warnings**

6 Any Product of CORT that CORT has reason to believe is not a Reformulated Product and
7 which is sold by CORT at a CORT clearance center in California or directly to a customer on or
8 after the Effective Date, shall have a warning as set forth herein. Each warning shall be
9 prominently placed with such conspicuousness when compared with other words, statements,
10 designs, or devices as to render it likely to be read and understood by an ordinary individual under
11 customary conditions before purchase. Each warning shall be provided in a manner such that the
12 consumer or user understands to which specific Product the warning applies, so as to minimize the
13 risk of consumer confusion.

14 A warning required to be provided pursuant to this C.C.P. § 664.6 Settlement shall state, if
15 the Product is not a Reformulated Product as defined in Section 2.1 herein:

16 **WARNING:** This product contains chemicals, including
17 TDCPP, known to the State of
18 California to cause cancer and birth defects or
other reproductive harm.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

21 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
22 claims referred to in this Consent Judgment, CORT shall pay \$72,000 in civil penalties in
23 accordance with this Section. Each penalty payment will be allocated in accordance with California
24 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
25 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
26 penalty remitted to Vinocur. Vinocur’s counsel shall be responsible for remitting CORT’s penalty
27 payment(s) under this Consent Judgment to OEHHA.
28

1 **3.1.1 Initial Civil Penalty.** CORT shall make an initial civil penalty payment of
2 \$17,000. CORT shall provide its payment in a single check made payable to “Laurence Vinocur,
3 Client Trust Account” within fifteen business days of the execution of this Consent Judgment and
4 delivered to the address in Section 3.6.

5 **3.1.2 Final Civil Penalty.** On August 1, 2015, CORT shall make a final civil
6 penalty payment of \$55,000. Pursuant to title 11 California Code of Regulations, section 3203(c),
7 Vinocur agrees that the final civil penalty payment shall be waived in its entirety if, no later than
8 June 1, 2015, an officer of CORT provides Vinocur with a signed declaration certifying that all of
9 the Products it purchases or imports for distribution, sale, or use in California or causes to be
10 purchased for distribution, sale, or use in California as of the date of the certification are
11 Reformulated Products, and that CORT will continue to purchase for distribution, sale, or use in
12 California only Reformulated Products in the future. The option to provide a declaration certifying
13 early and complete reformulation in lieu of making the final civil penalty payment is a material
14 term, and time is of the essence. CORT shall deliver its declaration, if any, to Vinocur’s counsel at
15 the address provided in Section 3.6, below.

16 **3.2 Representations**

17 CORT represents that in implementing the requirements set forth in Sections 2.1 and 2.2 of
18 this Consent Judgment, it will voluntarily employ commercial best efforts to achieve reformulation
19 of Products on a nationwide basis and not employ statements that will encourage a vendor to limit
20 its compliance with the reformulation standard to goods intended for sale to customers who reside
21 in California.

22 **3.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

23 If Vinocur provides notice and appropriate supporting information to CORT that levels of
24 the TDCPP, TCEP, TDBPP in excess of the 25 ppm have been detected in one or more Products
25 labeled or otherwise marked in an identifiable manner as manufactured or imported after the
26 Effective Date, CORT may elect to pay a stipulated penalty to relieve any further potential liability
27 under Proposition 65 or sanction under this Consent Judgment as to Products sourced from the
28

1 vendor in question.¹ Supporting information to be provided to CORT shall include, but shall not be
2 limited to, the following: a copy of the test report(s) identifying the laboratory undertaking the
3 testing, the test method(s) used, and the test result(s); a statement of the
4 material/component/constituent of the Product that was tested; a photo of the Product that was
5 tested; and the receipt(s) demonstrating the place, date and amount of purchase of the Product. The
6 stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation
7 level is between 100 ppm and 249 ppm, this being applicable for any amount in excess of 25 ppm
8 but under 250 ppm.² Vinocur shall further be entitled to reimbursement of his associated expense in
9 an amount not to exceed \$5,000 regardless of the stipulated penalty level. CORT under this Section
10 must provide notice and appropriate supporting information relating to the purchase (e.g. vendor
11 name and contact information including representative, purchase order, certification (if any)
12 received from vendor for the exemplar or subcategory of products), test results, and a letter from a
13 company representative or counsel attesting to the information provided, to Vinocur within 30
14 calendar days of receiving test results from Vinocur's counsel. Any violation levels at or above 250
15 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

16 **3.4 Reimbursement of Attorneys' Fees and Costs**

17 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
18 without reaching agreement on the amount of fees and costs to be reimbursed to them, thereby
19 leaving the issue to be resolved after the material terms of the agreement had been settled. After
20 finalizing the other settlement terms, the Parties negotiated a resolution of the compensation due to
21 Vinocur and his counsel under general contract principles and the private attorney general doctrine
22 codified at California Code of Civil Procedure section 1021.5. For all work performed through the
23 approval of this agreement and the Court's approval of the same, but exclusive of fees and costs on
24 appeal, if any, CORT shall reimburse Vinocur and his counsel \$48,000. CORT's payment shall be

25 _____
26 ¹ This Section shall not be applicable where the vendor in question had previously been
27 found by CORT 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 CORT's vendor at a level between 100 and 249 ppm shall not
be available after July 1, 2015.

² Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 3.1 and 3.4, respectively.

1 due within fifteen business days of the execution of this Consent Judgment, and delivered to the
2 address in Section 3.6 in the form of a check payable to “The Chanler Group.” The reimbursement
3 shall cover all fees and costs incurred by Vinocur investigating, bringing this matter to CORT’s
4 attention, litigating, and negotiating a settlement of the matter in the public interest.

5 **3.5 Payments Held in Trust**

6 All payments required by this Consent Judgment shall be delivered to Vinocur’s counsel at
7 the address provided in Section 3.6 on or before the date they are due. Vinocur’s counsel shall
8 then have fourteen (14) days to forward the funds to a third party escrow agent to be held until
9 such time as the Court grants the motion for approval of the Parties’ settlement contemplated by
10 Section 5. If this Consent Judgment is not approved by the Court, Vinocur’s counsel will return to
11 CORT at the address set forth in Section 7 all payments made by CORT pursuant to Sections 3.1,
12 3.2 (if any), and 3.4.

13 **3.6 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to the following
15 address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Vinocur’s Release of Proposition 65 Claims**

23 This Consent Judgment is a full, final and binding resolution of the claims that were or
24 could have been asserted in the Notice and/or Complaint. Vinocur, acting on his own behalf and in
25 the public interest, releases CORT and its parents, subsidiaries, affiliated entities under common
26 ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to whom
27 CORT directly or indirectly distributes or sells the Products including, but not limited to, its
28 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
licensors and licensees (“Downstream Releasees”) for any violation arising under Proposition 65
for unwarned exposures to TDCPP from the Products manufactured, imported, distributed or sold

1 by CORT prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
2 Consent Judgment constitutes compliance with Proposition 65 by CORT with respect to the alleged
3 or actual failure to warn about exposures to TDCPP from Products manufactured, sold or
4 distributed for sale by CORT after the Effective Date.

5 **4.2 Vinocur's Individual Release of Claims**

6 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides
7 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
8 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
9 attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
10 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
11 exposures to TDCPP, TCEP and/or TDBPP in Products manufactured, imported, distributed or sold
12 by CORT before the Effective Date.

13 **4.3 CORT's Release of Vinocur**

14 CORT, on its own behalf and on behalf of its past and current agents, representatives,
15 attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his
16 attorneys and other representatives, for any and all actions taken or statements made by Vinocur
17 and his attorneys and other representatives in the course of investigating claims, seeking to enforce
18 Proposition 65 against it in this matter, or with respect to the Products.

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
22 after it has been fully executed by all Parties. Vinocur and CORT agree to support the entry of this
23 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
24 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
25 noticed motion is required for judicial approval of this Consent Judgment, which motion Vinocur
26 shall draft and file and CORT shall support, appearing at the hearing if so requested. If any third-
27 party objection to the motion is filed, Vinocur and CORT agree to work together to file a reply and
28 appear at any hearing.

1 **6. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then CORT
5 may provide Vinocur with written notice of any asserted change in the law, and shall have no
6 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
7 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve CORT
8 from its obligation to comply with any pertinent state or federal law or regulation.

9 **7. NOTICE**

10 Unless specified herein, all correspondence and notice required by this Consent Judgment
11 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
12 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
13 following addresses:

14 To CORT:

15 Jeffrey A. Seidman
16 Corporate Vice President Human Resources
17 CORT Business Services Corporation
18 15000 Conference Center Drive, Suite 440
19 Chantilly, VA 20151

To Vinocur:

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

20 With a copy to:

21 Patrick J. Cafferty, Jr.
22 Munger, Tolles & Olson, LLP
23 560 Mission Street, 27th Floor
24 San Francisco, CA 94105

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

27 **8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

1 **9. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **10. MODIFICATION**

5 **10.1 Modification**

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

9 **10.2 Subsequent Legislation**

10 If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the
11 TDCPP content of Covered Products sold in California hereunder, any Party shall be entitled to
12 request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment
13 for good cause shown.

14 **10.3 Notice: Meet and Confer**

15 Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall
16 first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify
17 the Consent Judgment.

18 **11. AUTHORIZATION**

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

22 **AGREED TO:**

23 
24 _____
25 LAURENCE VINO CUR

26 Dated: May 13, 2015

AGREED TO:

CORT Business Services Corporation

By: Jeffrey A. Seidman

Its: Corporate Vice President, Human Resources

Dated: _____

28

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24 LAURENCE VINO CUR
25

26 Dated: _____

AGREED TO:



CORT Business Services Corporation

By: Jeffrey A. Seidman

Its: Corporate Vice President, Human Resources

Dated: 5/14/2015

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