

1 Laralei S. Paras, State Bar No. 203319
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
LAURENCE VINOCUR

ENDORSED
FILED
ALAMEDA COUNTY

JUL 15 2014

JUN 03 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

11 LAURENCE VINOCUR,

12 Plaintiff,

13 v.

14 BOJER, INC.; STANISLAUS FUNDING,
15 INC.; PATIO WORLD, INC.; and DOES 1-
150, inclusive,

16 Defendants.

) Case No.: RG13677618

) ~~PROPOSED~~ JUDGMENT PURSUANT
) TO TERMS OF PROPOSITION 65
) SETTLEMENT AND CONSENT
) JUDGMENT AS TO BOJER, INC.

) Date: July 15, 2014

) Time: 2:30 p.m.

) Dept. 17

) Judge: Hon. George C. Hernandez, Jr.

)
) Reservation No.: R-1518998

1 In the above-entitled action, plaintiff Laurence Vinocur and defendant Bojer, Inc., having
2 agreed through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a [Proposed] Consent Judgment As To Bojer, Inc. ("Consent
4 Judgment"), and following this Court's issuance of an Order approving this Proposition 65
5 settlement and Consent Judgment on July 15, 2014.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California
7 Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is
8 entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By
9 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of
10 Civil Procedure § 664.6.

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12 **IT IS SO ORDERED.**

13
14 Dated: JUL 15 2014

GEORGE C. HERNANDEZ, JR.
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
Laralei S. Paras, State Bar No. 203319
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

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6 Attorneys for Plaintiff
LAURENCE VINOCUR

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

10
11 LAURENCE VINOCUR,
12 Plaintiff,
13 v.
14 BOJER, INC.; et al.
15 Defendants.

Case No. RG13677618

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

**[PROPOSED] CONSENT JUDGMENT AS
TO BOJER, INC.**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: April 30, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Plaintiff”) and Bojer, Inc. (“Bojer”), with Plaintiff and the Bojer collectively referred to as the
5 “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Bojer**

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

14 **1.4 General Allegations**

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

18 **1.4.2** Pursuant to Proposition 65, on October 28, 2011, California identified and
19 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
20 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
21 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Plaintiff alleges that
22 TDCPP escapes from foam padding, leading to human exposures.

23 **1.5 Product Description**

24 The categories of products that are covered by this Consent Judgment as to Bojer are
25 identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
26 manufactured for use as a component of another product, such as seat cushions, but which is not itself
27 a finished product, is specifically excluded from the definition of Products and shall not be identified
28 by Bojer on Exhibit A as a Product.

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1.6 Notice of Violation

On February 22, 2013, Plaintiff served Bojer and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and workers in California that the Products expose users to TDCPP. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On April 30, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County of Alameda against Bojer and Does 1 through 150, *Laurence Vinocur v. Bojer, Inc., et al.*, Case No. RG 13-677618, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the Products.

1.8 No Admission

Bojer denies the material factual and legal allegations contained in Plaintiff’s Notice and Complaint and maintain that all products that it has manufactured, imported, distributed, and/or sold in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Bojer of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Bojer of any fact, finding, conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise affect Bojer’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

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

1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 "California Customer" shall mean any customer to whom Bojer supplied Products that is
4 located in California, has a California warehouse or distribution center, maintains a retail outlet in
5 California, or has made internet sales into California on or after January 1, 2011.

6 **2.2 Detectable**

7 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent of
8 .0025%) of any one chemical in any material, component, or constituent of a subject product, when
9 analyzed by a laboratory accredited by the State of California, a federal agency, NVLAP (National
10 Volunteer Laboratory Accreditation Program), American Association for Lab Accreditation (A2LA),
11 ANSI-ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company),
12 International Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry
13 Johnson Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation
14 Cooperation (ILAC), or similar nationally recognized accrediting organization (such laboratory
15 referred hereinafter as an "Accredited Lab") pursuant to EPA testing methodologies 3545 and
16 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
17 and measure the quantity, of TDCPP and/or tris(2-chloroethyl) phosphate ("TCEP") in a solid
18 substance.

19 **2.3 Effective Date**

20 "Effective Date" shall mean March 31, 2014.

21 **2.4 Private Label Covered Products**

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

25 **2.5 Reformulated Products**

26 "Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP
27 or TCEP.

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1 **2.6 Reformulation Standard**

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

4 **2.7 Retailer**

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

7 **3. INJUNCTIVE RELIEF: REFORMULATION**

8 **3.1 Reformulation Commitment**

9 Commencing on the Effective Date, Bojer shall not manufacture or import for distribution or
10 sale to California Customers, or cause to be manufactured or imported for distribution or sale to
11 California Customers, any Products that are not Reformulated Products.

12 **3.2 Vendor Notification/Certification**

13 To the extent it has not already done so, on or before May 15, 2014, Bojer shall provide
14 written notice to all of its then-current vendors of the Products that will be sold or offered for sale in
15 California, or to California Customers, instructing each such vendor to use reasonable efforts to
16 provide only Reformulated Products for potential sale in California. In addressing the obligation set
17 forth in the preceding sentence, Bojer shall not employ statements that will encourage a vendor to
18 delay compliance with the Reformulation Standard. Bojer shall subsequently obtain written
19 certifications, no later than May 31, 2014, from such vendors, and any newly engaged vendors, that
20 the Products manufactured by such vendors are in compliance with the Reformulation Standard.
21 Certifications shall be held by Bojer for at least two years after their receipt and shall be made
22 available to Plaintiff upon request.

23 **3.3 Products No Longer in Bojer’s Control**

24 On or before May 15, 2014, Bojer shall send a letter, electronic or otherwise (“Notification
25 Letter”) to: (1) each California Customer and/or Retailer which it, after October 28, 2011, supplied
26 the item for resale in California described as an exemplar in the Notice Bojer received from Plaintiff
27 (“Exemplar Product”); and (2) any California Customer and/or Retailer that Bojer reasonably
28 understands or believes had any inventory for resale in California of Exemplar Products as of the

1 Notice's date. The Notification Letter shall advise the recipient that the Exemplar Product "contains
2 TDCPP, a chemical known to the State of California to cause cancer," and request that the recipient
3 either: (a) label the Exemplar Products remaining in inventory for sale in California, or to California
4 Customers, pursuant to Section 3.5; or (b) return, at Bojer's sole expense, all units of the Exemplar
5 Product held for sale in California, or to California Customers, to Bojer or a party Bojer has
6 otherwise designated. The Notification Letter shall require a response from the recipient within 14
7 business days confirming whether the Exemplar Product will be labeled or returned. Bojer shall
8 maintain records of all correspondence or other communications generated pursuant to this Section
9 for two years after the Effective Date and shall promptly produce copies of such records upon
10 Plaintiff's written request.

11 **3.4 Current Inventory**

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

16 **3.5 Product Warnings**

17 **3.5.1 Product Labeling**

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

24 A warning provided pursuant to this Consent Judgment shall state:
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1 **WARNING:** This product contains TDCPP, a
2 flame retardant chemical known to
3 the State of California to cause
4 cancer.¹

5 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be
6 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
7 set forth in this Section are addressed, including as to the required warning statement and method of
8 transmission as set forth above, Bojer remains free not to utilize the template warnings.

9 **3.5.2 Internet Website Warning**

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

16 **WARNING:** This product contains TDCPP, a
17 flame retardant chemical known to
18 the State of California to cause
19 cancer.³

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

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

36 ³ Footnote 1, supra, applies in this context as well.

1 **3.6 Alternatives to Interim Warnings**

2 The obligations of Bojer under Section 3.3 shall be relieved provided Bojer certifies on or
3 before May 15, 2014, that only Exemplar Products meeting the Reformulation Standard have been
4 and will continue to be offered for sale in California, or to California Customers for sale in
5 California, as of the Effective Date. The obligations of Bojer under Section 3.4 shall be relieved
6 provided Bojer certifies on or before May 15, 2014 that, after June 30, 2014, it will only distribute or
7 cause to be distributed for sale in, or sell in, California, or to California Customers for sale in
8 California, Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation
9 Standard. The certifications provided by this Section are 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, Bojer shall pay the civil
13 penalties shown for it on Exhibit A in accordance with this Section. With the exception of the Initial
14 Civil Penalty, each penalty payment will be allocated in accordance with California Health & Safety
15 Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of
16 Environmental Health Hazard Assessment (“OEHHA”). 25% of the penalty remitted to “Laurence
17 Vinocur, Client Trust Account.” Each penalty payment shall be delivered to the addresses listed in
18 Section 4.5 below. Bojer shall be liable for payment of interest, at a rate of 10% simple interest, for
19 all amounts due and owing under this Section that are not received within two business days of the
20 due date.

21 4.1.1 Initial Civil Penalty. On or before May 15, 2014, Bojer shall make an initial
22 civil penalty payment in the amount identified on Exhibit A.

23 4.1.2 Second Civil Penalty. On or before June 15, 2014, Bojer shall make a second
24 civil penalty payment in the amount identified on Exhibit A. The second penalty may be set aside
25 according to any penalty waiver for which Bojer is eligible under Section 4.1.4(ii), below.

26 4.1.3 Third Civil Penalty. On or before November 30, 2014, Bojer shall make a
27 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
28

1 may be reduced according to any penalty waiver for which Bojer is eligible under Sections 4.1.4(i)
2 and 4.1.4(iii), below.

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

9 4.1.4(i) **Partial Penalty Waiver for Extended Reformulation.**

10 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
11 Bojer has agreed that, as of the Effective Date, and continuing into the future, it shall only
12 manufacture or import for distribution or sale in California or cause to be manufactured or imported
13 for distribution or sale in California. Reformulated Products which also do not contain tris(2,3-
14 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 ppm (the equivalent of
15 .0025%) in any material, component, or constituent of the Products, when analyzed by an Accredited
16 Lab pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by
17 federal or state agencies to determine the presence, and measure the quantity, of TDBPP in a solid
18 substance. An officer or other authorized representative of Bojer that has exercised this election shall
19 provide Plaintiff with a written certification confirming compliance with such conditions, which
20 certification must be received by Plaintiff's counsel on or before November 15, 2014.

21 4.1.4(ii) **Partial Penalty Waiver for Withdrawal of Unreformulated**
22 **Exemplar Products from the California Market.**

23 As shown on Exhibit A, the second civil penalty shall be waived, if an officer or other
24 authorized representative of Bojer provides Plaintiff with written certification, by May 31, 2014,
25 confirming that each individual or establishment in California to which it supplied the Exemplar
26 Product after October 28, 2011, has elected, pursuant to Section 3.3, to return all Exemplar Products
27 held for sale in California.

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1 4.1.4(iii) **Partial Penalty Waiver for Termination of Distribution to**
2 **California of Unreformulated Inventory.**

3 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
4 other authorized representative of Bojer provides Plaintiff with written certification, on or before
5 November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to distribute, offer
6 for sale, or sell in California, or to California Customers, only Reformulated Products.

7 4.2 **Representations**

8 Bojer represents that the sales data and other information, concerning its economic health,
9 knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Plaintiff was
10 truthful to its knowledge and a material factor upon which Plaintiff has relied to determine the
11 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
12 Judgment. If, within nine months of the Effective Date, Plaintiff discovers and presents to Bojer
13 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
14 then Bojer shall have 30 days to meet and confer regarding the Plaintiff's contention. Should this 30
15 day period pass without any such resolution between the Plaintiff and Bojer, Plaintiff shall be entitled
16 to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

17 Bojer further represents that in implementing the requirements set forth in Sections 3.1 and
18 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
19 reformulation of its Products on a nationwide basis and not employ statements that will encourage a
20 vendor to limit its compliance with the Reformulation Standard to goods intended for sale to
21 California Consumers.

22 4.3 **Stipulated Penalties for Certain Violations of the Reformulation Standard.**

23 If Plaintiff provides notice and appropriate supporting information to Bojer that levels of
24 TDCPP and/or TCEP in excess of the Reformulation Standard have been detected in one or more
25 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a
26 deadline for meeting the Reformulation Standard has arisen for Bojer under Sections 3.1 or 3.6
27 above, Bojer may elect to pay a stipulated penalty to relieve any further potential liability under
28 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in

1 question.⁴ The stipulated penalty shall be \$1,500 if the violation level of TDCPP and/or TCEP is
2 below 100 ppm and \$3,000 if the violation level of TDCPP and/or TCEP is between 100 ppm and
3 249 ppm, this being applicable for any amount in excess of the Reformulation Standards but under
4 250 ppm.⁵ Plaintiff shall further be entitled to reimbursement of his associated expense in an amount
5 not to exceed \$5,000 regardless of the stipulated penalty level. Bojer under this Section must provide
6 notice and appropriate supporting information relating to the purchase (e.g. vendor name and contact
7 information including representative, purchase order, certification (if any) received from vendor for
8 the exemplar or subcategory of products), test results, and a letter from a company representative or
9 counsel attesting to the information provided, to Plaintiff within 30 calendar days of receiving test
10 results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the full
11 remedies provided pursuant to this Consent Judgment and at law.

12 4.4 Reimbursement of Fees and Costs

13 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
15 reimbursement issue to be resolved after the material terms of the agreement had been settled.
16 Shortly after the other settlement terms had been finalized. Bojer expressed a desire to resolve the
17 fee and cost issue. Bojer then agreed to pay Plaintiff and his counsel under general contract
18 principles and the private attorney general doctrine codified at California Code of Civil Procedure
19 § 1021.5 for all work performed through the mutual execution of this agreement, including the fees
20 and costs incurred as a result of investigating, bringing this matter to Bojer's attention, negotiating a
21 settlement in the public interest, and seeking court approval of the same. In addition, the negotiated
22 fee and cost figure expressly includes the anticipated significant amount of time plaintiff's counsel
23 will incur to monitor various provisions in this agreement over the next two years. Bojer more

24 _____
25 ⁴ This Section shall not be applicable where the vendor in question had previously been
26 found by Bojer to have provided unreliable certifications as to meeting the Reformulation Standard
27 in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a
28 second exceedance by Bojer's vendor at a level of TDCPP and/or TCEP between 100 and 249 ppm
shall not be available after July 1, 2015.

⁵ 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 specifically agreed, upon the Court's approval and entry of this Consent Judgment, to pay Plaintiff's
2 counsel the amount of fees and costs indicated on Exhibit A, which Vinocur agrees to accept in nine
3 equal installments, the first installment being due upon the Court's approval and entry of this
4 Consent Judgment, and each following installment being due every 30 days thereafter after until the
5 ninth installment is paid.

6 **4.5 Payment Procedures**

7 4.5.1 Issuance of Payments.

8 (a) All payments required by Section 4.1.1 shall be delivered to Fulbright
9 & Jaworski LLP at the address set forth in Section 8, held in trust pending the Court's approval of
10 this Consent Judgment. Fulbright & Jaworski LLP shall confirm, in writing within five days of
11 deposit, that the funds have been deposited in a trust account. Within two days of the date of the
12 hearing on which the Court approves the Consent Judgment, the payments set forth in Section
13 4.5.1(a) above shall be delivered to The Chanler Group at the address set forth in Section 4.5.1(b)
14 below in two separate checks payable, as follows:

15 (i) One check in the amount of 75% of the initial civil penalty
16 made payable to "The Chanler Group in Trust for OEHHA";
17 and

18 (ii) One check in the amount of 25% of the initial civil penalty to
19 "Laurence Vinocur, Client Trust Account".

20 (b) All payments owed to Plaintiff and his counsel, pursuant to Sections
21 4.1.2, 4.1.3, 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
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

25 (c) All payments owed to OEHHA, pursuant to Sections 4.1.2, 4.1.3 and
26 4.3, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following
27 addresses, as appropriate:
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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 OEHHHA. A copy of each check payable to OEHHHA shall
14 be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section
15 4.5.1(b) above, as proof of payment to OEHHHA.

16 **5. CLAIMS COVERED AND RELEASED**

17 **5.1 Plaintiff's Release of Proposition 65 Claims**

18 Plaintiff, acting on his own behalf and in the public interest, releases Bojer, its parents,
19 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
20 attorneys, and each entity to whom Bojer directly or indirectly distributes or sells Products, including,
21 but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
22 members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65
23 through the Effective Date based on unwarned exposures to TDCPP in the Products, as set forth in
24 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
25 Proposition 65 with respect to exposures to TDCPP from the Products, as set forth in the Notice. The
26 Parties further understand and agree that this Section 5.1 release shall not extend upstream to any
27 entities, other than Bojer, that manufactured the Products or any component parts thereof, or any
28 distributors or suppliers who sold the Products or any component parts thereof to Bojer, except that
any entity upstream of Bojer that is a Retailer of a Private Labeled Covered Product shall be released
as to the Private Labeled Covered Products offered for sale in California, or to California Customers,
by the Retailer in question.

1 **5.2 Plaintiff's Individual Releases of Claims**

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

15 **5.3 Bojer's Release of Plaintiff**

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

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and shall
24 be null and void if, for any reason, it is not approved in its entirety and entered by the Court within
25 one year after it has been fully executed by all Parties. If the Court does not approve the Consent
26 Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the ruling.
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. If the Court's approval is ultimately overturned by an

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

9 **7. GOVERNING LAW**

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

19 **8. NOTICES**

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

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

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

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

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

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

12. MODIFICATION

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

1 **13. AUTHORIZATION**


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

5

6 AGREED TO:

AGREED TO:

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8 
9 Plaintiff Laurence Vinocur

Doris Gabai, President
Bojer, Inc.

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11 Date: May 5, 2014

Date: May __, 2014

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1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
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4 Judgment.

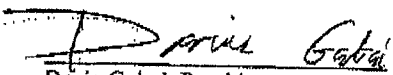
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6 AGREED TO:

AGREED TO:

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8 _____
9 Plaintiff Laurence Vinocur


Doris Gabai, President
Bojer, Inc.

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11 Date: May __, 2014

Date: May 16, 2014

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1 EXHIBIT A

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3 I. Bojer, Inc.
177 South Peckham Road
4 Azusa, CA 91702

5 II. Names of Releasees (Optional; May be Partial)

6 Stanislaus Funding, Inc. dba Patio World

7
8 III. Types of Covered Products Applicable to Bojer, Inc. (Check All That Match 60-Day Notice
9 or Supplemental Notice Received)

10 Foam-cushioned pads for children and infants to lie on, such as rest mats

11 Upholstered furniture

12 Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

13 Car seats, strollers

14 Other (specify): Foam-filled seat cushions

15 IV. Bojer, Inc.'s Required Settlement Payments

16 A. Penalties:

17 \$ 6,500 initial payment due on or before May 15, 2014;

18 \$7,000 second payment due on or before June 15, 2014, which may be waived pursuant to Section
4.1.4(ii); and

19 \$10,000 third payment due on or before November 30, 2014, of which \$6,000 may be waived
20 pursuant to Section 4.1.4(i) and \$4,000 may be waived pursuant to Section 4.1.4(iii).

21 V. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

22 A. Fees and Costs for Bojer: \$21,500.

23 B. Additional Fees and Costs:

24 \$4,000 supplemental fee for Stanislaus Funding, Inc. dba Patio World who received a 60-Day
Notice of Violation released by the Consent Judgment.

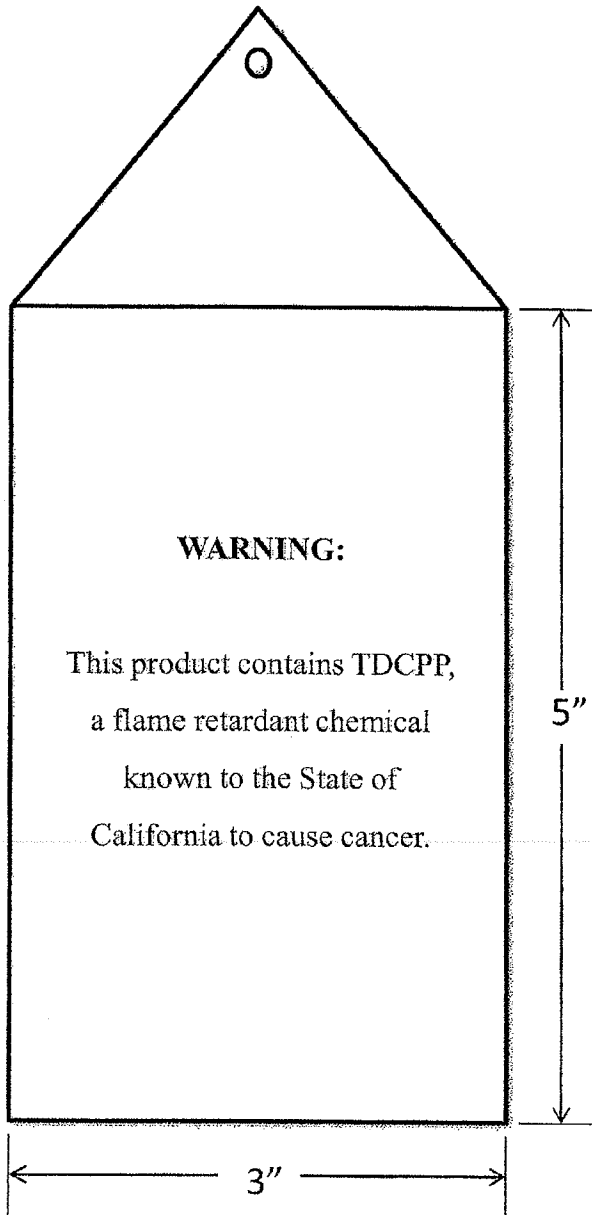
25 VI. Person(s) to receive Notices pursuant to Section 8:

26 Doris Gabai, President
27 Bojer, Inc.
177 South Peckham Road
28 Azusa, CA 91702

Jeffrey Margulies
Fulbright & Jaworski LLP
555 South Flower Street, Forty-First Floor
Los Angeles, California 90071

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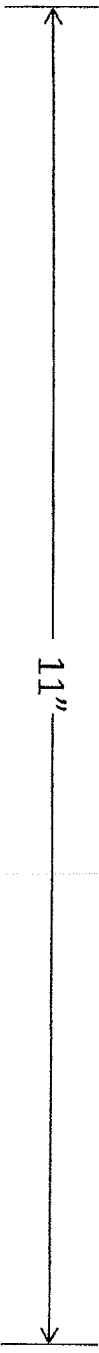
EXHIBIT B



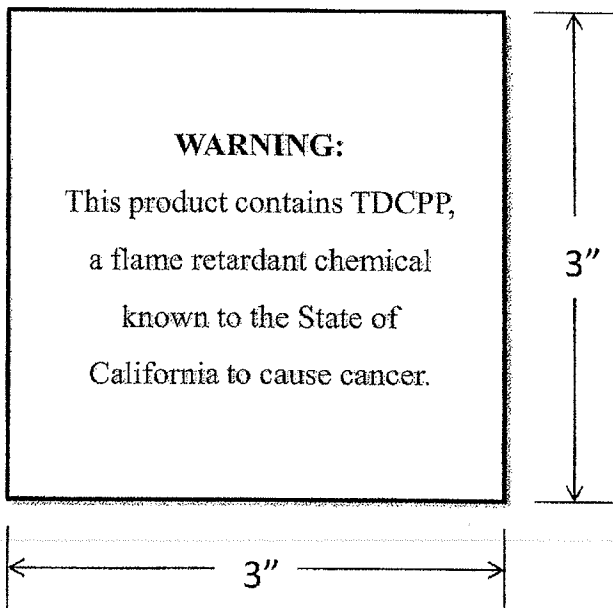
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

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.