



1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur  
4 (“Vinocur”) and the defendants National Public Seating Corp. and Oklahoma Sound (collectively,  
5 “NPS”) with Vinocur and NPS collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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 Defendants**

11 NPS 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 NPS manufactured, imported, sold and/or distributed for  
16 sale in California, upholstered chairs with foam padding containing tris(1,3-dichloro-2-propyl)  
17 phosphate (“TDCPP”) without the requisite Proposition 65 health hazard warnings. Vinocur  
18 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 NPS 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 NPS on Exhibit A as a Product.

1           **1.6 Notice of Violation**

2           On or about July 30, 2014, Vinocur served NPS and certain requisite public enforcement  
3 agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of  
4 alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and  
5 workers in California that certain Products expose users to TDCPP. To the best of the Parties’  
6 knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth  
7 in the Notice.

8           **1.7 Complaint**

9           On April 9, 2015, Vinocur filed a Complaint in the Superior Court for the County of  
10 Alameda against NPS and Does 1 through 150 in an action styled as *Vinocur v. National Public*  
11 *Seating Corp.; et al.*, Case No. RG15765714, alleging violations of Proposition 65, based on the  
12 alleged unwarned exposures to TDCPP contained in the Products.

13           **1.8 No Admission**

14           NPS 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 NPS of any fact, finding, conclusion, issue  
18 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
19 construed as an admission by NPS of any fact, finding, conclusion, issue of law, or violation of law.  
20 However, this section shall not diminish or otherwise affect NPS’s obligations, responsibilities, and  
21 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 NPS as to the allegations contained in the Complaint, that venue is proper in the  
25 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this  
26 Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

27  
28

1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 “California Customer” shall mean any customer of NPS that NPS reasonably understands is  
4 located in California, has a California warehouse or distribution center, maintains a retail outlet in  
5 California, or has made internet sales into California on or after October 28, 2012.

6 **2.2 Detectable**

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

12 **2.3 Effective Date**

13 “Effective Date” shall mean June 15, 2015.

14 **2.4 Private Label Covered Products**

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

18 **2.5 Reformulated Products**

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

21 **2.6 Reformulation Standard**

22 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of  
23 TDCPP, and/or tris (2-chloroethyl) phosphate (“TCEP”).

24 **2.7 Retailer**

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

27  
28

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on the Effective Date, NPS shall not manufacture or import for distribution or  
4 sale to California Customers, or cause to be manufactured or imported for distribution or sale to  
5 California Customers, any Products that are not Reformulated Products.

6 **3.2 Vendor Notification/Certification**

7 On or before May 15, 2015, NPS shall provide written notice to all of its then-current  
8 vendors of the Products that will be sold or offered for sale in California, or to California  
9 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated  
10 Products for potential sale in California. In addressing the obligation set forth in the preceding  
11 sentence, NPS shall not employ statements that will encourage a vendor to delay compliance with  
12 the Reformulation Standard. NPS shall subsequently obtain written certifications, no later than July  
13 1, 2015, from such vendors, and any newly engaged vendors, that the Products manufactured by  
14 such vendors are in compliance with the Reformulation Standard. Certifications shall be held by  
15 NPS for at least two years after their receipt and shall be made available to Vinocur upon request.

16 **3.3 Products No Longer in NPS's Control**

17 No later than forty-five days after the Effective Date, NPS shall send a letter, electronic or  
18 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after  
19 October 28, 2012, supplied the item for resale in California described as an exemplar in the Notice  
20 NPS received from Vinocur ("Exemplar Product"); and (2) any California Customer and/or Retailer  
21 that NPS reasonably understands or believes had any inventory for resale in California of the  
22 Exemplar Product as of the relevant Notice's dates. The Notification Letter shall advise the  
23 recipient that the Exemplar Product contains TDCPP, a chemical known to the State of California to  
24 cause cancer, as appropriate depending on the allegations in the Notice, and request that the  
25 recipient either: (a) label the Exemplar Product remaining in inventory for sale in California, or to  
26 California Customers, pursuant to Section 3.5; or (b) return, at NPS's sole expense, all units of the  
27 Exemplar Product held for sale in California, or to California Customers, to NPS or a party NPS has  
28 otherwise designated. The Notification Letter shall require a response from the recipient within 15

1 days confirming whether the Exemplar Product will be labeled or returned. NPS shall maintain  
2 records of all correspondence or other communications generated pursuant to this Section for two  
3 years after the Effective Date and shall promptly produce copies of such records upon Vinocur's  
4 written request.

### 5 3.4 Current Inventory

6 Any Products in, or manufactured and en route to, NPS's inventory as of or after May 30,  
7 2015, that do not qualify as Reformulated Products and that NPS has reason to believe may be sold  
8 or distributed for sale in California, shall contain a clear and reasonable warning as set forth in  
9 Section 3.5 below unless Section 3.6 applies.

### 10 3.5 Product Warnings

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

17 A warning provided pursuant to this Consent Judgment shall state:

18 **WARNING:** This product contains TDCPP, a flame  
19 retardant chemical known to the State  
of California to cause cancer.<sup>1</sup>

### 20 3.6 Alternatives to Interim Warnings

21 The obligations of NPS under Section 3.3 shall be relieved provided NPS certifies on or  
22 before June 15, 2015 that only Exemplar Products meeting the Reformulation Standard will be  
23 offered for sale in California, or to California Customers for sale in California, after June 1, 2015.  
24 The obligations of NPS under Section 3.4 shall be relieved provided NPS certifies on or before June

25 \_\_\_\_\_  
26 <sup>1</sup> If NPS seeks to use alternative warning language, other than the language specified above or the safe harbor  
27 warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it must  
28 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 15, 2015 that, after June 1, 2015, it will only distribute or cause to be distributed for sale in, or sell  
2 in California, or to California Customers for sale in California, Products (i.e., Products beyond the  
3 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this  
4 Section are material terms and time is of the essence.

5 **4. MONETARY PAYMENTS**

6 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

17 4.1.1 Initial Civil Penalty. On or before the Effective Date, NPS shall make an  
18 initial civil penalty payment in the amount identified on Exhibit A to “Goodwin Procter LLP.”  
19 Goodwin Procter LLP shall provide The Chanler Group with written confirmation within five (5)  
20 days of receipt that the funds have been deposited in a trust account. Within five (5) business days  
21 of the date that this Consent Judgment is approved by the Court, Goodwin Procter LLP shall issue a  
22 check for the initial civil penalty payments to “Laurence Vinocur, Client Trust Account.”

23 4.1.2 Second Civil Penalty. On or before July 15, 2015, NPS shall make a second  
24 civil penalty payment in the amount identified on Exhibit A. The amount of the second penalty  
25 may be reduced according to any penalty waiver NPS is eligible for under Sections 4.1.4(i) and  
26 4.1.4(iii), below.

27 4.1.3 Third Civil Penalty. On or before December 30, 2015, NPS shall make a  
28 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty

1 may be reduced according to any penalty waiver NPS is eligible for under Sections 4.1.4(ii) and  
2 4.1.4(iv), below.

3 4.1.4 Reductions to Civil Penalty Payment Amounts. NPS may reduce the amount  
4 of the second and/or third civil penalty payments identified on Exhibit A by providing Vinocur with  
5 certification of certain efforts undertaken to reformulate their Products or limit the ongoing sale of  
6 non-reformulated Products in California. The options to provide a written certification in lieu of  
7 making a portion of NPS's civil penalty payment constitute material terms of this Consent  
8 Judgment, and with regard to such terms, time is of the essence.

9 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**  
10 **Products Sold or Offered for Sale in California.**

11 As shown on Exhibit A, a portion of the second civil penalty shall be waived, to the extent  
12 that it has agreed that, as of May 15, 2015, and continuing into the future, it shall only manufacture  
13 or import for distribution or sale to California Customers or cause to be manufactured or imported  
14 for distribution or sale to California Customers, Reformulated Products. An officer or other  
15 authorized representative of NPS that has exercised this election shall provide Vinocur with a  
16 written certification confirming compliance with such conditions, which certification must be  
17 received by Vinocur's counsel on or before May 1, 2015.

18 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

19 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that  
20 NPS has agreed that, as of July 1, 2015, and continuing into the future, it shall only manufacture or  
21 import for distribution or sale in California or cause to be manufactured or imported for distribution  
22 or sale in California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)  
23 phosphate ("TDBPP") in a detectable amount of more than 25 parts per million ("ppm") (the  
24 equivalent of .0025%) in any material, component, or constituent of a subject product, when  
25 analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and  
26 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,  
27 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized  
28 representative of NPS that has exercised this election shall provide Vinocur with a written



1 certification confirming compliance with such conditions, which certification must be received by  
2 Vinocur's counsel on or before November 15, 2015.

3                   4.1.4(iii) **Partial Penalty Waiver for Withdrawal of Unreformulated**  
4 **Exemplar Products from the California Market.**

5           As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or  
6 other authorized representative of NPS provides Vinocur with written certification, by June 15,  
7 2015, confirming that each individual or establishment in California to which it supplied the  
8 Exemplar Product after October 28, 2012, has elected to return all remaining Exemplar Products  
9 held for sale in California.

10                   4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**  
11 **California of Unreformulated Inventory.**

12           As shown on NPS's Exhibit A, a portion of the third civil penalty shall be waived, if an  
13 officer or other authorized representative of NPS provides Vinocur with written certification, on or  
14 before November 15, 2015, confirming that, as of November 1, 2015, it has and will continue to  
15 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated  
16 Products.

17                   4.2 **Representations**

18           NPS represents that the sales data and other information concerning its size, knowledge of  
19 TDCPP, and prior reformulation and/or warning efforts, it provided to Vinocur was truthful to its  
20 knowledge and a material factor upon which Vinocur has relied to determine the amount of civil  
21 penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment.

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

27           NPS further represents that in implementing the requirements set forth in Sections 3.1 and  
28 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve

1 reformulation of its Products and Additional Products on a nationwide basis and not employ  
2 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to  
3 goods intended for sale to California Consumers.

4 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**

5 **Standard.**

6 If Vinocur provides notice and appropriate supporting information to NPS that levels of  
7 TDCPP in excess of the Reformulation Standard have been detected in one or more Products  
8 labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline  
9 for meeting the Reformulation Standard has arisen for NPS under Sections 3.1 or 3.6 above, NPS  
10 may elect to pay a stipulated penalty to relieve any further potential liability under Proposition 65 or  
11 sanction under this Consent Judgment as to Products sourced from the vendor in question.<sup>2</sup> The  
12 stipulated penalty shall be \$1,500 if the violation level is below 100 ppm, and \$3,000 if the  
13 violation level is between 100 ppm and 249 ppm, this being applicable for any amount in excess of  
14 the Reformulation Standards but under 250 ppm.<sup>3</sup> Vinocur shall further be entitled to  
15 reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the  
16 stipulated penalty level. NPS under this Section must provide notice and appropriate supporting  
17 information relating to the purchase (e.g. vendor name and contact information including  
18 representative, purchase order, certification (if any) received from vendor for the exemplar or  
19 subcategory of products), test results, and a letter from a company representative or counsel  
20 attesting to the information provided, to Vinocur within 30 calendar days of receiving test results  
21 from Vinocur's counsel. Any violation levels at or above 250 ppm shall be subject to the full  
22 remedies provided pursuant to this Consent Judgment and at law.

23  
24  
25  
26 <sup>2</sup> This Section shall not be applicable where the vendor in question had previously been  
27 found by NPS to have provided unreliable certifications as to meeting the Reformulation Standard  
28 after November 1, 2015.

<sup>3</sup> 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           **4.4 Reimbursement of Fees and Costs**

2           The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute  
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
4 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
5 settled. Shortly after the other settlement terms had been finalized, NPS expressed a desire to  
6 resolve the fee and cost issue. NPS then agreed to pay Vinocur and his counsel under general  
7 contract principles and the private attorney general doctrine codified at California Code of Civil  
8 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,  
9 including the fees and costs incurred as a result of investigating, bringing this matter to NPS's  
10 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In  
11 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of  
12 time Vinocur's counsel will incur to monitor various provisions in this agreement over the next two  
13 years, with the exception of additional fees that may be incurred pursuant to NPS's election in  
14 Section 11. NPS more specifically agreed, upon the Court's approval and entry of this Consent  
15 Judgment, to pay Vinocur's counsel the amount of fees and costs indicated on Exhibit A. NPS  
16 shall, on or before the Effective Date, issue a check payable to "Goodwin Procter LLP" in the  
17 amount of fees and costs indicated on Exhibit A to be held in trust by Goodwin Procter LLP for The  
18 Chanler Group. Goodwin Procter LLP shall provide The Chanler Group with written confirmation  
19 within five (5) days of receipt that the funds have been deposited in a trust account. Within five (5)  
20 business days of the date this Consent Judgment is approved by the Court, Goodwin Procter LLP  
21 shall issue a check payable to "The Chanler Group" at the address found in Section 4.5 below.

22           **4.5 Payment Procedures**

23           All payments required by this Consent Judgment shall be delivered to the following  
24 address:

25                           The Chanler Group  
26                           Attn: Proposition 65 Controller  
27                           2560 Ninth Street  
28                           Parker Plaza, Suite 214  
                              Berkeley, CA 94710

1 **5. CLAIMS COVERED AND RELEASED**

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

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

18 **5.2 Vinocur's Individual Releases of Claims**

19 Vinocur, in his individual capacity only and *not* in his representative capacity, provides a  
20 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
21 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
22 liabilities, and demands of Vinocur of any nature, character, or kind, whether known or unknown,  
23 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,  
24 TCEP and TDBPP in the Products or Additional Products (as defined in Section 11.1 and delineated  
25 on NPS's Exhibit A) manufactured, imported, distributed, or sold by NPS prior to the Effective  
26 Date. The Parties further understand and agree that this Section 5.2 release shall not extend  
27 upstream to any entities that manufactured the Products or Additional Products, or any component  
28 parts thereof, or any distributors or suppliers who sold the Products or Additional Products, any

1 component parts thereof to NPS, except that an entity upstream of NPS that is a Retailer of a  
2 Private Labeled Covered Product (or Additional) Product shall be released as to the Private Labeled  
3 Covered (or Additional) Products offered for sale in California by the Retailer in question. Nothing  
4 in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65  
5 against a Releasee that does not involve NPS's Products or Additional Products.

### 6 5.3 NPS's Release of Vinocur

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

## 13 6. COURT APPROVAL

14 This Consent Judgment is not effective until it is approved and entered by the Court and  
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
16 after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment,  
17 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the  
18 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal  
19 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate  
20 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.  
21 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its  
22 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by  
23 the Court and subsequently overturned by any appellate court, any monies that have been provided  
24 to OEHHA, Vinocur or his counsel pursuant to Section 4, above, shall be refunded within 15 days  
25 of the appellate decision becoming final. If the Court does not approve and enter the Consent  
26 Judgment within one year of the Effective Date, any monies that have been provided to OEHHA or  
27 held in trust for Vinocur or his counsel pursuant to Section 4, above, shall be refunded to NPS  
28 within 15 days.

1 **7. GOVERNING LAW**

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

11 **8. NOTICES**

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

16 To NPS:

17 At the address shown on Exhibit A

To Vinocur:

18 Proposition 65 Coordinator  
19 The Chanler Group  
20 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

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

24 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
25 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
26 one and the same document. A facsimile or pdf signature shall be as valid as the original.  
27  
28

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

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products, where NPS has identified on Exhibit A additional  
6 products that contain TDCPP and that are sold or offered for sale by it in California, or to California  
7 Customers, (“Additional Products”), then by no later than July 15, 2015, NPS may provide Vinocur  
8 with additional information or representations necessary to enable him to issue a 60-Day Notice of  
9 Violation and valid Certificate of Merit therefore, pursuant to Health & Safety Code § 25249.7, that  
10 includes the Additional Products. Polyurethane foam that is supplied, shaped or manufactured for  
11 use as a component of a product, such as upholstered furniture, is specifically excluded from the  
12 definition of Additional Products and shall not be identified by NPS on Exhibit A as an Additional  
13 Product. Except as agreed upon by Vinocur, NPS shall not include a product, as an Additional  
14 Product, that is the subject of an existing 60-Day Notice issued by Vinocur or any other private  
15 enforcer at the time of execution. After receipt of the required information, Vinocur agrees to issue  
16 a supplemental 60-day notice in compliance with all statutory and regulatory requirements for the  
17 Additional Products. Vinocur will, and in no event later than December 1, 2015, prepare and file an  
18 amendment to this Consent Judgment to incorporate the Additional Products within the defined  
19 term “Products” and serve a copy thereof and its supporting papers (including the basis for  
20 supplemental stipulated penalties, if any) on the Office of the California Attorney General upon the  
21 Court’s approval and finding that the supplemental stipulated penalty amount, if any, is reasonable,  
22 the Additional Products shall become subject to Section 5.1 in addition to Section 5.2. NPS shall,  
23 at the time it elects to utilize this Section and tenders the additional information or representations  
24 regarding the Additional Products to Vinocur, tender to Goodwin Procter LLP’s trust account an  
25 amount not to exceed \$8,750 as stipulated penalties and attorneys’ fees and costs incurred by  
26 Vinocur in issuing the new notice and engaging in other reasonably related activities, which may be  
27 released from the trust as awarded by the Court upon Vinocur’s application. Any fee award  
28 associated with the modification of the Consent Judgment to include Additional Products shall not

1 offset any associated supplemental penalty award, if any. (Any tendered funds remaining in the  
2 trust thereafter shall be refunded to NPS within 15 days). Such payment shall be made to “in trust  
3 for The Chanler Group” and delivered as per Section 4.5.1(a) above.

4 11.2 Vinocur and NPS agree to support the entry of this agreement as a Consent  
5 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The  
6 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion  
7 is required to obtain judicial approval of this Consent Judgment, which Vinocur shall draft and file.  
8 If any third party objection to the noticed motion is filed, Vinocur and NPS shall work together to  
9 file a reply and appear at any hearing before the Court. This provision is a material component of  
10 the Consent Judgment and shall be treated as such in the event of a breach.

11 **12. MODIFICATION**

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

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



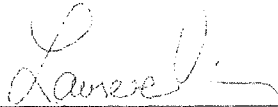
1 **13. AUTHORIZATION**

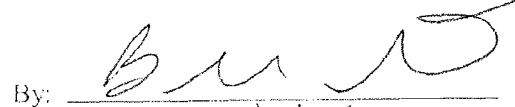
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment.

5 AGREED TO:

AGREED TO:

Defendant:  
National Public Seating Corp.

6  
7 

8 

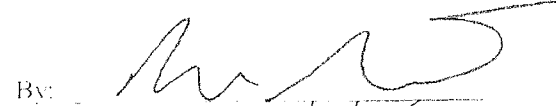
9 Plaintiff: Laurence Vinocur

By: \_\_\_\_\_  
Name: Barry Stauber  
Its: resident

10 Date: April 16, 2015

Date: April 30, 2015

11 Defendant:  
Oklahoma Sound

12  
13 

14 By: \_\_\_\_\_  
15 Name: Barry Stauber  
16 Its: resident

17 Date: April 30, 2015

1 EXHIBIT A

2  
3 I. Name of Settling Defendants: National Public Seating Corp. and Oklahoma Sound  
(collectively, "NPS")

4 II. Names of Releasees (optional/partial): W.W. Grainger, Inc.

5 III. Types of Covered Products Applicable to NPS:

6 Upholstered Chairs with Foam padding containing TDCPP:

- 7 - Model No. 952 Vinyl Padded Grey/Grey Chair  
8 - Model No. 954 Vinyl Padded Blue/Blue Chair  
9 - Model No. 964 Fabric Padded Blue/Blue Chair  
- Model No. 968 Fabric Padded Burgundy/Grey Chair  
10 - 1200 Series Premium Steel Vinyl Folding Chair (Model Nos. 1201, 1202, 1203, 1204,  
11 1210)  
- 1300 Series Premium Steel Vinyl Folding Chair (Model Nos. 1301, 1302, 1304)  
- 2200 Series Premium Steel Fabric Folding Chair (Model Nos. 2201, 2202, 2204, 2205,  
12 2207, 2208, 2210)  
- 2300 Series Premium Steel Fabric Folding Chair (2301, 2302, 2304, 2308)  
13 - 3200 Series Premium Steel Fabric Folding Chair (Model Nos. 3212, 3215, 3218, 3219)  
- 6400 Series Heavy Duty Steel Stool with Vinyl Padding (Model Nos. 6418, 6424, 6430)  
14 - 6524 HB Adjustable Premium Swivel Stool with Backrest – Gray  
- 8600 Series Signature Lightweight Fabric Padded Stack Chair (Model Nos. 8652, 8660,  
15 8664, 8668)  
- 9100 Series Value Stacker Chair  
- 9200 Series Dome-Back Stacker Chair  
16 - 9300 Series Silhouette Stacker Chair

17 IV. Types of Additional Products NPS Elects to Address (if any):

18  
19 V. NPS Required Settlement Payments

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

21 \$15,000 initial payment due on or before the Effective Date;

22 \$24,000 second payment due on or before July 15, 2015, of which \$14,000  
23 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived  
pursuant to Section 4.1.4(iii); and

24 \$18,000 third payment due on or before December 30, 2015, of which  
25 \$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).

26 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs  
totaling \$35,000, as follows:

27 Fees and Costs attributable to NPS: \$35,000.  
28

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

2 Patrick Thompson  
3 Goodwin Procter LLP  
4 Three Embarcadero Center, 24<sup>th</sup> Floor  
5 San Francisco, CA  
6 94111  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28