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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

**CONSENT JUDGMENT AS TO
DEFENDANT HOOKER FURNITURE
CORPORATION**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: April 11, 2013

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1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Settling Defendant**

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

14 **1.4 General Allegations**

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

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

23 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
25 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). TDCPP and TCEP
27 are hereinafter referred to as the “Listed Chemicals.” Plaintiff alleges that the Listed Chemicals
28 escape from the foam padding, leading to human exposures.

1 **1.5 Product Description**

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

7 **1.6 Notices of Violation**

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

14 **1.7 Complaint**

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

20 **1.8 No Admission**

21 The Settling Defendant denies the material factual and legal allegations contained in
22 Plaintiff’s Notices and Complaint and maintains that all products that it has manufactured,
23 imported, distributed, and/or sold in California, including the Products, have been and are in
24 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
25 the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall
26 compliance with this Consent Judgment constitute or be construed as an admission by the Settling
27 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section
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1 shall not diminish or otherwise affect the Settling Defendant's obligations, responsibilities, and
2 duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

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

9 **2. DEFINITIONS**

10 **2.1 California Customers**

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

15 **2.2 Detectable**

16 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
17 of .0025%) of any one chemical in any material, component, or constituent of a
18 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
19 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
20 determine the presence, and measure the quantity, of TDCPP, TCEP, and/or tris(2,3-
21 dibromopropyl)phosphate ("TDBPP") in a solid substance.

22 **2.3 Effective Date**

23 "Effective Date" shall mean October 30, 2013.

24 **2.4 Private Label Covered Products**

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

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1 **2.5 Reformulated Products**

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

4 **2.6 Reformulation Standard**

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

7 **2.7 Retailer**

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

11 **3. INJUNCTIVE RELIEF: REFORMULATION**

12 **3.1 Reformulation Commitment**

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

16 **3.2 Vendor Notification/Certification**

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

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1 **3.3 Products No Longer in the Settling Defendant's Control**

2 No later than 30 days after the Effective Date, the Settling Defendant shall send a letter,
3 electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer
4 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
5 in the Notices the Settling Defendant received from Plaintiff ("Exemplar Product"); and (2) any
6 California Customer and/or Retailer that the Settling Defendant reasonably understands or believes
7 had any inventory for resale in California of Exemplar Products as of the Notices dates. The
8 Notification Letter shall advise the recipient that the Exemplar Product "contains TDCPP and/or
9 TCEP, chemicals known to the State of California to cause cancer," and request that the recipient
10 either: (a) label the Exemplar Products remaining in inventory for sale in California, or to
11 California Customers, pursuant to Section 3.5; or (b) return, at the Settling Defendant's sole
12 expense, all units of the Exemplar Product held for sale in California, or to California Customers, to
13 the Settling Defendant or a party the Settling Defendant has otherwise designated. The Notification
14 Letter shall require a response from the recipient within 20 days confirming whether the Exemplar
15 Product will be labeled or returned. The Settling Defendant shall maintain records of all
16 correspondence or other communications generated pursuant to this Section for two years after the
17 Effective Date and shall promptly produce copies of such records upon Plaintiff's written request.

18 **3.4 Current Inventory**

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

23 **3.5 Product Warnings**

24 **3.5.1 Product Labeling**

25 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
26 labeling, or directly on each Product. Each warning shall be prominently placed with such
27 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
28 to be read and understood by an ordinary individual under customary conditions before purchase.

1 Each warning shall be provided in a manner such that the consumer or user understands to which
2 specific Product the warning applies, so as to minimize the risk of consumer confusion.

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

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

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

11 3.5.2 Internet Website Warning

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

18 **WARNING:** This product contains [TDCPP and/or
19 TCEP], flame retardant chemicals

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

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

known to the State of California to
cause cancer.³

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3.6 Alternatives to Interim Warnings

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

4. MONETARY PAYMENTS

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

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

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

³ Footnote 1 applies in this context as well.

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

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

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

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

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

24 **4.2 Representation Regarding Sales Volume**

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

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

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

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

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

5 **4.4 Reimbursement of Fees and Costs** [we do not agree to the proposed fee/cost
6 amount proposed in Exh A]

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

23 **4.5 Payment Procedures**

24 **4.5.1 Issuance of Payments.**

25 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
26 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

27 The Chanler Group
28 Attn: Proposition 65 Controller
 2560 Ninth Street
 Parker Plaza, Suite 214

Berkeley, CA 94710

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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

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

5. CLAIMS COVERED AND RELEASED

5.1 Plaintiff's Release of Proposition 65 Claims

Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly distributes or sells Products, including, but not limited, to downstream

1 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
2 (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective
3 Date based on unwarned exposures to the Listed Chemicals in the Products, as set forth in the
4 Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
5 Proposition 65 with respect to exposures to the Listed Chemicals from the Products, as set forth in
6 the Notices. The Parties further understand and agree that this Section 5.1 release shall not extend
7 upstream to any entities, other than the Settling Defendant, that manufactured the Products or any
8 component parts thereof, or any distributors or suppliers who sold the Products or any component
9 parts thereof to a Settling Defendant, except that entities upstream of the Settling Defendant that is
10 a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled Covered
11 Products offered for sale in California, or to California Customers, by the Retailer in question.

12 **5.2 Plaintiff's Individual Releases of Claims**

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

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

1 an action under Proposition 65 against a Releasee that does not involve the Settling Defendant's
2 Products or Additional Products.

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5 **5.3 Settling Defendant's Release of Plaintiff**

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

12 **6. COURT APPROVAL**

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

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1 **7. GOVERNING LAW**

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

11 **8. NOTICE**

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

16 To Settling Defendant:

17 At the address shown on Exhibit A

To Plaintiff:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

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

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

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

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products, where the Settling Defendant has identified on Exhibit A
6 additional products that contain TDCPP, TCEP, TDBPP and/or any Proposition 65-listed
7 chemical(s) and that are sold or offered for sale by it to California Customers, (“Additional
8 Products”), then by no later than October 15, 2013, the Settling Defendant may provide Plaintiff
9 with additional information or representations necessary to enable him to issue a 60-Day Notice of
10 Violation and valid Certificate of Merit therefore, pursuant to Health & Safety Code section
11 25249.7, that includes the Additional Products. Polyurethane foam that is supplied, shaped or
12 manufactured for use as a component of a product, such as upholstered furniture, is specifically
13 excluded from the definition of Additional Products and shall not be identified by the Settling
14 Defendant on Exhibit A as an Additional Product. Except as agreed upon by Plaintiff, Settling
15 Defendant shall not include a product, as an Additional Product, that is the subject of an existing
16 60-day notice issued by Plaintiff or any other private enforcer at the time of execution.

17 After receipt of the required information, Plaintiff agrees to issue a supplemental 60-day
18 notice in compliance with all statutory and regulatory requirements for the Additional Products.
19 Plaintiff will, and in no event later than October 1, 2014, prepare and file an amendment to this
20 Consent Judgment to incorporate the Additional Products within the defined term “Products” and,
21 upon the Court’s approval thereof, the Additional Products shall become subject to Sections 5.1 and
22 5.2. The Settling Defendant shall, at the time it elects to utilize this Section and tenders the
23 additional information or representations regarding the Additional Products to Plaintiff, tender to
24 The Chanler Group’s trust account an amount not to exceed \$8,750 as stipulated penalties and
25 attorneys’ fees and costs incurred by Plaintiff in issuing the new notice and engaging in other
26 reasonably related activities, which may be released from the trust as awarded by the Court upon
27 Plaintiff’s application. (Any tendered funds remaining in the trust thereafter shall be refunded to
28

1 the Settling Defendant within 15 days). Such payment shall be made to "In trust for The Chanler
2 Group" and delivered as per Section 4.5.1(a) above.

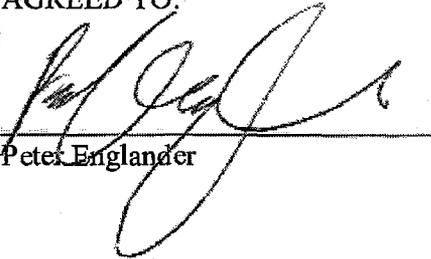
3 11.2 Plaintiff and Settling Defendant agree to support the entry of this agreement as a
4 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
5 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
6 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff
7 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and the
8 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.
9 This provision is a material component of the Consent Judgment and shall be treated as such in the
10 event of a breach.

11 **12. MODIFICATION**

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

15 **13. AUTHORIZATION**

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

19
20 AGREED TO:
21 
22 _____
23 Peter Englander

24 Date: October 29, 2013

20 AGREED TO:
21 
22 _____
23 Hooker Furniture Corporation

24 Date: October 14, 2013

EXHIBIT A

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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

X 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

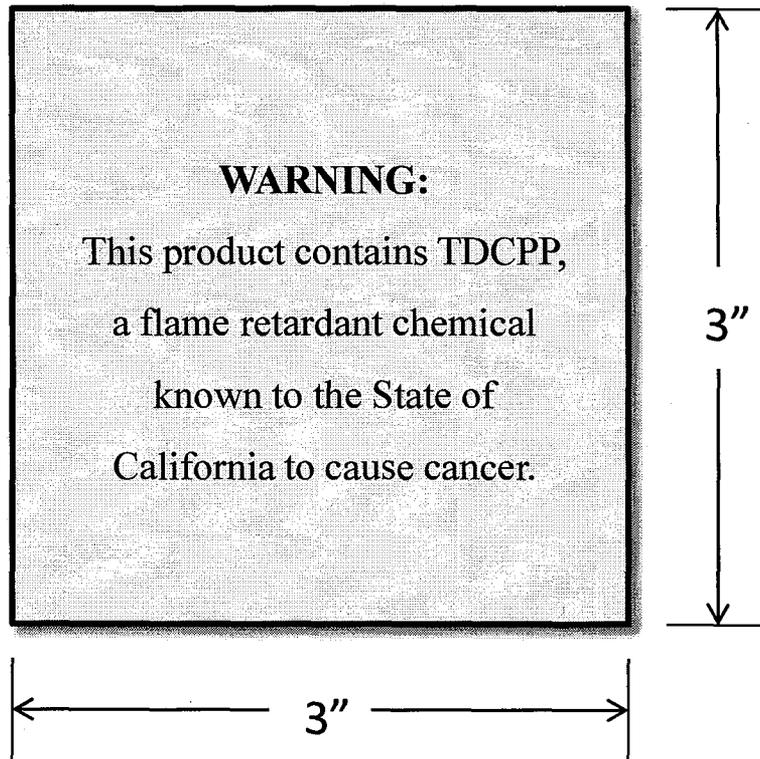
2	<u>Harrison Toms</u>	<u>Dennis E. Raglin</u>
3	Name	Name
4	<u>Manager, Regulatory Compliance</u>	<u>Lawyer</u>
5	Title	Title
6	<u>Hooker Furniture Corporation</u>	<u>Sedgwick LLP</u>
	Company/Firm Name	Company/Firm Name
7	<u>Address P.O. Box 4708</u>	<u>Address 333 Bush Street, 30th Floor</u>
8	<u>Martinsville,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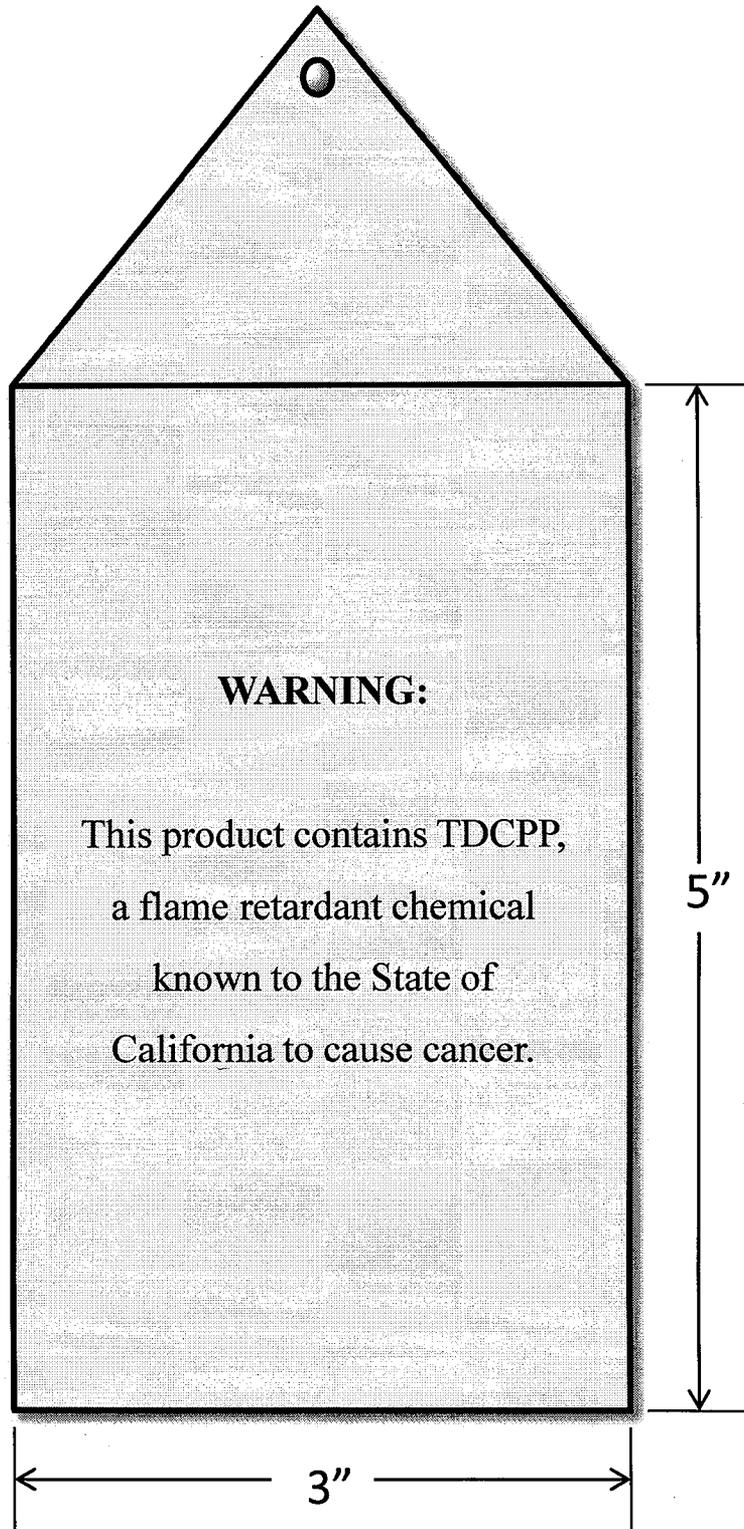
EXHIBIT B

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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

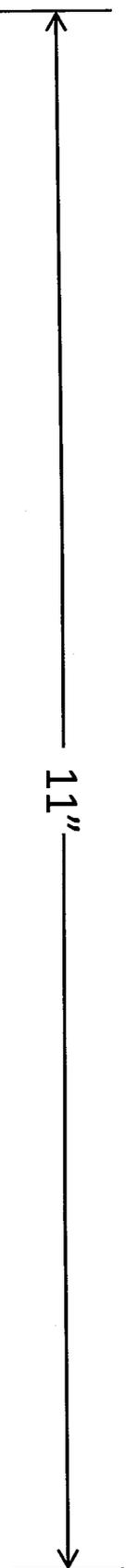


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

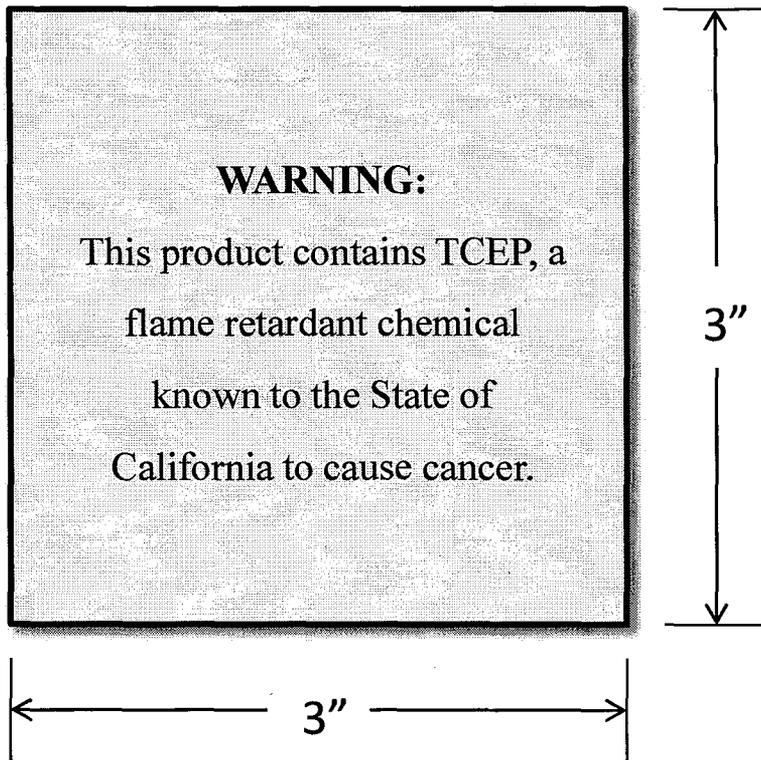
WARNING:

This product contains TDCPP, a flame retardant
8.5"

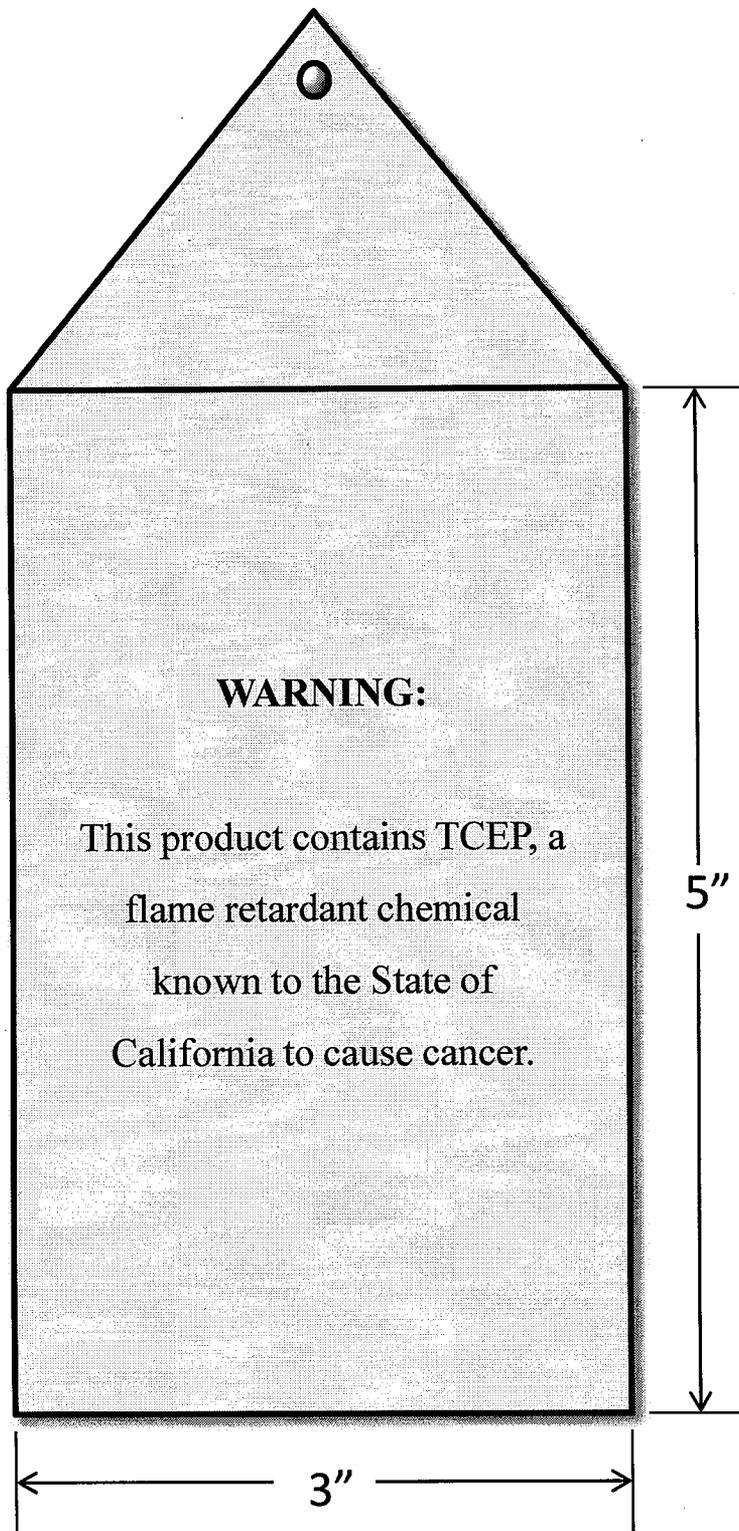
chemical known to the State of California to
cause cancer.



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:

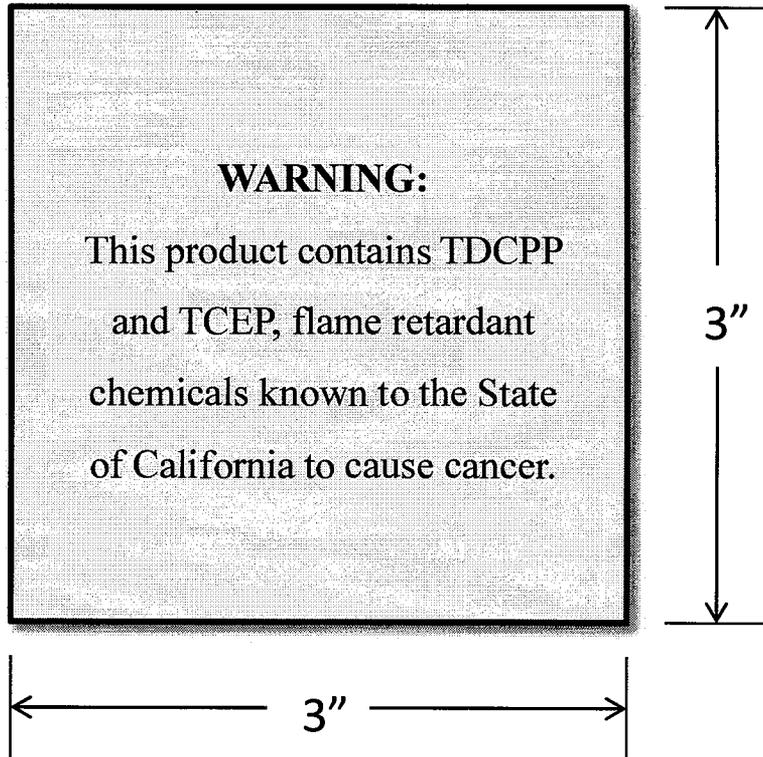
This product contains TCEP, a flame retardant
chemical known to the State of California to
cause cancer.

8.5"

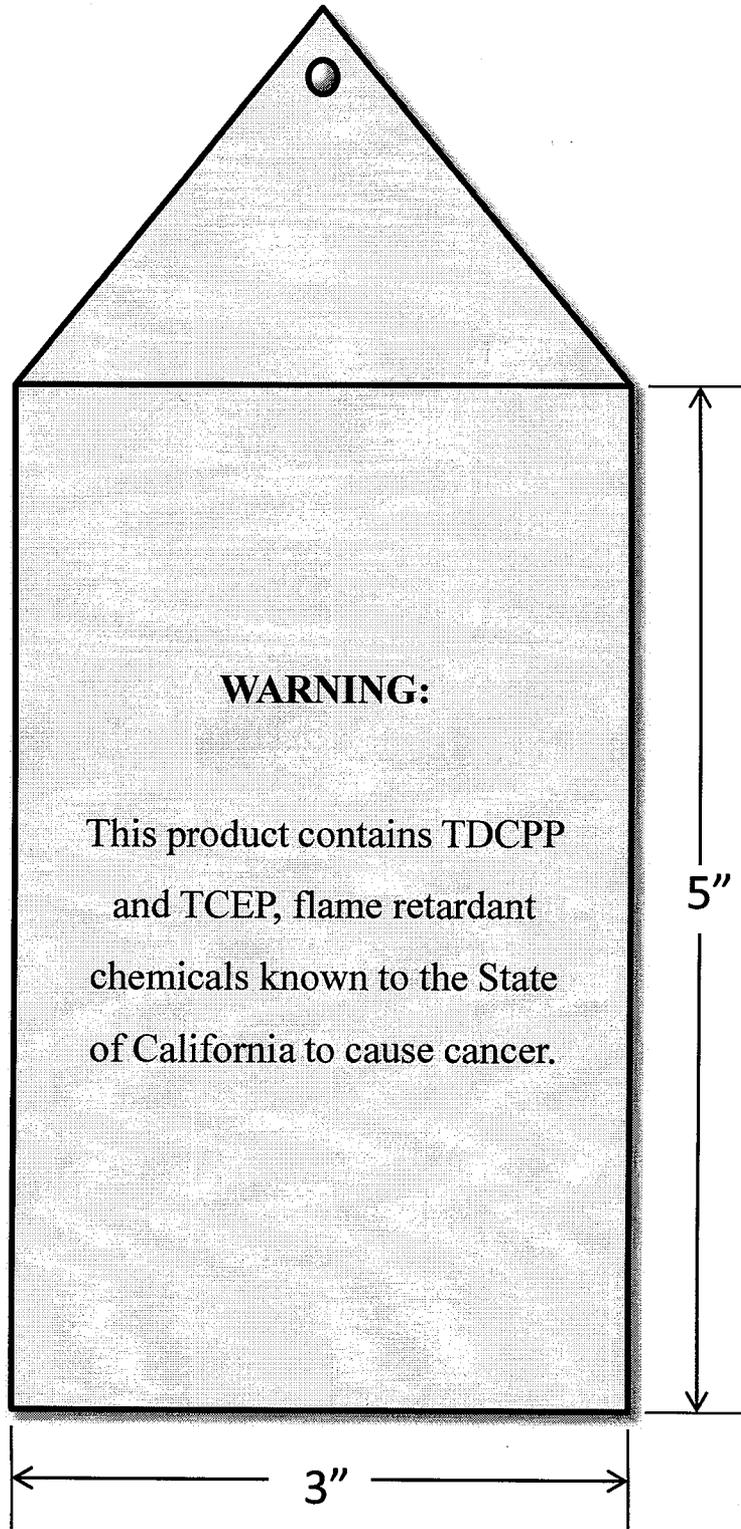
11"

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.

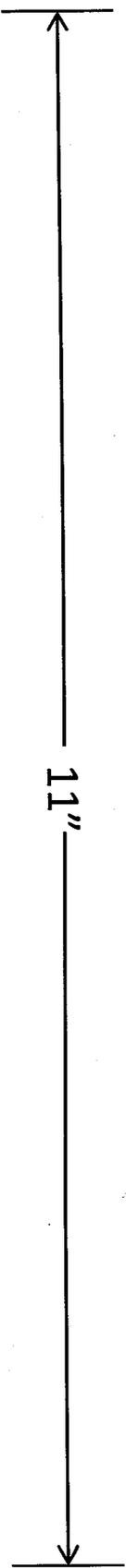
WARNING:

This product contains TDCPP and TCPEP, flame

8.5"

retardant chemicals known to the State of

California to cause cancer.



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