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

14 LAURENCE VINOUCUR

15 Plaintiff,

16 v.

17 NORSTAR OFFICE PRODUCTS, INC., et
18 al.

19 Defendants.

Case No. RG13672551

*Assigned for All Purposes to
The Hon. George C. Hernandez, Jr.,
Department 17*

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT SAUDER
WOODWORKING CO.**

(Health & Safety Code § 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and defendant Sauder Woodworking Co., together with its parents, affiliates,
5 subsidiaries, unincorporated tradenames (including “Sauder,” “Studio Edge” and “Gruga – Seating
6 By Sauder”), insurers, officers, directors, employees, representatives, agents, successors and assigns
7 (collectively “Sauder”).

8 Target Corporation, together with its parents, affiliates, subsidiaries, insurers, officers,
9 directors, employees, representatives, agents, suppliers, successors and assigns (collectively
10 “Target”), is also an intended beneficiary of this Consent Judgment, including the releases provided
11 for herein, as it relates to Target’s alleged manufacture, distribution, importation, sale or offering
12 for sale of the Products, as defined herein.

13 Vinocur and Sauder (and Target, as applicable) are each referred to individually as a “Party”
14 and collectively as the “Parties.”

15 **1.2 Plaintiff**

16 Vinocur is a resident of the State of California who seeks to promote awareness of
17 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
18 substances contained in consumer and commercial products.

19 **1.3 Defendant**

20 Sauder employs ten or more persons and is a person in the course of doing business for
21 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
22 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

23 **1.4 General Allegations**

24 Vinocur alleges that Sauder and/or Target manufactured, imported, sold and/or distributed
25 for sale in California, upholstered furniture with foam padding containing tris (1,3-dichloro-2-
26 propyl) phosphate (CAS Number 13674-87-8) (“TDCPP”) without providing the clear and
27 reasonable health hazard warnings required by Proposition 65. On October 28, 2011, California
28 identified and listed TDCPP Pursuant to Proposition 65, as a chemical known to cause cancer.

1 TDCPP became subject to the “clear and reasonable warning” requirements of the act one year later
2 on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and
3 25249.10(b). Vinocur alleges that TDCPP escapes from the foam padding components resulting in
4 human exposures.

5 1.5 Product Description

6 The categories of products that are covered by this Consent Judgment are all office and task
7 chairs (including but not limited to products described as “task chairs,” “manager chairs,”
8 “executive chairs” and “entertainment chairs”) with foam padding, manufactured, sold, imported,
9 distributed, sold or offered for sale by Sauder, including products manufactured, sold, imported,
10 distributed, sold or offered for sale by Sauder (whether under its name, its affiliates’ names, or
11 under any of its trade names), or which bear a brand or trademark owned or licensed by a third-
12 party, retailer or affiliated entity (a “Private Label Product”) (collectively the “Products”),
13 specifically including but not being limited to Products sold by Target.

14 1.6 Notices of Violation

15 On January 8, 2013, and/or March 20, 2013, Vinocur served Sauder, Target (one of
16 Sauder’s retail customers in California), and certain requisite public enforcement agencies with two
17 separate 60-Day Notices of Violation (the “Notices”), alleging that Sauder and Target violated
18 Proposition 65 when they failed to warn their customers, consumers, and workers in California that
19 the Products expose users to TDCPP. To the best of the Parties’ knowledge, no public enforcer has
20 commenced and is diligently prosecuting the allegations set forth in the Notices.

21 1.7 Complaint

22 On March 22, 2013, Vinocur commenced the instant action. Thereafter, on July 9, 2013,
23 Vinocur filed a First Amended Complaint (“Complaint”), the operative pleading in this action,
24 naming Sauder and Target as defendants, and stating a cause of action for the alleged violations of
25 Proposition 65 that are the subject of the Notices.

26 1.8 No Admission

27 Sauder and Target each deny the material, factual, and legal allegations contained in the
28 Notices and Complaint and maintain that all of the Products that either of them has sold or

1 distributed for sale in California, including all other products, have been and are in compliance with
2 all laws. Nothing in this Consent Judgment shall be construed as an admission by Sauder or Target
3 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with
4 this Consent Judgment constitute or be construed as an admission by Sauder or Target of any fact,
5 finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
6 diminish or otherwise affect Sauder's obligations, responsibilities, and duties under this Consent
7 Judgment, or the releases provided to Sauder and Target under this Consent Judgment.

8 1.9 **Jurisdiction**

9 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
10 jurisdiction over Sauder as to the allegations contained in the Complaint, that venue is proper in the
11 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
12 Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section 664.6.

13 **2. DEFINITIONS**

14 2.1 **California Customer**

15 "California Customer" shall mean any customer that Sauder reasonably understands is
16 located in California, has a California warehouse or distribution center, maintains a retail outlet in
17 California, or has distributed Products for sale in California, online via the internet or by any other
18 means, on or after October 28, 2011.

19 2.2 **No Detectable Amount**

20 "No Detectable Amount" shall mean no more than 25 parts per million ("ppm") (the
21 equivalent of .0025%) of TDCPP in any material, component, or constituent of a subject product,
22 when analyzed by a domestic NVLAP (National Volunteer Laboratory Accreditation Program)
23 accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent
24 methodologies utilized by federal or state agencies to determine the presence, or measure the
25 amount, of TDCPP in a solid substance.

26 2.3 **Effective Date**

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

28

1 2.4 **Reformulated Products**

2 “Reformulated Products” shall mean Products that contain No Detectable Amount of
3 TDCPP. Sauder also agrees that “Reformulated Products” shall also contain No Detectable
4 Amount of tris (2-chloroethyl) phosphate (CAS Number 115-96-8) (“TCEP”), and tris (2, 3-
5 dibromopropyl) phosphate (CAS Number 126-72-7) (“TDBPP”).

6 2.5 **Reformulation Standard**

7 The “Reformulation Standard” shall mean a maximum of 25 ppm TDCPP, TCEP and/or
8 TDBPP content.

9 2.6 **Retailer**

10 “Retailer” means an individual or entity that offers a Product for sale to consumers in
11 California.

12 **3. INJUNCTIVE RELIEF: REFORMULATION**

13 3.1 **Reformulation Commitment**

14 Commencing on March 31, 2014 (the “Reformulation Date”), and continuing thereafter,
15 Sauder shall only manufacture or import for distribution or sale to California Customers, or cause to
16 be manufactured or imported for distribution or sale to California Customers, Reformulated
17 Products.

18 3.2 **Product Warnings**

19 On or before the Effective Date, Sauder shall certify that all Products (except for
20 Reformulated Products) purchased for sale, manufactured for sale, or distributed for sale in
21 California, or to a California Customer shall include, or continue to include (the warnings currently
22 by Sauder as to the Products conform to the requirements described below in this Section 3.2) a
23 warning affixed to the Product’s packaging, labeling, or directly on each Product. Each warning
24 shall be prominently placed on the Product’s packaging or label with such conspicuousness when
25 compared with other words, statements, designs, devices in the packaging or label as to render it
26 likely to be read and understood by an ordinary individual under customary conditions of purchase
27 or use.

28 Any warning provided pursuant to this Consent Judgment shall read as follows:

1 WARNING: This product contains a chemical
2 known to the State of California
3 to cause cancer.

4 **4. MONETARY PAYMENTS**

5 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

6 In settlement of all the claims referred to in this Consent Judgment, Sauder shall pay civil
7 penalties totaling Forty Thousand Dollars (\$40,000). Each penalty payment shall be allocated in
8 accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the
9 funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”),
10 and 25% of the penalty remitted to “The Chanler Group in Trust for Laurence Vinocur.” Each
11 penalty payment shall be delivered within two business days of the date it is due at the addresses
12 below. Sauder shall be liable for payment of simple interest at a rate of 10% for all amounts due
13 and owing that are not received within two business days of the date they are due, if any.

14 **4.1.1 Initial Civil Penalty Payment.** On or before the Effective Date, Sauder
15 shall make an initial civil penalty payment in the amount of Twenty Thousand Dollars (\$20,000).
16 Sauder shall provide its payment in the form of two checks, for the following amounts, made
17 payable to: “The Chanler Group in Trust for Laurence Vinocur” in the amount of \$5,000; and (b)
18 “The Chanler Group in Trust” in the amount of \$15,000.”

19 **4.1.2 Credit for Early Reformulation.** On or before January 15, 2014, Sauder
20 shall make a second civil penalty payment in the amount of Twenty Thousand Dollars (\$20,000),
21 except that Sauder shall not be obligated to pay, and shall be excused from paying, the second civil
22 penalty payment (\$20,000) by providing Vinocur with certification (to be given by December 15,
23 2013) that on and after December 31, 2013 Sauder will distribute, offer for sale, or sell in
24 California, or to California Customers, only Reformulated Products. Sauder’s option to provide a
25 written certification of early reformulation in lieu of making the Second Civil Penalty Payment
26 constitutes a material term of this Consent Judgment, and with regard to such term, time is of the
27 essence.
28

1 **4.2 Representations Regarding Sales, Compliance and Company Size**

2 Sauder represents that the sales data and other information concerning company size,
3 revenues, knowledge of TDCPP presence, and prior reformulation and/or warning efforts provided
4 to Vinocur are each true and accurate based on its knowledge, and are material factors upon which
5 Vinocur relies to determine the amount of civil penalties assessed pursuant to Health and Safety
6 Code section 25249.7(b). If, within nine months of the Effective Date, Vinocur discovers and
7 presents to Sauder, evidence demonstrating that the any of the preceding representations or
8 warranties were materially inaccurate, then Sauder shall have thirty (30) days to meet and confer
9 regarding the Vinocur's contention. Should the thirty (30) day period conclude without any
10 resolution between Vinocur and Sauder, Vinocur shall be entitled to file a formal legal claim
11 including, but not limited to, a claim seeking damages for breach of contract.

12 **4.3 Violations of the Reformulation Standard.**

13 In the event Vinocur identifies a Product manufactured, imported, distributed, sold or
14 offered for sale by Sauder in California on or after the Reformulation Date which allegedly contains
15 a level of TDCPP in excess of the Reformulation Standard (Non-Compliant Product), then Vinocur
16 shall notify Sauder in writing of the alleged violation of the Reformulation Standard, together with
17 all laboratory test results demonstrating the alleged violation. Within thirty (30) days following its
18 receipt of such notice, Sauder shall (a) provide Vinocur with the name, address and telephone
19 number of the vendor/supplier of the allegedly Non-Compliant Product; and (b) product
20 specifications or other documentation confirming that Sauder took reasonable steps to prevent the
21 alleged violation. Sauder shall also advise the vendor/supplier of the alleged violation, and shall
22 require that the Reformulation Standard be achieved. Upon confirmation (such as by additional
23 testing, or a determination by the Court in the event of any dispute) of any alleged violation, Sauder
24 shall also take action to ensure that any Non-Compliant Products are not offered for sale, or sold, in
25 California.

26 Sauder may elect to exercise the foregoing procedures once for any one supplier or two
27 times altogether, and Vinocur agrees in those instances to forego enforcement for any alleged
28 breach of the injunctive relief agreed to in this Consent Judgment. Upon any other or subsequent

1 violation of the terms of this Consent Judgment, Vinocur may pursue all remedies available at law
2 to enforce the terms of this Consent Judgment.

3 **4.4 Reimbursement of Fees and Costs**

4 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee
6 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
7 other settlement terms had been finalized, Sauder expressed a desire to resolve Vinocur's
8 outstanding fees and costs. Under general contract principles and the private attorney general
9 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
10 through the mutual execution of this agreement, including the fees and costs incurred as a result of
11 investigating, bringing this matter to Sauder's attention, negotiating a settlement in the public
12 interest, and seeking court approval of the same, Sauder agreed to pay Vinocur, upon the Court's
13 approval and entry of this Consent Judgment, fees and costs in the total amount of Forty-Seven
14 Thousand Five Hundred Dollars (\$47,500). Sauder further agreed to tender and shall tender its
15 payment in full under this Section to Vinocur's counsel's trust account – payable to "The Chanler
16 Group in Trust" – within two business days of the Effective Date. Such funds shall be disbursed
17 upon the Court's approval and entry of this Consent Judgment.

18 **4.5 Payment Procedures**

19 **4.5.1 Payment Addresses.**

20 (a) All payments owed to Vinocur and his counsel under this Consent
21 Judgment shall be delivered to the following address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 (b) All payments owed to OEHHA under this Consent Judgment shall be
28 delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following
addresses, as appropriate:

1 For United States Postal Service Delivery:

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

7 For Non-United States Postal Service Delivery or Courier:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 4.5.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
14 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
15 Section 4.5.1(a) above.

16 4.5.3 **Tax Documentation.** Sauder shall provide a separate 1099 form for each
17 payment required by this Consent Judgment to: (a) Laurence Vinocur, whose address and tax
18 identification number shall be furnished upon request after this Consent Judgment has been fully
19 executed by the Parties; (b) "California Office of Environmental Health Hazard Assessment" (EIN:
20 68-0284486); and (c) "The Chanler Group" (EIN: 94-3171522) .

21 **5. CLAIMS COVERED AND RELEASED**

22 **5.1 Vinocur's Release of Proposition 65 Claims**

23 Vinocur, acting on his own behalf and in the public interest, releases Sauder, its parents,
24 affiliates, subsidiaries, unincorporated tradenames (including "Sauder," "Studio Edge" and "Gruga-
25 Seating by Sauder"), insurers, officers, directors, employees, representatives, agents, suppliers,
26 successors and assigns, and each entity to whom Sauder directly or indirectly distributes or sells
27 the Products, including, but not limited, to downstream distributors, wholesalers, customers,
28 retailers, franchisees, cooperative members, and licensees (specifically including but not being
limited to Target) (collectively the "Released Entities and Persons"), from all claims alleging
violations of Proposition 65 through the Effective Date based on unwarned exposures to TDCPP in
the Products, as set forth in the Notices. Compliance with the terms of this Consent Judgment

1 constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the Products,
2 as set forth in the Notices.

3 **5.2 Vinocur's Individual Releases of Claims**

4 Vinocur, in his individual capacity only and *not* in any representative capacity, provides a
5 release herein to the Released Entities and Persons which shall be effective as a full and final accord
6 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
7 fees, damages, losses, claims, liabilities, and demands of any nature, character, or kind, whether
8 known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual
9 exposures to TDCPP, TCEP, and/or TDBPP in any Products occurring on or before the Effective
10 Date. Nothing in this Section affects Vinocur's right to commence or prosecute an action under
11 Proposition 65 against a Released Entity or Person which does not involve the Products.

12 **5.3 Sauder's Release of Vinocur**

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

19 **6. 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. If the Court does not approve the Consent Judgment,
23 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
24 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
25 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
26 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
27 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
28 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by

1 the Court and subsequently overturned by any appellate court, any monies that have been tendered
2 or paid to OEHHA (or held in trust), Vinocur or his counsel pursuant to Section 3, above, shall be
3 refunded within 15 days of the appellate decision becoming final. If the Court does not approve
4 and enter the Consent Judgment within one year of the Effective Date, any monies that have been
5 tendered or paid to OEHHA (or held in trust) for Vinocur or his counsel pursuant to Section 3,
6 above, shall be refunded to the Sauder within 15 days.

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California.
9 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
10 reason of law generally, or as to the Products, then Sauder may provide Vinocur with notice of any
11 asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment
12 with respect to, and to the extent that, the Products are so affected. Nothing in this Consent
13 Judgment shall be interpreted to relieve Sauder from its obligation to comply with any pertinent
14 state or federal law or regulation.

15 **8. NOTICE**

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

20 To Sauder:

21 Sauder Woodworking Company
22 502 Middle Street
23 Archbold, OH 43502
24 Attn: President

To Vinocur:

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

25 Any Party, from time to time, may specify in writing to the other Party a change of address to
26 which all notices and other communications shall be sent.
27
28

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

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. DISMISSAL OF TARGET CORPORATION**

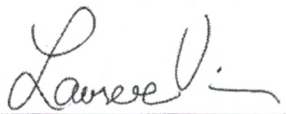
9 Within five days of the Court's entry of an order approving this Consent Judgment, Vinocur
10 shall file a request for dismissal without prejudice as to defendant Target Corporation.

11 **12. ENTIRE AGREEMENT, MODIFICATION**


12 This Consent Judgment is a full and complete statement of all matters relating hereto. No
13 other agreements, obligations or undertakings shall be binding on the parties. This Consent
14 Judgment may be modified only: (i) by written agreement of the Parties and upon entry of a
15 modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and
16 entry of a modified Consent Judgment by the Court.

17 **13. AUTHORIZATION**

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

21 **AGREED TO:**
22 
23 _____

24 LAURENCE VINO CUR
25 Dated: October 7, 2013

AGREED TO:


SAUDER WOODWORKING CO.
By: Kevin J. Sauder
Its: President/CEO
Dated: 10/7/13

28