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

13 LAURENCE VINO CUR,

14 Plaintiff,

15 vs.

16 ACE BAYOU CORP., MARCO GROUP, INC.,  
17 MECO CORPORATION, MICHAELS  
18 STORES, INC., OFFICE DEPOT, INC., THE  
19 FAIRFIELD PROCESSING CORPORATION,  
20 UNAKA COMPANY, INCORPORATED and  
21 DOES 1-150,

22 Defendants.

Case No. RG13673697

Assigned for All Purposes to  
Judge George C. Hernandez, Jr.,  
Department 17

**CONSENT TO JUDGMENT AS TO  
DEFENDANT ACE BAYOU CORP.**

(Health & Safety Code § 25249.6 *et seq.*)

Filed: March 29, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur  
4 (“Plaintiff”) and the defendants identified in Exhibit A (“Settling Defendants”), with Plaintiff and  
5 the Settling Defendants collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Plaintiff 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  
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Settling Defendants**

11 Each Settling Defendant employs ten or more persons and is a person in the course of  
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that each Settling Defendant manufactured, imported, sold  
16 and/or distributed for sale in California, products with foam cushioned components containing  
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”)  
18 without the requisite Proposition 65 health hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed  
20 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable  
21 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §  
22 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and  
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
25 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code  
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

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1 TDCPP and TCEP are hereinafter collectively referred to as the "Listed Chemicals." Plaintiff  
2 alleges that the Listed Chemicals escape from foam padding, leading to human exposures.

3 **1.5 Product Description**

4 The products and/or categories of products that are covered by this Consent Judgment as  
5 to Settling Defendants is identified on Exhibit A (as "Products" or "Exemplar Products").  
6 Polyurethane foam that is supplied, shaped or manufactured for use as a component of another  
7 product, such as upholstered furniture, but which is not itself a finished product, is specifically  
8 excluded from the definition of Products and shall not be identified by a Settling Defendant on  
9 Exhibit A as a Product.

10 **1.6 Notices of Violation**

11 Beginning in December 2012, Plaintiff served Settling Defendants and certain requisite  
12 public enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the  
13 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn  
14 customers, consumers, and workers in California that the Products expose users to one or more  
15 Listed Chemicals. To the best of the Parties' knowledge, no public enforcer has commenced or is  
16 diligently prosecuting the allegations set forth in the Notices.

17 **1.7 Complaint**

18 On April 12, 2013, Plaintiff filed a First Amended Complaint in the Superior Court in and  
19 for the County of Alameda against the Settling Defendants, other defendants and Does 1 through  
20 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to  
21 TDCPP contained in the Products.

22 **1.8 No Admission**

23 The Settling Defendants deny the material factual and legal allegations contained in  
24 Plaintiff's Notices and Complaints and maintain that all products that they have manufactured,  
25 imported, distributed, and/or sold in California, including the Products, have been and are in  
26 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission  
27 by a Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
28 compliance with this Consent Judgment constitute or be construed as an admission by any Settling

1 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section  
2 shall not diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and  
3 duties under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
6 jurisdiction over the Settling Defendants as to the allegations contained in the Complaints, that  
7 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce  
8 the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil  
9 Procedure § 664.6.

10 **2. DEFINITIONS**

11 **2.1 California Customers**

12 "California Customer" shall mean any customer that a Settling Defendant reasonably  
13 understands is located in California, has a California warehouse or distribution center, maintains a  
14 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

15 **2.2 Detectable**

16 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent  
17 of .0025%) of any one chemical in any material, component, or constituent of a  
18 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing  
19 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies  
20 to determine the presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

21 **2.3 Effective Date**

22 "Effective Date" shall mean October 15, 2013.

23 **2.4 Private Label Covered Products**

24 "Private Label Covered Products" means Products that bear a brand or trademark owned  
25 or licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State  
26 of California.

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1                   2.5     **Reformulated Products**

2                   “Reformulated Products” shall mean Products that contain no Detectable amount of  
3 TDCPP or TCEP.

4                   2.6     **Reformulation Standard**

5                   The “Reformulation Standard” shall mean containing no more than 25 ppm for each of  
6 TDCPP and TCEP.

7                   2.7     **Retailer**

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

10                  3.     **INJUNCTIVE RELIEF: REFORMULATION**

11                  3.1     **Reformulation Commitment**

12                  Commencing on March 31, 2014, Settling Defendants shall not manufacture or import, or  
13 cause to be manufactured or imported, any Products that are not Reformulated Products.

14                  3.2     **Vendor Notification/Certification**

15                  On or before the Effective Date, each Settling Defendant shall provide written notice to all  
16 of its then-current vendors of the Products, instructing each such vendor to use reasonable efforts  
17 to provide only Reformulated Products. In addressing the obligation set forth in the preceding  
18 sentence, a Settling Defendant shall not employ statements that will encourage a vendor to delay  
19 compliance with the Reformulation Standard. The Settling Defendant shall subsequently obtain  
20 written certifications, no later than April 1, 2014, from such vendors, and any newly engaged  
21 vendors, that the Products manufactured by such vendors are in compliance with the  
22 Reformulation Standard. Certifications shall be held by the Settling Defendant for at least two  
23 years after their receipt and shall be made available to Plaintiff upon request.

24                  3.3     **Products No Longer in a Settling Defendant’s Control**

25                  No later than 45 days after the Effective Date, each Settling Defendant shall send a letter,  
26 electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer  
27 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar  
28 in the Notice(s) the Settling Defendant received from Plaintiff (“Exemplar Product”); and (2) any

1 California Customer and/or Retailer that the Settling Defendant reasonably understands or  
2 believes had any inventory for resale in California of Exemplar Products as of the relevant Notice's  
3 dates. The Notification Letter shall advise the recipient that the Exemplar Product "contains  
4 TDCPP and/or TCEP, chemicals known to the State of California to cause cancer," and request  
5 that the recipient either: (a) label the Exemplar Products remaining in inventory for sale in  
6 California, or to California Customers, pursuant to Section 3.5; or (b) return, at the Settling  
7 Defendant's sole expense, all units of the Exemplar Product held for sale in California, or to  
8 California Customers, to the Settling Defendant or a party the Settling Defendant has otherwise  
9 designated. The Notification Letter shall require a response from the recipient within 15 days  
10 confirming whether the Exemplar Product will be labeled or returned. The Settling Defendant  
11 shall maintain records of all correspondence or other communications generated pursuant to this  
12 Section for two years after the Effective Date and shall promptly produce copies of such records  
13 upon Plaintiff's written request.

### 14 3.4 Current Inventory

15 Any Products in, or manufactured and en route to, a Settling Defendant's inventory as of or  
16 after December 31, 2013, that do not qualify as Reformulated Products and that the Settling  
17 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a  
18 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.<sup>1</sup>

### 19 3.5 Product Warnings

#### 20 3.5.1 Product Labeling

21 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,  
22 labeling, or directly on each Product. Each warning shall be prominently placed with such  
23 conspicuousness as compared with other words, statements, designs, or devices as to render it  
24 likely to be read and understood by an ordinary individual under customary conditions before  
25 purchase. Each warning shall be provided in a manner such that the consumer or user

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27  
28 <sup>1</sup> This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants' inventory as of December 31, 2013.

1 understands to which specific Product the warning applies, so as to minimize the risk of consumer  
2 confusion.

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

4 **WARNING:** This product contains TDCPP, a flame  
5 retardant chemical known to the State  
6 of California to cause cancer.<sup>2</sup>

7 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be  
8 clear and reasonable for purposes of this Consent Judgment.<sup>3</sup> Provided that the other  
9 requirements set forth in this Section are addressed, including as to the required warning  
10 statement, Settling Defendants that elect not to utilize the template warnings remain free to  
11 provide a warning in any other manner meeting the requirements of 27 CCR § 25603.1.

### 12 3.5.2 Internet Website Warning

13 A warning shall be given in conjunction with the sale of the Products to California, or  
14 California Customers, via the internet, which warning shall appear on one or more web pages  
15 displayed to a purchaser during the checkout process. The following warning statement shall be  
16 used and shall: (a) appear adjacent to or immediately following the display, description, or price  
17 of the Product; (b) appear as a pop-up box or (c) otherwise automatically appear to the consumer.  
18 The warning text shall be the same type size or larger than the Product description text:

19 **WARNING:** This product contains TDCPP, a flame  
20 retardant chemical known to the State  
21 of California to cause cancer.<sup>4</sup>

### 22 3.6 Alternatives to Interim Warnings

23 <sup>2</sup> of the regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling  
24 Defendant had begun to use it, prior to the Effective Date. The Parties agree that the following hybrid warning language  
25 shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent  
26 Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth defects or other reproductive  
27 harm."

28 <sup>3</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no  
less than 12 point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to  
the Product; (b) a yellow warning sign measuring 8.5" x. 11", with no less that 32 point font, with the warning language  
printed on each side, which shall be affixed directly to the Product; and (c) for Products sold at retail in a box or  
packaging, a yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed directly to  
the Product packaging.

<sup>4</sup> Footnote 4, *supra*, applies in this context as well.

1 The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the  
2 Settling Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting  
3 the Reformulation Standard will be offered for sale in California, or to California Customers for  
4 sale in California, after December 31, 2013. The obligations of a Settling Defendant under Section  
5 3.4 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013 that,  
6 after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California,  
7 or to California Customers for sale in California, Products (i.e., Products beyond the Exemplar  
8 Product) meeting the Reformulation Standard. The certifications provided by this Section are  
9 material terms and time is of the essence.

10 **4. MONETARY PAYMENTS**

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

12 In settlement of all the claims referred to in this Consent Judgment, a Settling Defendant  
13 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.<sup>5</sup>

14 Each penalty payment will be allocated in accordance with California Health & Safety Code  
15 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental  
16 Health Hazard Assessment (“OEHHA”) and 25% of the penalty remitted to “The Chanler Group  
17 in Trust for Vinocur.” Each penalty payment shall be made within two business days of the date it  
18 is due and be delivered to the addresses listed in Section 4.5 below. A Settling Defendant shall be  
19 liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing  
20 under this Section that are not received within two business days of the due date.

21 4.1.1 Initial Civil Penalty. On or before the Effective Date, each Settling  
22 Defendant shall make an initial civil penalty payment in the amount identified on the Settling  
23 Defendant’s Exhibit A.

24 4.1.2 Second Civil Penalty. On or before January 15, 2014, each Settling  
25 Defendant shall make a second civil penalty payment in the amount identified on the Settling  
26

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27 <sup>5</sup> For Settling Defendants that received supplemental Notices alleging violations of Proposition 65 concerning  
28 DEHP in Phthalate Products, the penalty amount shown on Exhibit A includes an additional component to address the  
resolution of those additional claims.



1 Defendant's Exhibit A. The amount of the second penalty may be reduced according to any  
2 penalty waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

3 4.1.3 Third Civil Penalty. On or before November 30, 2014, each Settling  
4 Defendant shall make a third civil penalty payment in the amount identified on the Settling  
5 Defendant's Exhibit A. The amount of the third penalty may be reduced according to any penalty  
6 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

14 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**  
15 **Products Sold or Offered for Sale in California.**

16 As shown on an electing Settling Defendant's Exhibit A, a portion of the second civil  
17 penalty shall be waived, to the extent that it has agreed that, as of November 1, 2013, and  
18 continuing into the future, it shall only manufacture or import for distribution or sale to California  
19 Customers or cause to be manufactured or imported for distribution or sale to California  
20 Customers, Reformulated Products. An officer or other authorized representative of a Settling  
21 Defendant that has exercised this election shall provide Plaintiff with a written certification  
22 confirming compliance with such conditions, which certification must be received by Plaintiff's  
23 counsel on or before December 15, 2013.

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

25 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil penalty  
26 shall be waived, to the extent that it has agreed that, as of March 15, 2014, and continuing into the  
27 future, it shall only manufacture or import for distribution or sale in California or cause to be  
28 manufactured or imported for distribution or sale in California, Reformulated Products that also

1 do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than  
2 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent  
3 of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing  
4 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies  
5 to determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or  
6 other authorized representative of a Settling Defendant that has exercised this election shall  
7 provide Plaintiff with a written certification confirming compliance with such conditions, which  
8 certification must be received by Plaintiff's counsel on or before November 15, 2014.

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

11 As shown on a Settling Defendant's Exhibit A, a portion of the second civil penalty shall be  
12 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff  
13 with written certification, by December 15, 2013, confirming that each individual or establishment  
14 in California to which it supplied the Exemplar Product after October 28, 2011, has elected to  
15 return all remaining Exemplar Products held for sale in California.<sup>6</sup>

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

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

23 **4.2 Representation**

24 Each Settling Defendant represents that the sales data and other information concerning its  
25 size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided

26 \_\_\_\_\_  
27 <sup>6</sup> For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs  
28 have, prior to August 31, 2013, provided the Settling Defendants with test results from a NVLAP accredited laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm pursuant to EPA testing methodologies 3545 or 8270C.

1 to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs have relied to  
2 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in  
3 this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discover and present  
4 to a Settling Defendant, evidence demonstrating that the preceding representation and warranty  
5 was materially inaccurate, then a Settling Defendant shall have 30 days to meet and confer  
6 regarding the Plaintiff's contention. Should this 30 day period pass without any such resolution  
7 between the Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal  
8 claim including, but not limited to, a claim for damages for breach of contract.

9 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**  
10 **Standard.**

11 If Plaintiff provides notice and appropriate supporting information to a Settling Defendant  
12 that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one  
13 or more Products labeled or otherwise marked in an identifiable manner as manufactured or  
14 imported after a deadline for meeting the Reformulation Standard has arisen for a Settling  
15 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated  
16 penalty to relieve any further potential liability under Proposition 65 or sanction under this  
17 Consent Judgment as to Products sourced from the vendor in question.<sup>7</sup> The stipulated penalty  
18 shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between  
19 100 ppm and 249 ppm, this being applicable for any amount in excess of the Reformulation  
20 Standards but under 250 ppm.<sup>8</sup> Plaintiff shall further be entitled to reimbursement of their  
21 associated expense in an amount not to exceed \$5,000 regardless of the stipulated penalty level. A  
22 Settling Defendant under this Section must provide notice and appropriate supporting  
23 information relating to the purchase (e.g. vendor name and contact information including  
24 representative, purchase order, certification (if any) received from vendor for the exemplar or

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25 <sup>7</sup> This Section shall not be applicable where the vendor in question had previously been found by the Settling  
26 Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more  
27 than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling  
28 Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

<sup>8</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 subcategory of products), test results, and a letter from a company representative or counsel  
2 attesting to the information provided, to Plaintiff within 30 calendar days of receiving test results  
3 from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the full  
4 remedies provided pursuant to this Consent Judgment and at law.

#### 5 **4.4 Reimbursement of Fees and Costs**

6 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute  
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
8 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
9 settled. Shortly after the other settlement terms had been finalized, the Settling Defendants  
10 expressed a desire to resolve the fee and cost issue. The Settling Defendants then agreed to pay  
11 Plaintiff and his counsel under general contract principles and the private attorney general  
12 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed  
13 through the mutual execution of this agreement, including the fees and costs incurred as a result of  
14 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in  
15 the public interest, and seeking court approval of the same. In addition, the negotiated fee and  
16 cost figure expressly includes the anticipated significant amount of time plaintiffs' counsel will  
17 incur to monitor various provisions in this agreement over the next two years, with the exception  
18 of additional fees that may be incurred pursuant to a Settling Defendant's election in Section 11.  
19 Each Settling Defendant more specifically agreed, upon the Court's approval and entry of this  
20 Consent Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on the Settling  
21 Defendant's Exhibit A. Each Settling Defendant further agreed to tender and shall tender its full  
22 required payment under this Section to a trust account at The Chanler Group (made payable "In  
23 Trust for The Chanler Group") within two business days of the Effective Date. Such funds shall be  
24 released from the trust account upon the Court's approval and entry of this Consent Judgment.

#### 25 **4.5 Payment Procedures**

##### 26 **4.5.1 Issuance of Payments.**

27 (a) All payments owed to Plaintiff and their counsel, pursuant to  
28 Sections 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

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

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 4.5.1(a) above, as proof of payment to OEHHA.

4.5.3 Tax Documentation. A Settling Defendant shall issue a separate 1099 form for each payment required by this Section to: (a) Laurence Vinocur, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

**5. CLAIMS COVERED AND RELEASED**

**5.1 Plaintiff's Release of Proposition 65 Claims**

Plaintiff, acting on his own behalf and in the public interest, releases each Settling Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors,

1 officers, agents employees, attorneys, and each entity to whom the Settling Defendant directly or  
2 indirectly distribute or sell Products, including, but not limited, to downstream distributors,  
3 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively,  
4 “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on  
5 unwarned exposures to the Listed Chemicals in the Products and Exemplar Products, as set forth  
6 in the Notices. *As part of this settlement, consolidated defendant Target Corporation is considered a*  
7 *Releasee but only to the limited extent of Target Corporation’s sale or other distribution of the XRocker*  
8 *series gaming chairs and other Covered Products sold or supplied to Target Corporation by Ace Bayou Corp.*  
9 *and not for any other product sold by Target Corporation.* Compliance with the terms of this Consent  
10 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed  
11 Chemicals from the Products, as set forth in the Notices. Compliance with the terms of this  
12 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the  
13 Listed Chemicals from the Products, as set forth in the Notices. The Parties further understand and  
14 agree that this Section 5.1 release shall not extend upstream to any entities, other than Settling  
15 Defendants, that manufactured the Products or any component parts thereof, or any distributors  
16 or suppliers who sold the Products or any component parts thereof to a Settling Defendant, except  
17 that entities upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered  
18 Product shall be released as to the Private Labeled Covered Products offered for sale in California,  
19 or to California Customers, by the Retailer in question.

20 **5.2 Plaintiff’s Individual Releases of Claims**

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

1 distributed, or sold by Settling Defendants prior to the Effective Date.<sup>9</sup> *As part of this settlement,*  
2 *consolidated defendant Target Corporation is considered a Releasee but only to the limited extent of Target*  
3 *Corporation's sale or other distribution of the XRocker series gaming chairs and other Covered Products sold*  
4 *or supplied to Target Corporation by Ace Bayou Corp. and not for any other product sold by Target*  
5 *Corporation.* The Parties further understand and agree that this Section 5.2 release shall not extend  
6 upstream to any entities that manufactured the Products or Additional Products, or any  
7 component parts thereof, or any distributors or suppliers who sold the Products or Additional  
8 Products, or any component parts thereof to Settling Defendants, except that entities upstream of a  
9 Settling Defendant that is a Retailer of a Private Labeled Covered (or Additional) Product shall be  
10 released as to the Private Labeled Covered (or Additional) Products offered for sale in California  
11 by the Retailer in question. Nothing in this Section affects Plaintiff's rights to commence or  
12 prosecute an action under Proposition 65 against a Releasee that does not involve a Settling  
13 Defendant's Products or Additional Products.

### 14 5.3 **Settling Defendants' Release of Plaintiff**

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

## 21 **6. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and  
23 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court  
24 within one year after it has been fully executed by all Parties. If the Court does not approve the  
25 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or  
26 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case

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27 <sup>9</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as  
28 otherwise specified.

1 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is  
2 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to  
3 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action  
4 to take, then the case shall proceed in its normal course on the Court's trial calendar. In the event  
5 that this Consent Judgment is entered by the Court and subsequently overturned by any appellate  
6 court, any monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section  
7 4, above, shall be refunded within 15 days of the appellate decision becoming final. If the Court  
8 does not approve and enter the Consent Judgment within one year of the Effective Date, any  
9 monies that have been provided to OEHHA or held in trust for Plaintiff or his counsel pursuant to  
10 Section 4, above, shall be refunded to the associated Settling Defendant within 15 days.

11 **7. GOVERNING LAW**

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

21 **8. NOTICES**

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

26 To Settling Defendants:

To Plaintiff:



1 At the address shown on Exhibit A

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

2  
3  
4 Any Party, from time to time, may specify in writing to the other Party a change of address to  
5 which all notices and other communications shall be sent.

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

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

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

11 Plaintiff and his attorneys agree to comply with the reporting form requirements  
12 referenced in California Health & Safety Code section 25249.7(f).

13 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

14 11.1 In addition to the Products, where a Settling Defendant has identified on Exhibit A  
15 additional products that contain Listed Chemicals and that are sold or offered for sale by it in  
16 California, or to California Customers, ("Additional Products"), then by no later than October 15,  
17 2013, the Settling Defendant may provide Plaintiff with additional information or representations  
18 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit  
19 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.  
20 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,  
21 such as upholstered furniture, is specifically excluded from the definition of Additional Products  
22 and shall not be identified by a Settling Defendant on Exhibit A as an Additional Product. Except  
23 as agreed upon by Plaintiff, Settling Defendants shall not include a product, as an Additional  
24 Product, that is the subject of an existing 60-day notice issued by Plaintiff or any other private  
25 enforcer at the time of execution. After receipt of the required information, Plaintiff agrees to issue  
26 a supplemental 60-day notice in compliance with all statutory and regulatory requirements for the  
27 Additional Products. Plaintiff will, and in no event later than October 1, 2014, prepare and file an  
28

1 amendment to this Consent Judgment to incorporate the Additional Products within the defined  
2 term "Products" and serve a copy thereof and its supporting papers (including the basis for  
3 supplemental stipulated penalties, if any) on the Office of the California Attorney General. Upon  
4 the Court's approval thereof, the Additional Products shall become subject to Section 5.1 in  
5 addition to Section 5.2. The Settling Defendant shall, at the time it elects to utilize this Section  
6 and tenders the additional information or representations regarding the Additional Products to  
7 Plaintiff, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated  
8 penalties and attorneys' fees and costs incurred by Plaintiff in issuing the new notice and engaging  
9 in other reasonably related activities, which may be released from the trust as awarded by the  
10 Court upon Plaintiff's application. (Any tendered funds remaining in the trust thereafter shall be  
11 refunded to the Settling Defendant within 15 days). Such payment shall be made to "in trust for  
12 The Chanler Group" and delivered as per Section 4.5.1(a) above.

13 11.2 Plaintiff and Settling Defendant(s) agree to support the entry of this agreement as a  
14 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.  
15 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a  
16 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff  
17 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and each  
18 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.  
19 This provision is a material component of the Consent Judgment and shall be treated as such in the  
20 event of a breach.

21 **12. MODIFICATION**

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

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13. AUTHORIZATION

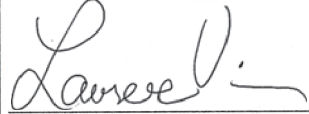
1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
2 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
3 Consent Judgment.

4 AGREED TO:

AGREED TO:

5 Date: October 23, 2013

6 Date: October 22, 2013

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9 Plaintiff Laurence Vinocur

Richard Davis  
Settling Defendant Ace Bayou Corp.

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EXHIBIT A

SETTLING DEFENDANT

**ACE BAYOU CORP.**

Product: padded, upholstered furniture (including gaming chairs)

Exemplar Product: XRocker series gaming chairs

Additional Product: none

Penalty 1 (Section 4.1.1): (see below for timing) \$20,000

Penalty 2 (Section 4.1.2) (due January 15, 2014): \$42,000

Penalty 3 (Section 4.1.3) (due November 30, 2014): \$24,000

Section 4.1.4(i) penalty waiver: \$25,000

Section 4.1.4(ii) penalty waiver: \$12,000

Section 4.1.4(iii) penalty waiver: \$17,000

Section 4.1.4(iv) penalty waiver: \$12,000

*Additional Releases: Target Corporation (As part of this settlement, consolidated defendant Target Corporation is considered a Releasee but only to the limited extent of Target Corporation's sale or other distribution of the XRocker series gaming chairs and other Covered Products sold or supplied to Target Corporation by Ace Bayou Corp. and not for any other product sold by Target Corporation. As part of this settlement, upon approval of this settlement and entry of judgment against Ace Bayou Corp. in this action, defendant Target Corporation will be dismissed from Alameda Superior Court Action RG13683190).*

Section 4.4 fee and costs reimbursement (see below for timing): \$48,500

Supplemental fee for additional Releases: (see below for timing): \$4,000

**Timing of Penalty and Fee/Cost Reimbursement Payments:**

November 1, 2013 - \$15,000 paid to OEHHA per Section 4 (75% share of total penalty)

November 1, 2013 - \$5,000 paid to TCG per Section 4 (25% share of total penalty)

November 1, 2013 - \$4,500 paid to TCG per Section 4 (1 of 3 fee/cost reimbursement)

November 29, 2013 - \$24,000 paid to TCG per Section 4 (2 of 3 fee/cost reimbursement)

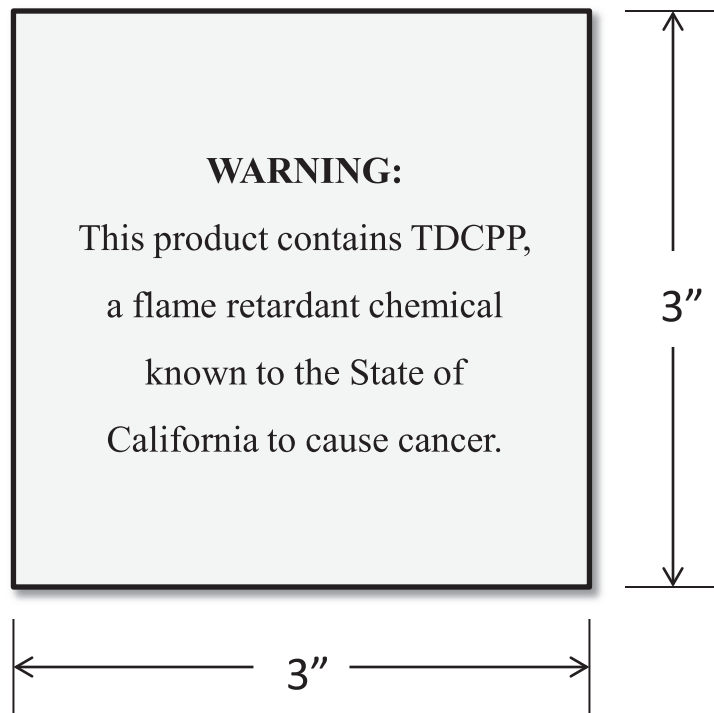
December 27, 2013 - \$24,000 paid to TCG per Section 4 (3 of 3 fee/cost reimbursement)

Person(s) to receive Notices pursuant to Section 8:

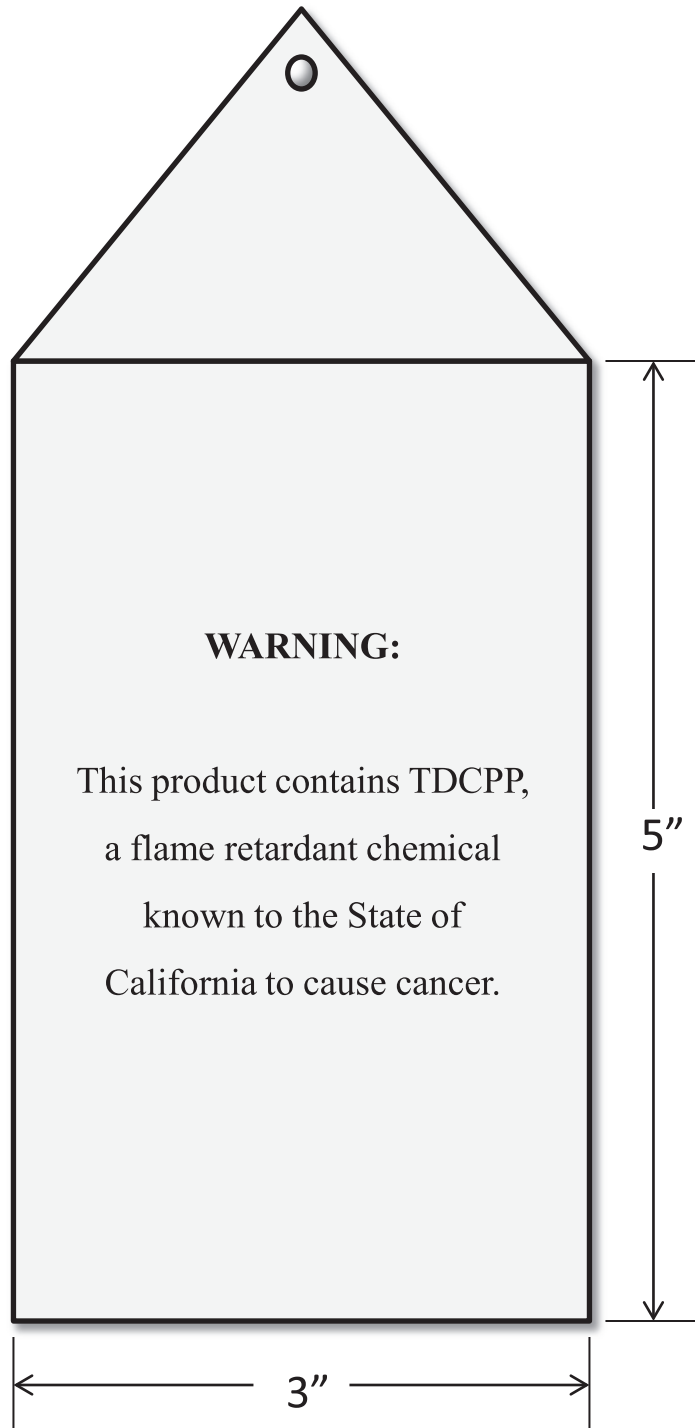
Richard Davis  
Ace Bayou Corp.  
P.O. Box 3308  
New Orleans, LA 70177

EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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**INSTRUCTIONS:** Minimum 12 pt. font. "WARNING:" text must be bold.

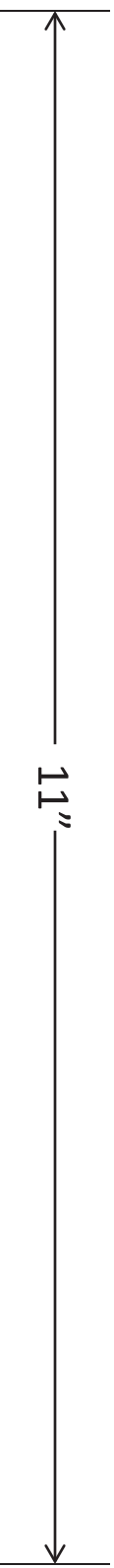


**INSTRUCTIONS:** Print warning on each side of hang tag.  
Minimum 12 pt. font. "WARNING:" text must be bold.

**WARNING:**

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to  
cause cancer.



**INSTRUCTIONS:** Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.