

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

**ENDORSED
FILED
ALAMEDA COUNTY**

MAR - 7 2014

CLERK OF THE SUPERIOR COURT
By **VOLANDA ESTRADA** Deputy

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

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 SKYLINE FURNITURE MFG., INC.; et
19 al.

20 Defendant.

Case No. RG13675155

**~~PROPOSED~~ JUDGMENT PURSUANT
TO PROPOSITION 65 SETTLEMENT
AND AMENDED CONSENT JUDGMENT
AS TO DEFENDANT HOOKER
FURNITURE CORPORATION**

Date: March 7, 2014

Time: 9:00 a.m.

Dept.: 17

Judge: Hon. George C. Hernandez, Jr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Amended Consent Judgment attached hereto as **Exhibit 1**, and as further modified by the Order approving the Proposition 65 settlement and Amended Consent Judgment. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: MAR - 7 2014

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT

Exhibit 1
(To Judgment)

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

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

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 SKYLINE FURNITURE MFG., INC.; et
17 al.

18 Defendants.

Case No. RG 13-675155

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

**AMENDED [PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
HOOKER FURNITURE CORPORATION**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: April 11, 2013

1 Recitation Regarding Amendment: This Amended Consent Judgment is entered into by and
2 between Peter Englander and Hooker Furniture Corporation, and is intended only to amend section
3 2.2 of the original Settlement Agreement executed by these parties on October 14, 2013, and
4 October 29, 2013. Except for the amendment to section 2.2, below, all other terms of the original
5 Settlement Agreement shall remain in full force and effect.

6 **1. INTRODUCTION**

7 **1.1 Parties**

8 This Consent Judgment is entered into by and between plaintiff Peter Englander (“Plaintiff”)
9 and defendant Hooker Furniture Corporation, identified in Exhibit A (“Settling Defendant”), with
10 Plaintiff and the Settling Defendant collectively referred to as the “Parties.”

11 **1.2 Plaintiff**

12 Plaintiff is an individual residing in the State of California who seeks to promote awareness
13 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
14 substances contained in consumer and commercial products.

15 **1.3 Settling Defendant**

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

19 **1.4 General Allegations**

20 **1.4.1** Plaintiff alleges that the Settling Defendant manufactured, imported, sold
21 and/or distributed for sale in California, products with foam cushioned components containing
22 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”)
23 without the requisite Proposition 65 health hazard warnings.

24 **1.4.2** Pursuant to Proposition 65, on April 1, 1992, California identified and listed
25 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
26 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §
27 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

1 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
2 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
3 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
4 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). TDCPP and TCEP
5 are hereinafter referred to as the “Listed Chemicals.” Plaintiff alleges that the Listed Chemicals
6 escape from the foam padding, leading to human exposures.

7 **1.5 Product Description**

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

13 **1.6 Notices of Violation**

14 On January 30, 2013, and February 25, 2013, Plaintiff served the Settling Defendant and
15 certain requisite public enforcement agencies with “60-Day Notices of Violation” (“Notices”) that
16 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
17 failure to warn customers, consumers, and workers in California that the Products expose users to
18 the Listed Chemicals. To the best of the Parties’ knowledge, no public enforcer has commenced or
19 is diligently prosecuting the allegations set forth in the Notice.

20 **1.7 Complaint**

21 On August 14, 2013, Plaintiff filed a Third Amended Complaint in the Superior Court in
22 and for the County of Alameda against the Settling Defendant, and Does 1 through 150, *Peter*
23 *Englander v. Skyline Furniture Mfg., Inc., et al.*, Case No. RG 13-675155, alleging violations of
24 Proposition 65, based in part on the alleged unwarned exposures to TDCPP and/or TCEP contained
25 in the Products.

26 **1.8 No Admission**

27 The Settling Defendant denies the material factual and legal allegations contained in
28 Plaintiff’s Notices and Complaint and maintains that all products that it has manufactured,

1 imported, distributed, and/or sold in California, including the Products, have been and are in
2 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
3 the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall
4 compliance with this Consent Judgment constitute or be construed as an admission by the Settling
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section
6 shall not diminish or otherwise affect the Settling Defendant's obligations, responsibilities, and
7 duties under this Consent Judgment.

8 **1.9 Consent to Jurisdiction**

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

14 **2. DEFINITIONS**

15 **2.1 California Customers**

16 "California Customer" shall mean any customer that the Settling Defendant reasonably
17 understands is located in California, has a California warehouse or distribution center, maintains a
18 retail outlet in California, or is an authorized online dealer of Settling Defendant and has made
19 internet sales to California on or after January 1, 2011.

20 **2.2 Detectable**

21 "Detectable" shall mean containing no more than 25 parts per million ("ppm") (the
22 equivalent of .0025%) of any one chemical in any material, component, or constituent of a subject
23 product, when analyzed by a laboratory accredited by the State of California, a federal agency,
24 American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board
25 (ANAB) - ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS),
26 International Accreditation Forum (IAF) shall mean containing no more than 25 parts per million
27 ("ppm") (the equivalent of .0025%) of any one chemical in any material, component, or constituent
28 of a subject product, when analyzed by a laboratory accredited by the State of California, a federal

1 agency, American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation
2 Board (ANAB) - ACLASS brand (an ANAB company), International Accreditation Service, Inc.
3 (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc.
4 (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar nationally
5 recognized accrediting organization now or in the future (such laboratory referred hereinafter as an
6 "Accredited Lab") pursuant to EPA testing methodologies 3545 and 8270C, or equivalent
7 methodologies utilized by federal or state agencies to determine the presence, and measure the
8 quantity, of TDCPP, TCEP, and/or tris(2,3-dibromopropyl)phosphate ("TDBPP") in a solid
9 substance, Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc.
10 (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar nationally
11 recognized accrediting organization now or in the future (such laboratory referred hereinafter as an
12 "Accredited Lab") pursuant to EPA testing methodologies 3545 and 8270C, or equivalent
13 methodologies utilized by federal or state agencies to determine the presence, and measure the
14 quantity, of TDCPP, TCEP, and/or tris(2,3-dibromopropyl)phosphate ("TDBPP") in a solid
15 substance.

16 **2.3 Effective Date**

17 "Effective Date" shall mean September 30, 2013.

18 **2.4 Private Label Covered Products**

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

22 **2.5 Reformulated Products**

23 "Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP,
24 or TCEP.

25 **2.6 Reformulation Standard**

26 The "Reformulation Standard" shall mean containing no more than 25 ppm for TDCPP and
27 TCEP.

1 2.7 **Retailer**

2 “Retailer” means an individual or entity that is an authorized retailer of Defendant, or an
3 authorized online retailer of Defendant, and offers a Product for retail sale to consumers in the State
4 of California.

5 **3. INJUNCTIVE RELIEF: REFORMULATION**

6 3.1 **Reformulation Commitment**

7 Commencing on March 31, 2014, the Settling Defendant shall not manufacture or import for
8 distribution or sale to California Customers, or cause to be manufactured or imported for
9 distribution or sale to California Customers, any Products that are not Reformulated Products.

10 3.2 **Vendor Notification/Certification**

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

21 3.3 **Products No Longer in the Settling Defendant’s Control**

22 No later than 30 days after the Effective Date, the Settling Defendant shall send a letter,
23 electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer
24 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
25 in the Notices the Settling Defendant received from Plaintiff (“Exemplar Product”); and (2) any
26 California Customer and/or Retailer that the Settling Defendant reasonably understands or believes
27 had any inventory for resale in California of Exemplar Products as of the Notices dates. The
28 Notification Letter shall advise the recipient that the Exemplar Product “contains TDCPP and/or

1 TCEP, chemicals known to the State of California to cause cancer,” and request that the recipient
2 either: (a) label the Exemplar Products remaining in inventory for sale in California, or to
3 California Customers, pursuant to Section 3.5; or (b) return, at the Settling Defendant’s sole
4 expense, all units of the Exemplar Product held for sale in California, or to California Customers, to
5 the Settling Defendant or a party the Settling Defendant has otherwise designated. The Notification
6 Letter shall require a response from the recipient within 20 days confirming whether the Exemplar
7 Product will be labeled or returned. The Settling Defendant shall maintain records of all
8 correspondence or other communications generated pursuant to this Section for two years after the
9 Effective Date and shall promptly produce copies of such records upon Plaintiff’s written request.

10 **3.4 Current Inventory**

11 Any Products in, or manufactured and en route to, the Settling Defendant’s inventory as of
12 or after December 31, 2013, that do not qualify as Reformulated Products and that the Settling
13 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a
14 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.

15 **3.5 Product Warnings**

16 **3.5.1 Product Labeling**

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

23 A warning provided pursuant to this Consent Judgment shall state:
24
25
26
27
28

1 **WARNING:** This product contains [TDCPP and/or
2 TCEP], flame retardant chemicals known to the State
3 of California to cause cancer.

4 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be
5 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
6 set forth in this Section are addressed, including obtaining Plaintiff's approval where required, the
7 Settling Defendant that elects not to utilize the template warnings shall remain free to provide a
8 warning in any other manner meeting the requirements of 27 CCR § 25601.

9 3.5.2 **Internet Website Warning**

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

16 **WARNING:** This product contains [TDCPP and/or
17 TCEP] , flame retardant chemicals
18 known to the State of California to
19 cause cancer.³

20 ///

21 ///

22 ¹The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the
23 Settling Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use
24 alternative warning language, other than the language specified above or the safe harbor warning specified in
25 27 CCR § 25603.2, or that seeks to use an alternate method of transmission of the warning, must obtain the
26 Court's approval of its proposed alternative and provide all Parties and the Office of the Attorney General
27 with timely notice and the opportunity to comment or object before the Court acts on the request. The
28 Parties agree that the following warning language shall not be deemed to meet the requirements of 27 CCR §
29 25601 *et seq.* and shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other
30 reproductive harm" and (b) "cancer, birth defects or other reproductive harm."

31 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag
32 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
33 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
34 8.5" x. 11", with no less that 32 point font, with the warning language printed on each side, which
35 shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a
36 yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed
37 directly to the Product packaging.

38 ³ Footnote 1 applies in this context as well.

1 **3.6 Alternatives to Interim Warnings**

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

11 **4. MONETARY PAYMENTS**

12 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

13 In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant
14 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
15 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1)
16 and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
17 Assessment (“OEHHA”) and 25% of the penalty remitted to “The Chanler Group in Trust for Peter
18 Englander.” Each penalty payment shall be made within two business days of the date it is due and
19 be delivered to the addresses listed in Section 4.5 below. The Settling Defendant shall be liable for
20 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under Section 4
21 that are not received within two business days of the due date.

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

25 4.1.2 Second Civil Penalty. On or before January 15, 2014, the Settling Defendant
26 shall make a second civil penalty payment in the amount identified on the Settling Defendant’s
27 Exhibit A. The amount of the second penalty may be reduced according to any penalty waiver the
28 Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

1 4.1.3 Third Civil Penalty. On or before November 30, 2014, the Settling
2 Defendant shall make a third civil penalty payment in the amount identified on the Settling
3 Defendant's Exhibit A. The amount of the third penalty may be reduced according to any penalty
4 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

12 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
13 **Products Sold or Offered for Sale in California.**

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

22 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

23 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil penalty
24 shall be waived, to the extent that it has agreed that, as of March 15, 2014, and continuing into the
25 future, it shall only manufacture or import for distribution or sale in California or cause to be
26 manufactured or imported for distribution or sale in California, Reformulated Products which also
27 do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than
28 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent
of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing

1 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
2 determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or
3 other authorized representative of a Settling Defendant that has exercised this election shall provide
4 Plaintiffs with a written certification confirming compliance with such conditions, which
5 certification must be received by Plaintiffs' counsel on or before November 15, 2014.

6 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
7 **Exemplar Products from the California Market.**

8 As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall
9 be waived, if an officer or other authorized representative of the Settling Defendant provides
10 Plaintiff with written certification, by December 15, 2013, confirming that each individual or
11 establishment in California to which it supplied the Exemplar Product after October 28, 2011, has
12 elected, pursuant to Section 3.3, to return all Exemplar Products held for sale in California.⁴

13 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
14 **California of Unreformulated Inventory.**

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

20 **4.2 Representation Regarding Sales Volume**

21 The Settling Defendant represents that the sales data and other information concerning its
22 size, knowledge of the Listed Chemicals, and prior reformulation and/or warning efforts, it
23 provided to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiff has
24 relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code §
25 25249.7 in this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers
26 and presents to the Settling Defendant, evidence demonstrating that the preceding representation

27 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Plaintiff has, prior to August 31, 2013, provided the Settling Defendant 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 and warranty was materially inaccurate, then the Settling Defendant shall have 30 days to meet and
2 confer regarding the Plaintiff's contention. Should this 30 day period pass without any such
3 resolution between the Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal
4 legal claim including, but not limited to, a claim for damages for breach of contract.

5 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

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

24
25 ⁵ This Section shall not be applicable where the vendor in question had previously been
26 found by the Settling Defendant to have provided unreliable certifications as to meeting the
27 Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing,
28 a stipulated penalty for a second exceedance by a Settling Defendant's vendor at a level between
100 and 249 ppm shall not be available after July 1, 2015.

⁶ 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 Plaintiff 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, the Settling Defendant
6 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay
7 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
8 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
9 mutual execution of this agreement, including the fees and costs incurred as a result of
10 investigating, bringing this matter to the Settling Defendant’s attention, negotiating a settlement in
11 the public interest, and seeking court approval of the same. The Settling Defendant more
12 specifically agreed, upon the Court’s approval and entry of this Consent Judgment, to pay
13 Plaintiff’s counsel the amount of fees and costs indicated on the Settling Defendant’s Exhibit A.
14 The Settling Defendant further agreed to tender and shall tender its full required payment under this
15 Section to a trust account at The Chanler Group (made payable “In Trust for The Chanler Group”)
16 within two business days of the Effective Date. Such funds shall be released from the trust account
17 upon the Court’s approval and entry of this Consent Judgment.

18 **4.5 Payment Procedures**

19 4.5.1 Issuance of Payments.

20 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
21 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

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

25 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
26 Section 4.1, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one
27 of the following addresses, as appropriate:
28

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:

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, as proof of payment to OEHHA.

16 4.5.3 Tax Documentation. The Settling Defendant shall issue a separate 1099 form
17 for each payment required by this Section to: (a) Peter Englander, 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) OEHHA, who shall be identified as "California Office of
20 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered
21 directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) "The Chanler Group" (EIN:
22 94-3171522) to the address set forth in Section 4.5.1(a) above.

23 **5. CLAIMS COVERED AND RELEASED**

24 **5.1 Plaintiff's Release of Proposition 65 Claims**

25 Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant,
26 its parents, subsidiaries, affiliated entities under common ownership as identified in Exhibit A,
27 directors, officers, agents employees, attorneys, and each entity to whom the Settling Defendant
28 directly or indirectly distributes or sells Products, including, but not limited, to downstream
distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
(collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective
Date based on unwarned exposures to the Listed Chemicals in the Products, as set forth in the
Notices. Compliance with the terms of this Consent Judgment constitutes compliance with

1 Proposition 65 with respect to exposures to the Listed Chemicals from the Products, as set forth in
2 the Notices. The Parties further understand and agree that this Section 5.1 release shall not extend
3 upstream to any entities, other than the Settling Defendant, that manufactured the Products or any
4 component parts thereof, or any distributors or suppliers who sold the Products or any component
5 parts thereof to a Settling Defendant, except that entities upstream of the Settling Defendant that is
6 a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled Covered
7 Products offered for sale in California, or to California Customers, by the Retailer in question.

8 **5.2 Plaintiff's Individual Releases of Claims**

9 Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a
10 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
11 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
12 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
13 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP and/or
14 TCEP in the Products or Additional Products (as defined in Section 11.1 and delineated on the
15 Settling Defendant's Exhibit A) manufactured, imported, distributed, or sold by Settling Defendant,
16 prior to the Effective Date.⁷ The Parties further understand and agree that this Section 5.2 release
17 shall not extend upstream to any entities that manufactured the Products or Additional Products, or
18 any component parts thereof, or any distributors or suppliers who sold the Products or Additional
19 Products, or any component parts thereof to Settling Defendant, except that entities upstream of the
20 Settling Defendant that is a Retailer of a Private Labeled Covered (or Additional) Product shall be
21 released as to the Private Labeled Covered (or Additional) Products offered for sale in California by
22 the Retailer in question. Nothing in this Section affects Plaintiff's rights to commence or prosecute
23 an action under Proposition 65 against a Releasee that does not involve the Settling Defendant's
24 Products or Additional Products.

25 ///

26 ///

27 _____
28 ⁷ The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

1 **5.3 Settling Defendant's Release of Plaintiff**

2 The Settling Defendant, on behalf of itself, its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his
4 attorneys and other representatives, for any and all actions taken or statements made (or those that
5 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in
6 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
7 matter with respect to the Products and/or Additional Products.

8 **6. COURT APPROVAL**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of California.
26 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
27 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
28 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered

1 inapplicable by reason of law generally as to the Products, then the Settling Defendant may provide
2 written notice to Plaintiff of any asserted change in the law, and shall have no further obligations
3 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
4 affected. Nothing in this Consent Judgment shall be interpreted to relieve the Settling Defendant
5 from any obligation to comply with any pertinent state or federal law or regulation.

6 **8. NOTICE**

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

11 To Settling Defendant:

To Plaintiff:

12 At the address shown on Exhibit A

13 Proposition 65 Coordinator
14 The Chanler Group
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710-2565

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

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

21 This Consent Judgment may be executed in counterparts and by facsimile or portable
22 document format (“pdf”) signature, each of which shall be deemed an original, and all of which,
23 when taken together, shall constitute one and the same document. A facsimile or pdf signature shall
24 be as valid as the original.

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

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

28 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

11.1 In addition to the Products, where the Settling Defendant has identified on Exhibit A
additional products that contain TDCPP, TCEP, TDBPP and/or any Proposition 65-listed

1 chemical(s) and that are sold or offered for sale by it to California Customers, (“Additional
2 Products”), then by no later than October 15, 2013, the Settling Defendant may provide Plaintiff
3 with additional information or representations necessary to enable him to issue a 60-Day Notice of
4 Violation and valid Certificate of Merit therefore, pursuant to Health & Safety Code section
5 25249.7, that includes the Additional Products. Polyurethane foam that is supplied, shaped or
6 manufactured for use as a component of a product, such as upholstered furniture, is specifically
7 excluded from the definition of Additional Products and shall not be identified by the Settling
8 Defendant on Exhibit A as an Additional Product. Except as agreed upon by Plaintiff, Settling
9 Defendant shall not include a product, as an Additional Product, that is the subject of an existing
10 60-day notice issued by Plaintiff or any other private enforcer at the time of execution.

11 After receipt of the required information, Plaintiff agrees to issue a supplemental 60-day
12 notice in compliance with all statutory and regulatory requirements for the Additional Products.
13 Plaintiff will, and in no event later than October 1, 2014, prepare and file an amendment to this
14 Consent Judgment to incorporate the Additional Products within the defined term “Products” and,
15 upon the Court’s approval thereof, the Additional Products shall become subject to Sections 5.1 and
16 5.2. The Settling Defendant shall, at the time it elects to utilize this Section and tenders the
17 additional information or representations regarding the Additional Products to Plaintiff, tender to
18 The Chanler Group’s trust account an amount not to exceed \$8,750 as stipulated penalties and
19 attorneys’ fees and costs incurred by Plaintiff in issuing the new notice and engaging in other
20 reasonably related activities, which may be released from the trust as awarded by the Court upon
21 Plaintiff’s application. (Any tendered funds remaining in the trust thereafter shall be refunded to
22 the Settling Defendant within 15 days). Such payment shall be made to “In trust for The Chanler
23 Group” and delivered as per Section 4.5.1(a) above.

24 11.2 Plaintiff and Settling Defendant agree to support the entry of this agreement as a
25 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
26 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
27 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff
28 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and the

1 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.
2 This provision is a material component of the Consent Judgment and shall be treated as such in the
3 event of a breach.

4 **12. MODIFICATION**

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

8 **13. AUTHORIZATION**

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

12
13 AGREED TO:

14 
15 _____
16 Peter Englander

17 Date: January 30, 2014

13 AGREED TO:

14 
15 _____
16 Hooker Furniture Corporation

17 Date: January 21, 2014

18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. Name of Settling Defendant: Hooker Furniture Corporation
- II. Names of Releasees:
- III. Types of Covered Products Applicable to Settling Defendant:
 - Foam-cushioned pads for children and infants to lie on, such as rest mats
 - Upholstered furniture
 - Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds
 - Car seats, strollers
 - Other (specify): padded upholstered furniture including ottomans
- IV. Types of Additional Products the Settling Defendant Elects to Address (if any):
- V. Settling Defendant's Required Settlement Payments
 - A. Civil Penalties for Settling Defendant as follows:
 - \$24,000 initial payment due on or before the Effective Date;
 - \$42,000 second payment due on or before January 15, 2014, of which \$23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be waived pursuant to Section 4.1.4(iii); and
 - \$24,000 third payment due on or before November 30, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be waived pursuant to Section 4.1.4(iv).
- VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs totaling \$48,500, as follows:
 - A. Fees and Costs for Settling Defendant: \$44,500.
 - B. Additional Fees and Costs attributable to action filed by Plaintiff before the Effective Date naming an unaffiliated third party that is released by the Settling Defendant's participation in the Consent Judgment: \$4,000.

1 VII. Person(s) to receive Notice pursuant to Section 8

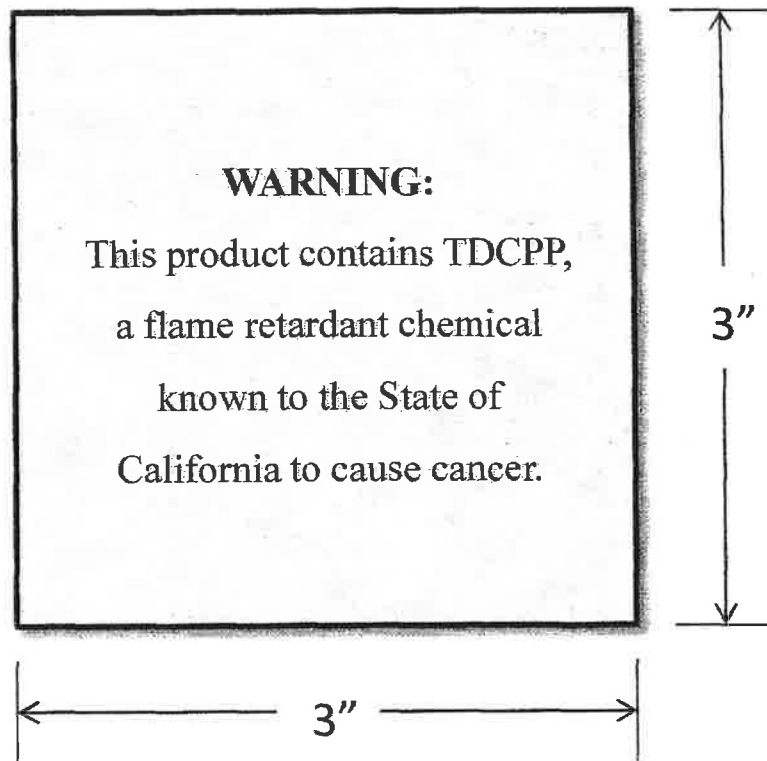
2		
3	<u>Harrison Toms</u>	<u>Dennis E. Raglin</u>
	Name	Name
4	<u>Manager, Regulatory Compliance</u>	<u>Lawyer</u>
5	Title	Title
6	<u>Hooker Furniture Corporation</u>	<u>Sedgwick LLP</u>
	Company/Firm Name	Company/Firm Name
7		
8	<u>Address P.O. Box 4708</u>	<u>Address 333 Bush Street, 30th Floor</u>
9	<u>Martinsville, Virginia 24115</u>	<u>San Francisco, California 94104</u>

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

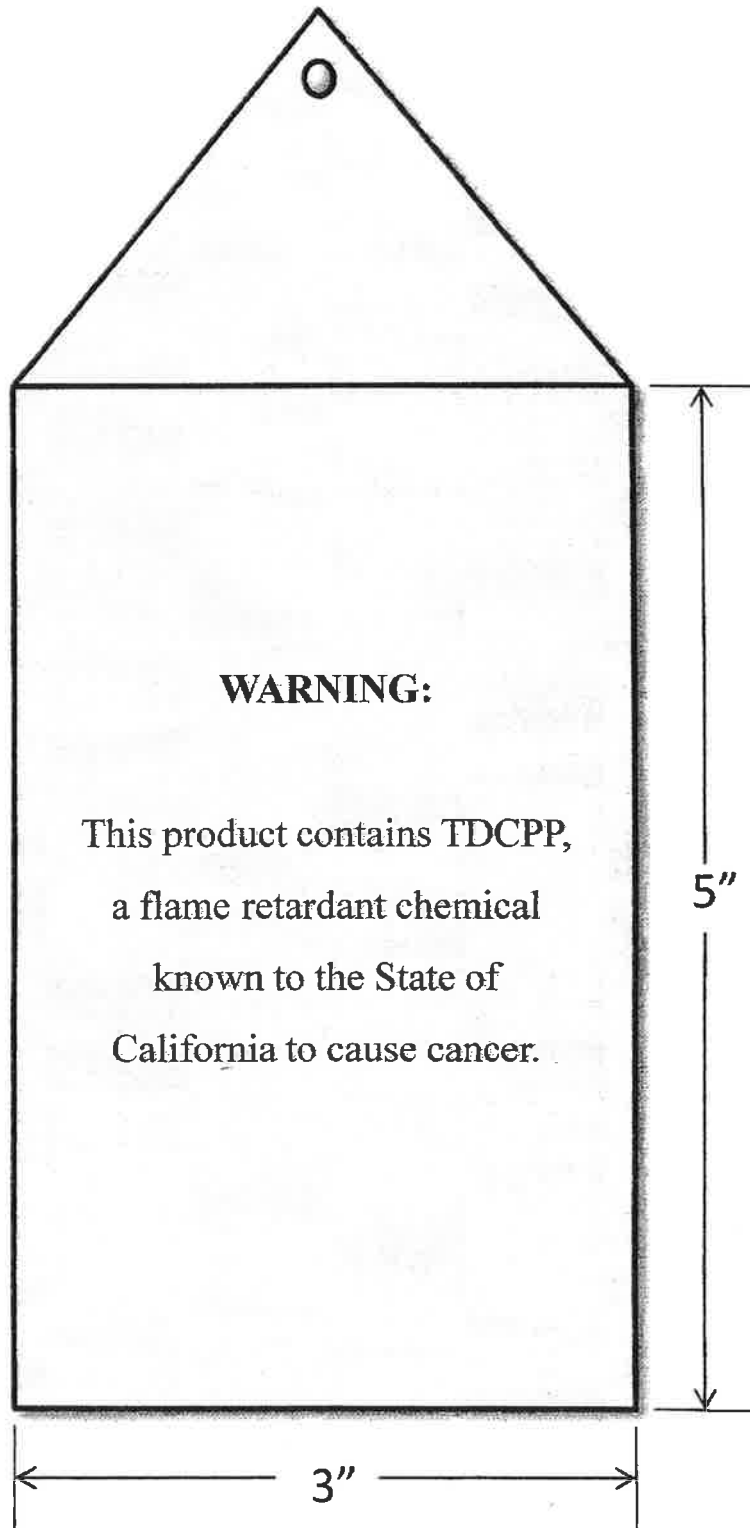
EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B
(ILLUSTRATIVE WARNINGS)



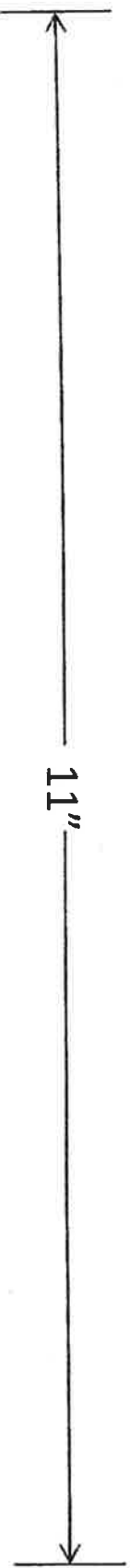
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



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

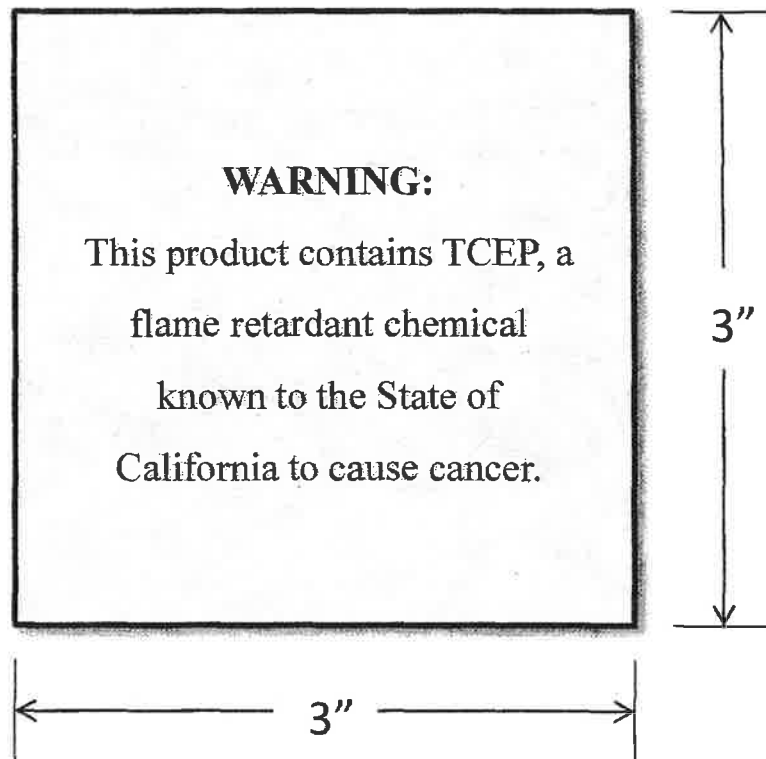
WARNING:

This product contains TDCPP, a flame retardant
8.5"
chemical known to the State of California to
cause cancer.

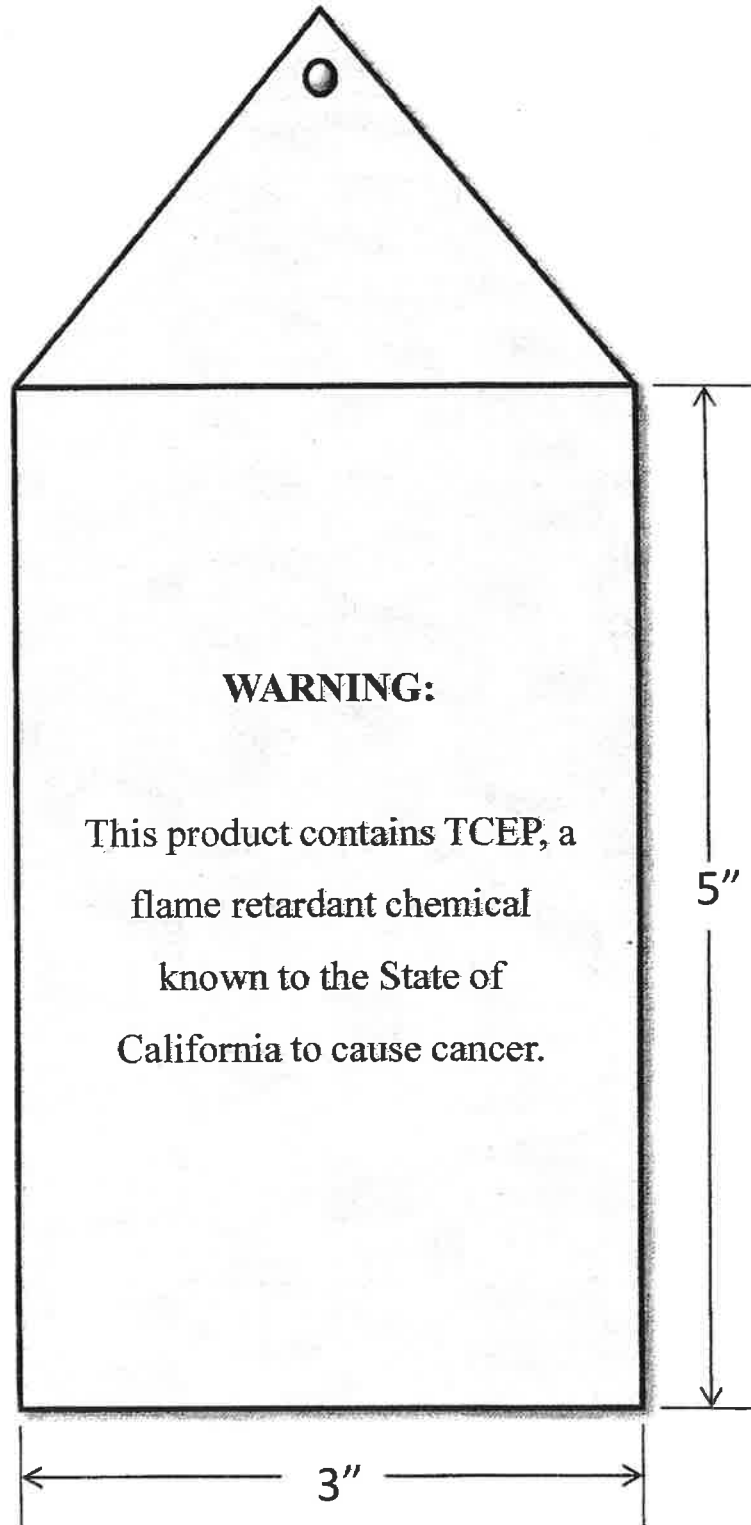


INSTRUCTIONS:

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



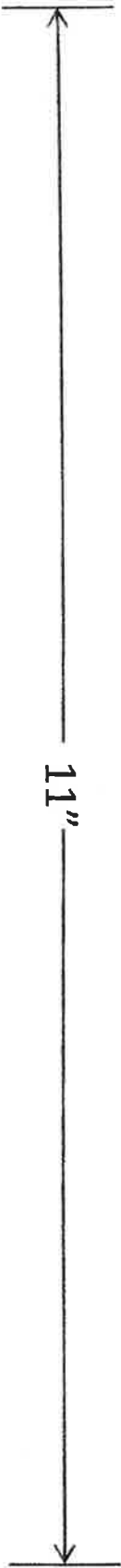
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



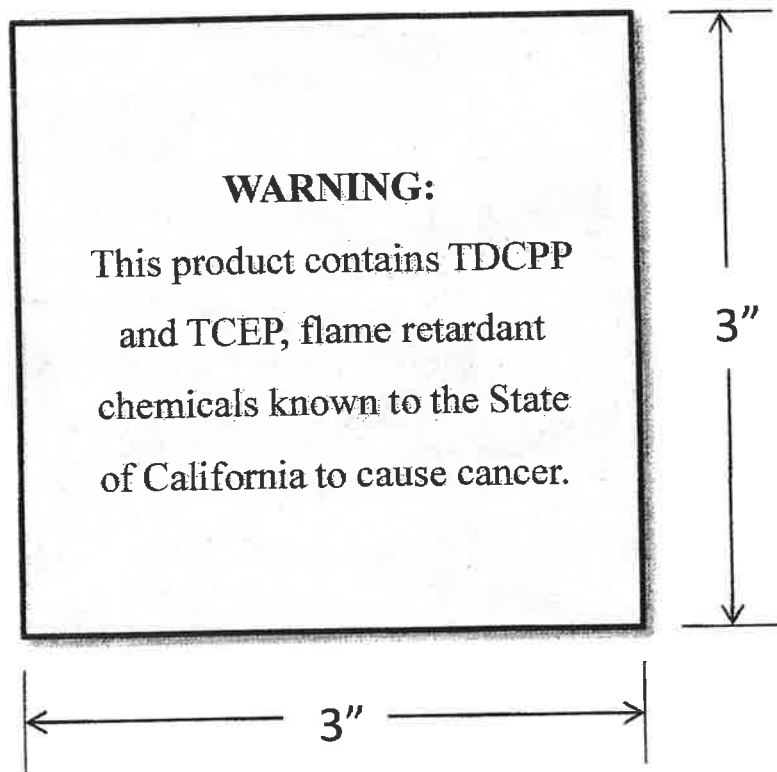
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

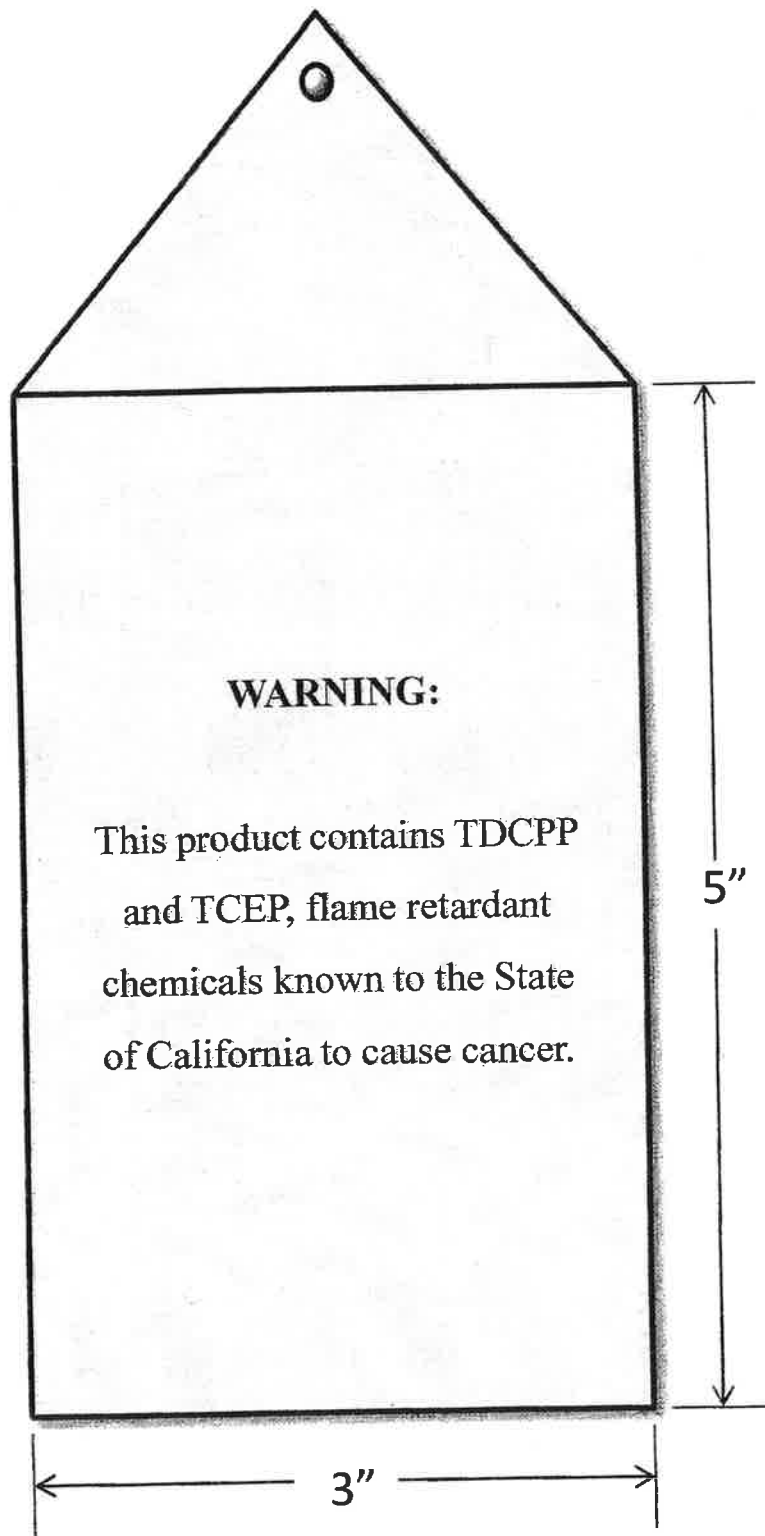
This product contains TCEP, a flame retardant
chemical known to the State of California to
cause cancer.



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



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 and TCDF, flame
retardant chemicals known to the State of
California to cause cancer.

8.5"

11"

INSTRUCTIONS:

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