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

13 LAURENCE VINOUCUR

14 Plaintiff,

15 v.

16 COSTCO WHOLESALE
17 CORPORATION; et al.,

18 Defendants.

) Case No. RG 13672233

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

) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO GRACO CHILDREN'S PRODUCTS**
) **INC.**

) **(Health & Safety Code § 25249.6 et seq.**
) **First Amended Complaint Filed: April 12, 2013)**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and the defendant Graco Children’s Products Inc. (“Graco”) with Vinocur and Graco
5 collectively referred to as the “Parties.”

6 **1.2 Laurence Vinocur**

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

10 **1.3 Graco Children’s Products Inc.**

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

14 **1.4 General Allegations**

15 **1.4.1** Vinocur alleges that Graco manufactured, imported, sold and/or distributed
16 for sale in California, playards/bassinets and car seats with foam padding containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings. Vinocur alleges that TDCPP escapes from foam padding, leading to human exposures.

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

24 **1.4.3** Vinocur alleges that Graco manufactured, imported, sold and/or distributed
25 for sale in California, vinyl/PVC car seat protectors containing lead and di(2-ethylhexyl)phthalate
26 (“DEHP”) without the requisite Proposition 65 health hazard warnings.

27 **1.4.4** Pursuant to Proposition 65, on October 24, 2003, California identified and
28 listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP

1 became subject to the “clear and reasonable warning” requirements of Proposition 65 one year later
2 on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
3 25249.10(b).

4 1.4.5 Pursuant to Proposition 65, on February 27, 1987, California identified and
5 listed lead as a chemical known to cause birth defects and other reproductive harm. Lead became
6 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
7 February 27, 1988. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
8 25249.10(b).

9 TDCPP, DEHP and lead shall hereinafter be collectively referred to as the “Listed
10 Chemicals.”

11 1.5 Product Description

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

17 1.6 Notices of Violation

18 On or about January 4, 2013, Vinocur served Graco and certain requisite public enforcement
19 agencies with a “60-Day Notice of Violation” (“January 4, 2013, Notice”) that provided the
20 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
21 customers, consumers, and workers in California that certain Products expose users to TDCPP.

22 Based on their further investigation, Vinocur also issued a “Supplemental 60-Day Notice of
23 Violation” (“July 12, 2013, Notice”) to Graco and certain requisite public enforcement agencies,
24 alleging that certain Products expose users to TDCPP and that certain vinyl/PVC car seat protectors
25 expose Californians to di(2-ethylhexyl)phthalate (“DEHP”) and lead (“Phthalate/lead Products”).
26 DEHP and other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate
27 (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and other
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1 reproductive harm. Lead is listed under Proposition 65 as a chemical known to cause birth defects
2 and other reproductive harm.

3 The January 4, 2013, Notice and the July 12, 2013, Notice shall hereinafter collectively be
4 referred to as the "Notices." To the best of the Parties' knowledge, no public enforcer has
5 commenced or is diligently prosecuting the allegations set forth in the Notices.

6 **1.7 Complaint**

7 On March 20, 2013, Vinocur filed a Complaint in the Superior Court in and for the County
8 of Alameda against Graco and other defendants, *Peter Englander, et al. v. Costco Wholesale*
9 *Corporation, et al.*, Case No. RG 13672233, alleging violations of Proposition 65, based in part on
10 the alleged unwarned exposures to TDCPP contained in the Products. On April 12, 2013, Vinocur
11 filed a First Amended Complaint ("Complaint"), alleging additional violations of Proposition 65
12 against Graco. Upon entry of this Consent Judgment, the Complaint shall be deemed amended
13 *nunc pro tunc* to include the violations of Proposition 65 alleged by Englander in the July 12, 2013,
14 Notice.

15 **1.8 No Admission**

16 Graco denies the material factual and legal allegations contained in Vinocur's Notices and
17 Complaint and maintains that all products it has manufactured, imported, distributed, and/or sold in
18 California, including the Products, have been and are in compliance with all laws. Nothing in this
19 Consent Judgment shall be construed as an admission by Graco of any fact, finding, conclusion,
20 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
21 construed as an admission by Graco of any fact, finding, conclusion, issue of law, or violation of
22 law. However, this section shall not diminish or otherwise affect Graco's obligations,
23 responsibilities, and duties under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Graco as to the allegations contained in the Complaints, that venue is proper in the
27 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
28 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 that Graco reasonably understands is
4 located in California, has a California warehouse or distribution center, maintains a retail outlet in
5 California, or has made internet sales into California on or after January 1, 2011.

6 **2.2 Detectable**

7 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
8 of .0025%) of any one chemical in any material, component, or constituent of a
9 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
10 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
11 determine the presence, and measure the quantity, of TDCPP and/or tris(2-chloroethyl) phosphate
12 ("TCEP") in a solid substance.

13 **2.3 Effective Date**

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

15 **2.4 Private Label Covered Products**

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

19 **2.5 Reformulated Products**

20 "Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP
21 or TCEP and Phthalate/lead Products which contain no more than 1000 ppm each of, DEHP, BBP,
22 and DBP and no more than 100 ppm each of lead.

23 **2.6 Reformulation Standard**

24 The "Reformulation Standard" shall mean containing no more than 25 ppm for each of
25 TDCPP and TCEP, and for Phthalate/lead Products, no more than 1000 ppm each of, DEHP, BBP,
26 and DBP and no more than 100 ppm each of lead.

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1 **2.7 Retailer**

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

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 **3.1 Reformulation Commitment**

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

9 **3.2 Vendor Notification/Certification**

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

19 **3.3 Products No Longer in Graco’s Control**

20 No later than 45 days after the Effective Date, Graco shall send a letter, electronic or
21 otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after
22 October 28, 2011, supplied the item for resale in California described as an exemplar in each of the
23 Notices Graco received from Vinocur (“Exemplar Product(s)"); and (2) any California Customer
24 and/or Retailer that Graco reasonably understands or believes had any inventory for resale in
25 California of Exemplar Product(s) as of the relevant Notice’s dates. The Notification Letter shall
26 advise the recipient that each Exemplar Product(s) contains TDCPP, a chemical known to the State
27 of California to cause cancer and/or DEHP and lead, chemicals known to the State of California to
28 cause birth defects and other reproductive harm, as appropriate depending on the allegations in the

1 Notices, and request that the recipient either: (a) label the Exemplar Product(s) remaining in
2 inventory for sale in California. or to California Customers; pursuant to Section 3.5; or (b) return, at
3 Graco's sole expense, all units of the Exemplar Product(s) held for sale in California. or to
4 California Customers, to Graco or a party Graco has otherwise designated. The Notification Letter
5 shall require a response from the recipient within 15 days confirming whether the Exemplar
6 Product(s) will be labeled or returned. Graco shall maintain records of all correspondence or other
7 communications generated pursuant to this Section for two years after the Effective Date and shall
8 promptly produce copies of such records upon Vinocur's written request.

9 **3.4 Current Inventory**

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

14 **3.5 Product Warnings**

15 **3.5.1 Product Labeling**

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

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

23 **WARNING:** This product contains TDCPP, a flame
24 retardant chemical known to the State
of California to cause cancer.

25 And, for Phthalate/lead Products:
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1 **WARNING:** This product contains DEHP and
2 Lead, chemicals known to the State of
3 California to cause birth defects and
4 other reproductive harm.³

5 **3.6 Alternatives to Interim Warnings**

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

14 **4. MONETARY PAYMENTS**

15 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

25 4.1.1 Initial Civil Penalty. On or before the Effective Date, Graco shall make an
26 initial civil penalty payment in the amount identified on Graco’s Exhibit A.

27 4.1.2 Second Civil Penalty. On or before January 15, 2014, Graco shall make a
28 second civil penalty payment in the amount identified on Graco’s Exhibit A. The amount of the

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

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

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

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

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

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

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

23 As shown on Graco's Exhibit A, a portion of the third civil penalty shall be waived, to the
24 extent that it has agreed that, as of March 31, 2014, and continuing into the future, it shall only
25 manufacture or import for distribution or sale in California or cause to be manufactured or imported
26 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-
27 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million
28 ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product,

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

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

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

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

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

21 **4.2 Representations**

22 Graco represents that the sales data and other information concerning its size, knowledge of
23 the Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Vinocur was
24 truthful to its knowledge and a material factor upon which Vinocur has relied to determine the
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27 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Vinocur has, prior to August 31, 2013, provided Graco 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 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
2 Judgment.

3 If, within nine months of the Effective Date, Vinocur discovers and presents to Graco,
4 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
5 then Graco shall have 30 days to meet and confer regarding the Vinocur's contention. Should this
6 30 day period pass without any such resolution between the Vinocur and Graco, Vinocur shall be
7 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of
8 contract.

9 Graco further represents that in implementing the requirements set forth in Sections 3.1 and
10 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
11 reformulation of its Products and Additional Products on a nationwide basis and not employ
12 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
13 goods intended for sale to California Consumers.

14 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
15 **Standard.**

16 If Vinocur provides notice and appropriate supporting information to Graco that levels of
17 the Listed Chemicals in excess of the Reformulation Standard have been detected in one or more
18 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a
19 deadline for meeting the Reformulation Standard has arisen for Graco under Sections 3.1 or 3.6
20 above, Graco may elect to pay a stipulated penalty to relieve any further potential liability under
21 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
22 question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000
23 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
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26 ⁵ This Section shall not be applicable where the vendor in question had previously been
27 found by Graco to have provided unreliable certifications as to meeting the Reformulation Standard
28 in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a
second exceedance by Graco's vendor at a level between 100 and 249 ppm shall not be available
after July 1, 2015.

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

10 **4.4 Reimbursement of Fees and Costs**

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

3 **4.5 Payment Procedures**

4 **4.5.1 Issuance of Payments.**

5 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
6 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

13 For United States Postal Service Delivery:

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

17 For Non-United States Postal Service Delivery:

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

21 **4.5.2 Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
22 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
23 in Section 4.5.1(a) above. as proof of payment to OEHHA.

24 **4.5.3 Tax Documentation.** Graco shall issue a separate 1099 form for each
25 payment required by this Section to: (a) Laurence Vinocur, whose address and tax
26 identification number shall be furnished upon request after this Consent Judgment has been
27 fully executed by the Parties; (b) OEHHA, who shall be identified as "California Office of
28 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be

1 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
2 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.3.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Vinocur's Release of Proposition 65 Claims**

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

20 **5.2 Vinocur's Individual Releases of Claims**

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

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

9 **5.3 Graco's Release of Vinocur**

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

16 **6. COURT APPROVAL**

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

1 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
2 have been provided to OEHHA or held in trust for Vinocur or his counsel pursuant to Section 4,
3 above, shall be refunded to the associated Graco within 15 days.

4 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 To Graco:

20 At the address shown on Exhibit A

To Vinocur:

21 Proposition 65 Coordinator
22 The Chanler Group
23 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

24 Any Party, from time to time, may specify in writing to the other Party a change of address to
25 which all notices and other communications shall be sent.
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1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

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

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 In addition to the Products, where Graco has identified on Exhibit A additional
10 products that contain the Listed Chemicals and that are sold or offered for sale by it in California, or
11 to California Customers. ("Additional Products"), then by no later than October 15, 2013, Graco
12 may provide Vinocur with additional information or representations necessary to enable him to
13 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &
14 Safety Code § 25249.7, that includes the Additional Products. Polyurethane foam that is supplied,
15 shaped or manufactured for use as a component of a product, such as upholstered furniture, is
16 specifically excluded from the definition of Additional Products and shall not be identified by
17 Graco on Exhibit A as an Additional Product. Except as agreed upon by Vinocur, Graco shall not
18 include a product, as an Additional Product, that is the subject of an existing 60-day notice issued
19 by Vinocur or any other private enforcer at the time of execution. After receipt of the required
20 information, Vinocur agrees to issue a supplemental 60-day notice in compliance with all statutory
21 and regulatory requirements for the Additional Products. Vinocur will, and in no event later than
22 October 1, 2014, prepare and file an amendment to this Consent Judgment to incorporate the
23 Additional Products within the defined term "Products" and serve a copy thereof and its supporting
24 papers (including the basis for supplemental stipulated penalties, if any) on the Office of the
25 California Attorney General upon the Court's approval and finding that the supplemental stipulated
26 penalty amount, if any, is reasonable, the Additional Products shall become subject to Section 5.1 in
27 addition to Section 5.2. Graco shall, at the time it elects to utilize this Section and tenders the
28 additional information or representations regarding the Additional Products to Vinocur, tender to

1 The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated penalties and
2 attorneys' fees and costs incurred by Vinocur in issuing the new notice and engaging in other
3 reasonably related activities, which may be released from the trust as awarded by the Court upon
4 Vinocur's application. Any fee award associated with the modification of the Consent Judgment to
5 include Additional Products shall not offset any associated supplemental penalty award, if any (Any
6 tendered funds remaining in the trust thereafter shall be refunded to Graco within 15 days). Such
7 payment shall be made to "in trust for The Chanler Group" and delivered as per Section 4.5.1(a)
8 above.

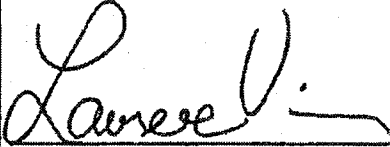
9 11.2 Vinocur and Graco agree to support the entry of this agreement as a Consent
10 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
11 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
12 is required to obtain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

16 **12. MODIFICATION**

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



Plaintiff: Laurence Vinocur

Date: October 11, 2013

AGREED TO:

Defendant:

Graco Children's Products Inc.

By: 

Name: Sean Beckstrom
It's: Vice President - Legal Affairs
Asst. Secretary

Date: ~~September~~ 3, 2013
October

EXHIBIT A

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- I. Name of Settling Defendant: GRACO CHILDREN'S PRODUCTS INC.
- II. Names of Releasees (optional/partial):
NEWELL RUBBERMAID INC.; COSTCO WHOLESALE CORPORATION; TARGET CORPORATION, AND AMAZON.COM. INC. as to the Products sold, imported, manufactured and/or distributed by GRACO CHILDREN'S PRODUCTS INC.
- III. Types of Covered Products Applicable to Graco Children's Products:
 - a) Vinyl/PVC Car Seat Protectors containing DEHP and Lead;
 - b) Playards/Bassinets with foam padding containing TDCPP;
 - c) Car Seats with foam padding containing TDCPP.
- IV. Types of Additional Products Graco Children's Products Elects to Address (if any):
- V. Graco Children's Products' Required Settlement Payments
 - A. Penalties of \$96,000, as follows:
 - \$30,000 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).
 - B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs totaling \$55,000, as follows:
 - Fees and Costs attributable to Graco Children's Products Inc., Inc.: \$43,000.
 - 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: \$12,000__

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

2 Kevin C. Mayer
3 Name

4 Attorney
5 Title

6 Company/Firm Name

7 Address: Crowell & Moring LLP

8 515 South Flower Street, 40th Floor

9 Los Angeles, CA 90071

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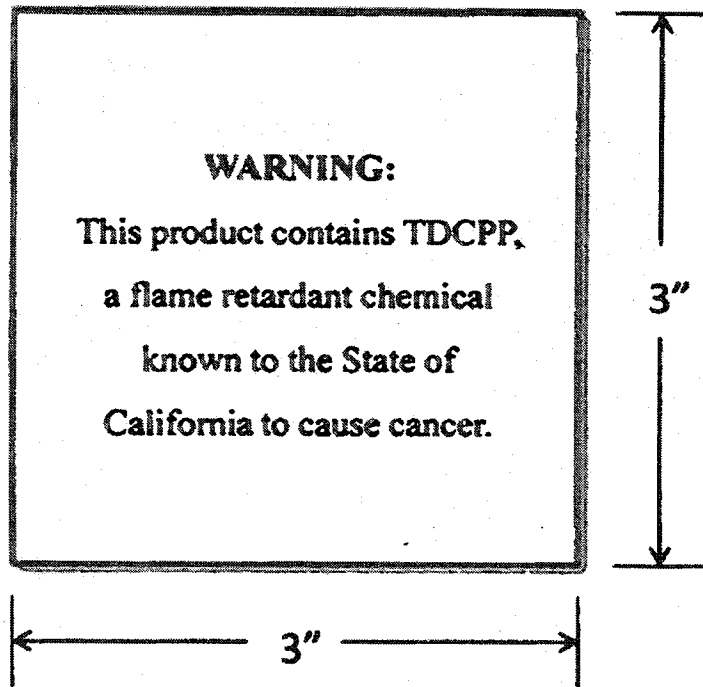
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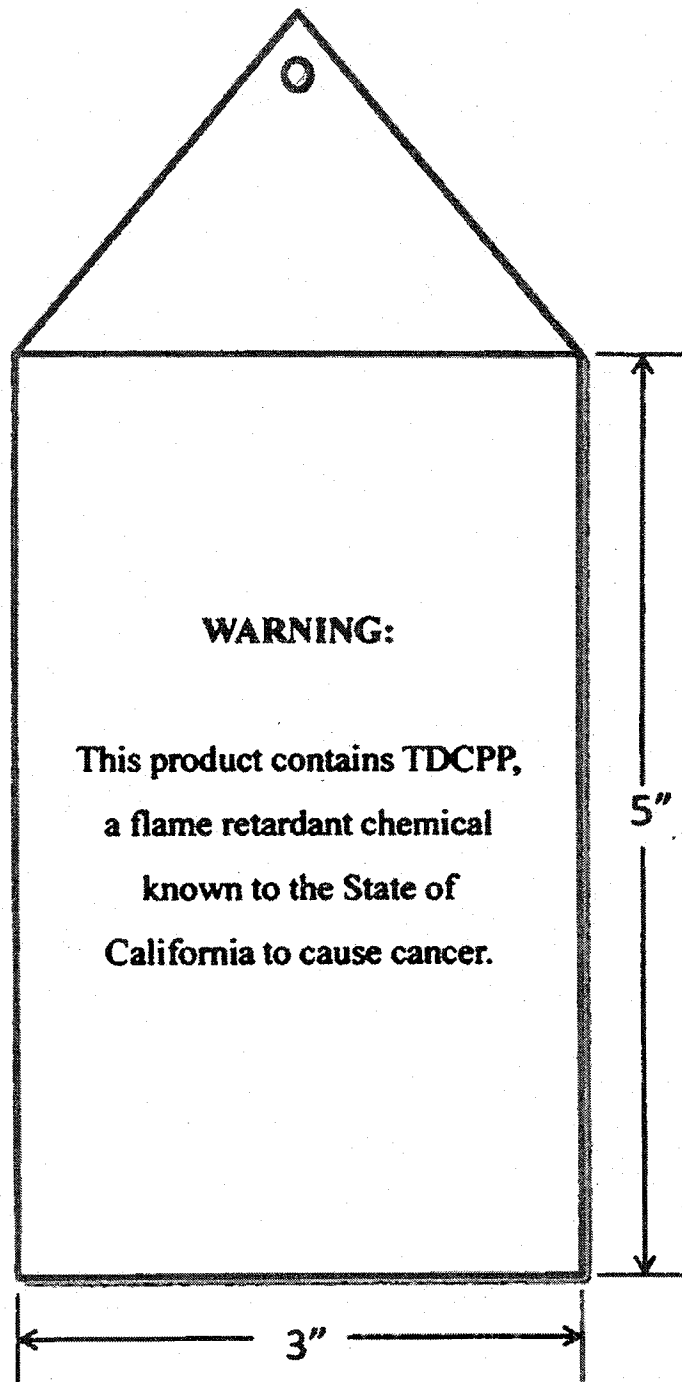
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



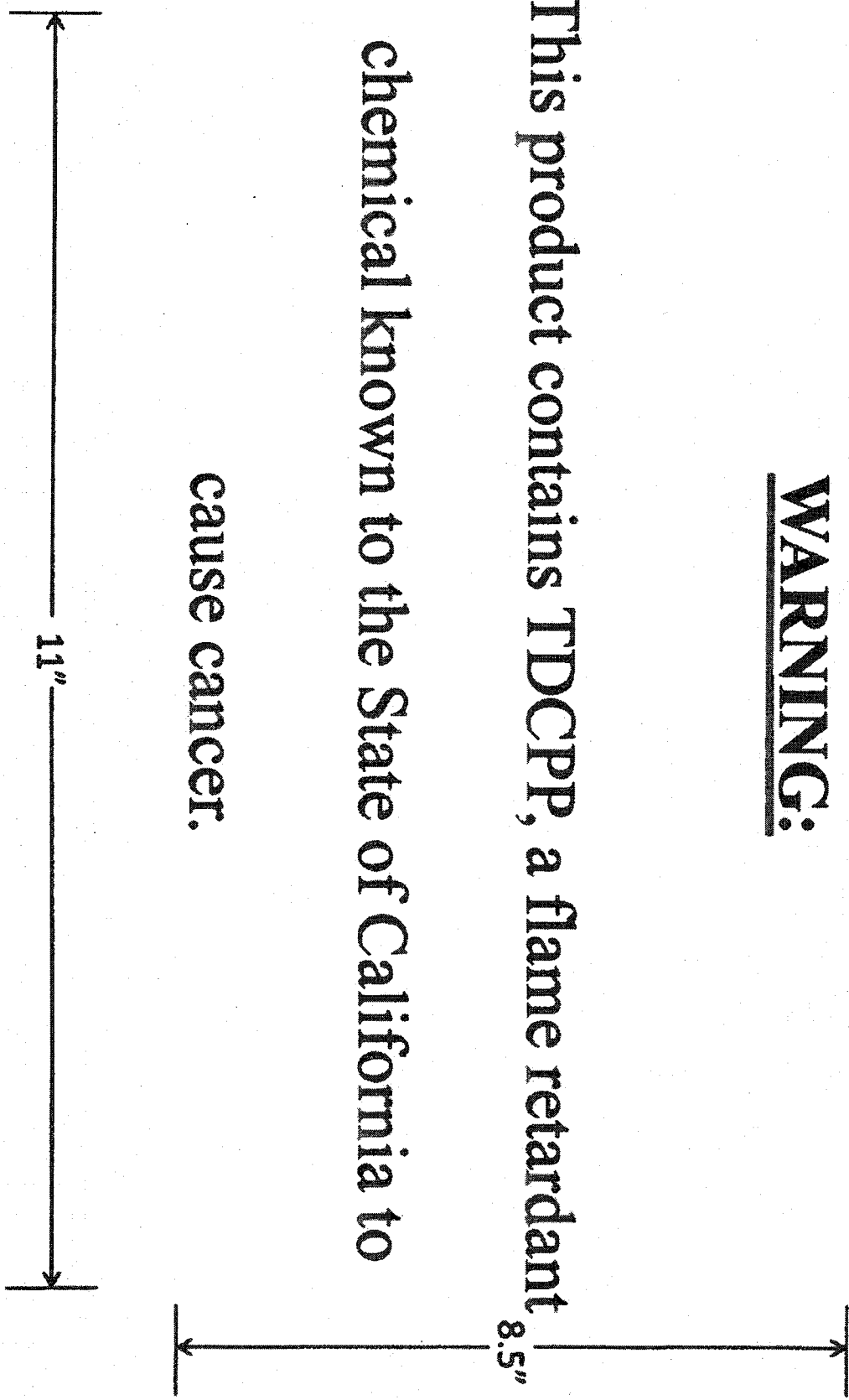
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



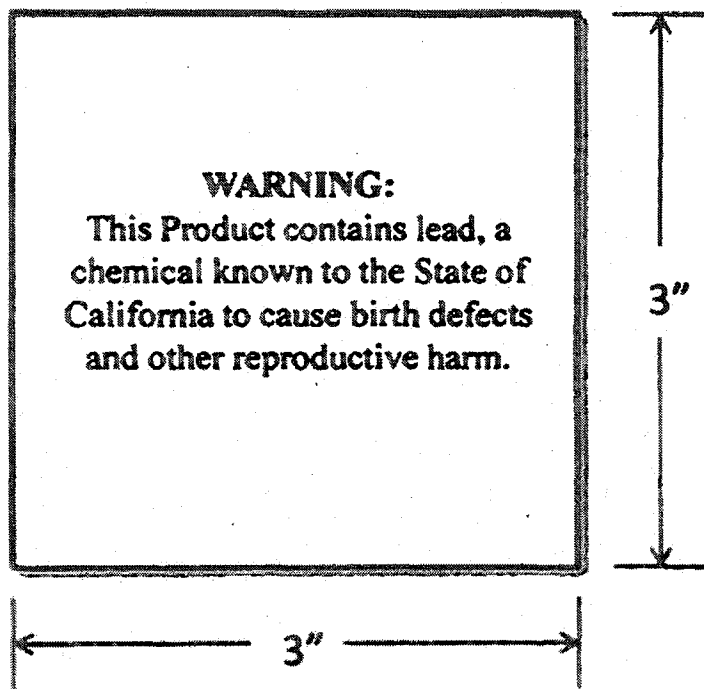
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

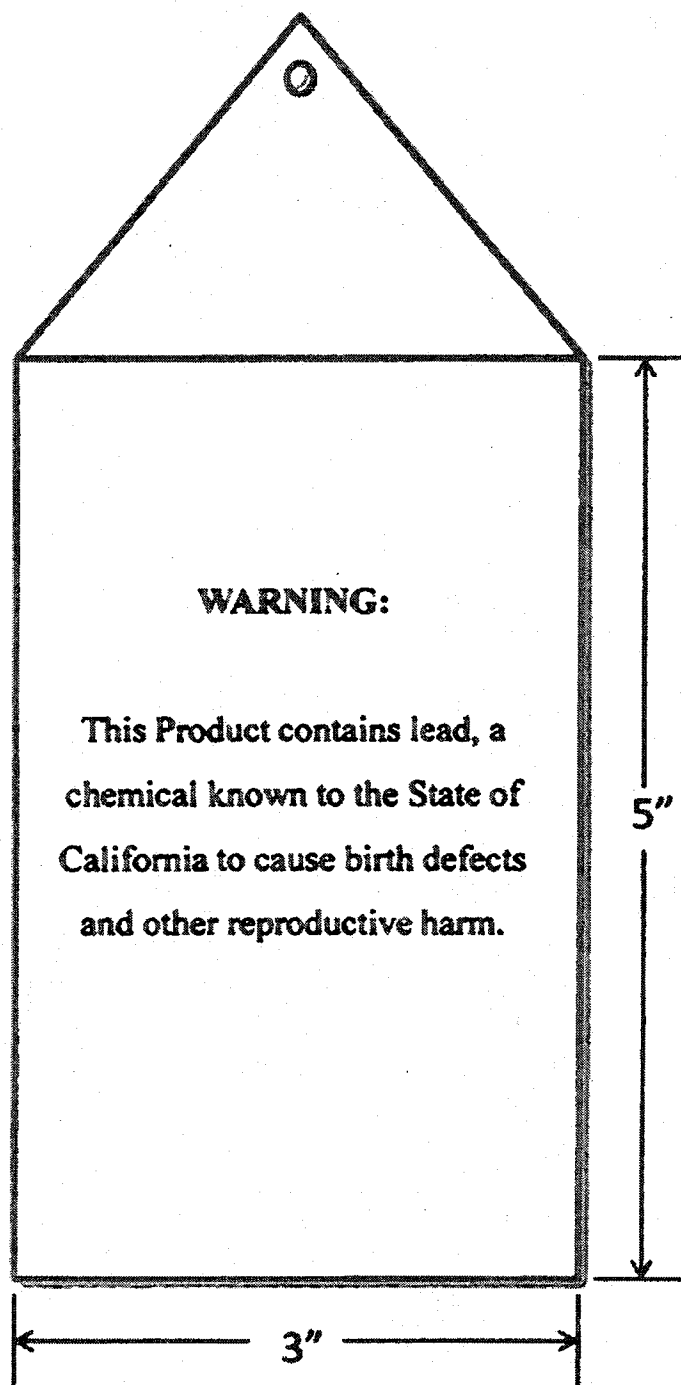
This product contains TDCPP, a flame retardant
chemical known to the State of California to
cause cancer.



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:

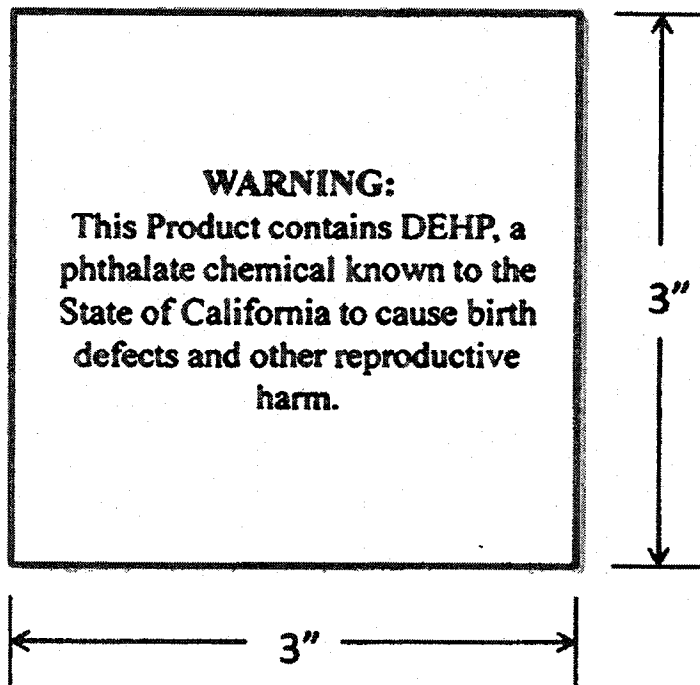
This Product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

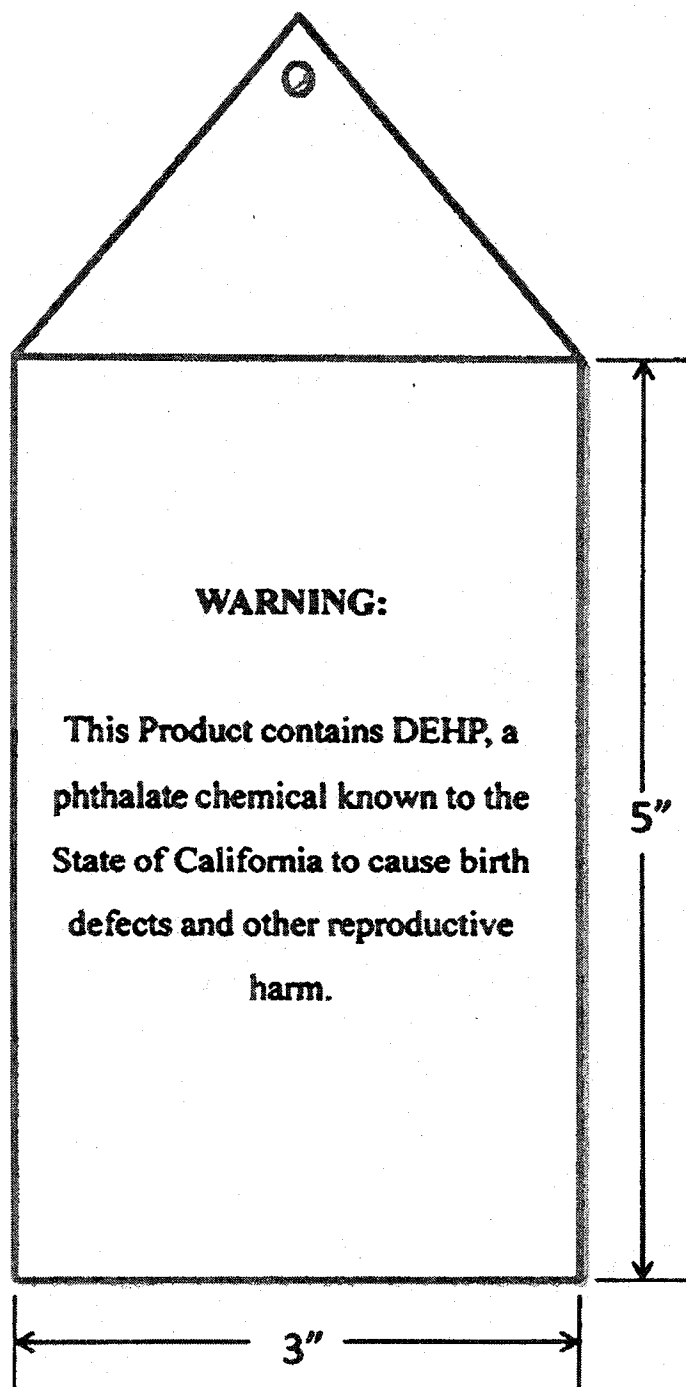
11"

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 DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

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