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11 JOHN MOORE

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

14 JOHN MOORE, ) Case No. RG 13-683338  
15 )  
16 Plaintiff, )  
17 )  
18 v. ) Assigned for All Purposes to  
19 ) Judge George C. Hernandez, Jr.,  
20 ) Department 17  
21 UNITED STATIONERS INC.; et al., )  
22 )  
23 Defendants. ) **[PROPOSED] CONSENT JUDGMENT AS**  
24 ) **TO UNITED STATIONERS SUPPLY CO.**  
25 )  
26 ) **(Health & Safety Code § 25249.6 et seq.)**  
27 )  
28 ) Complaint Filed: June 13, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) and  
4 United Stationers Supply Co. erroneously noticed and identified as United Stationers Supply Inc.  
5 (hereinafter referred to as “United Stationers”), with Moore and United Stationers collectively  
6 referred to as the “Parties.”

7 **1.2 John Moore**

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

11 **1.3 United Stationers Supply Co.**

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

15 **1.4 General Allegations**

16 1.4.1 Moore alleges that United Stationers manufactured, imported, sold and/or  
17 distributed for sale in California products with foam cushioned components containing tris(1,3-  
18 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard  
19 warnings. Moore alleges that TDCPP escapes from foam padding, leading to human exposures.

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

24 1.4.3 Moore alleges that United Stationers manufactured, imported, sold and/or  
25 distributed for sale in California, folding chairs with vinyl/PVC upholstery containing di(2-  
26 ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings.

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1                   1.4.4 Pursuant to Proposition 65, on October 24, 2003, California identified and  
2 listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP  
3 became subject to the “clear and reasonable warning” requirements of Proposition 65 one year later  
4 on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and  
5 25249.10(b).

6                   **1.5 Product Description**

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

12                   **1.6 Notices of Violation**

13                   On or about February 8, 2013, Moore issued to United Stationers and certain requisite  
14 public enforcement agencies a “60-Day Notice of Violation” (“February 8, 2013 Notice”) that  
15 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged  
16 failure to warn customers, consumers, and workers in California that the Products expose users to  
17 TDCPP.

18                   Based on further investigation, Moore has also issued a Supplemental 60-day notice to  
19 United Stationers on July 12, 2013 (“July 12, 2013 Notice”), alleging that folding chairs with  
20 vinyl/PVC upholstery contain and expose Californians to DEHP (“Phthalate Products”). DEHP and  
21 other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are  
22 listed under Proposition 65 as chemicals known to cause birth defects and other reproductive harm.

23                   The February 8, 2013 Notice and July 12, 2013 Notice shall hereinafter collectively be  
24 referred to as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has  
25 commenced or is diligently prosecuting the allegations set forth in the Notices.

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**1.7 Complaint**

On June 13, 2013, Moore filed a Complaint in the Superior Court in and for the County of Alameda against United Stationers, other defendants and Does 1 through 150, *John Moore v. United Stationers Inc., et al.*, Case No. RG 13-683338, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the Products. Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to include the violations of Proposition 65 alleged by Moore in the July 12, 2013 Notice.

**1.8 No Admission**

United Stationers denies the material factual and legal allegations contained in Moore’s Notices and Complaint and maintains 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 United Stationers 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 United Stationers of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect a United Stationers’ 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 United Stationers as to the allegations contained in the Notices and 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 that United Stationers reasonably  
4 understands is located in California, has a California warehouse or distribution center, maintains a  
5 retail outlet in 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 TCEP in a solid substance.

12 **2.3 Effective Date**

13 “Effective Date” shall mean October 15, 2013.

14 **2.4 Private Label Covered Products**

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

18 **2.5 Reformulated Products**

19 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP  
20 or TCEP.<sup>1</sup>

21 **2.6 Reformulation Standard**

22 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of  
23 TDCPP and TCEP.<sup>2</sup>

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27 <sup>1</sup> The term “Reformulated Products” also includes Phthalate Products which contain no  
more than 1000 ppm each of DEHP, BBP, and DBP.

28 <sup>2</sup> The term “Reformulated Standard” further requires that the Phthalate Products contain no  
more than 1000 ppm each of DEHP, BBP, and DBP

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, United Stationers shall not manufacture or import for  
7 distribution or sale to California Customers, or cause to be manufactured or imported for  
8 distribution or sale to California Customers, any Products that are not Reformulated Products.

9           **3.2     Vendor Notification/Certification**

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

20          **3.3     Products No Longer in United Stationers’ Control**

21          No later than 45 days after the Effective Date, United Stationers shall send a letter,  
22 electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer  
23 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar  
24 in each Notice United Stationers received from Moore (“Exemplar Product(s)”; and (2) any  
25 California Customer and/or Retailer that United Stationers reasonably understands or believes had  
26 any inventory for resale in California of Exemplar Product(s) as of the relevant Notice’s dates. The  
27 Notification Letter shall advise the recipient that the Exemplar Product(s) contains TDCPP, a  
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1 chemical known to the State of California to cause cancer, and/or DEHP, a chemical known to the  
2 State of California to cause birth defects and other reproductive harm, as appropriate depending on  
3 the allegations in the Notices, and request that the recipient either: (a) label the Exemplar Product(s)  
4 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or  
5 (b) return, at United Stationers' sole expense, all units of the Exemplar Product(s) held for sale in  
6 California, or to California Customers, to United Stationers or a party United Stationers has  
7 otherwise designated. The Notification Letter shall require a response from the recipient within 15  
8 days confirming whether the Exemplar Product(s) will be labeled or returned. United Stationers  
9 shall maintain records of all correspondence or other communications generated pursuant to this  
10 Section for two years after the Effective Date and shall promptly produce copies of such records  
11 upon Moore's written request.

#### 12 3.4 Current Inventory

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

#### 17 3.5 Product Warnings

##### 18 3.5.1 Product Labeling

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

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

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

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Or, for Phthalate Products:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects and reproductive harm.<sup>3</sup>

Attached as Exhibit B are template warnings developed by Moore that are deemed to be clear and reasonable for purposes of this Consent Judgment.<sup>4</sup> Provided that the other requirements set forth in this Section are addressed, including as to the required warning statement and method of transmission as set forth above, United Stationers remains free not to utilize the template warnings.

**3.5.2 Internet Website Warning**

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

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

Or, for Phthalate Products:

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<sup>3</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if United Stationers had begun to use it, prior to the Effective Date. If United Stationers seeks to use alternative warning language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, United Stationers must obtain the Court’s approval of its proposed alternative. The Parties agree that the following hybrid 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.”

<sup>4</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3” x 5”, with no less than 12 point font, with the warning language printed on each side 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 that 32 point font, with the warning language printed on each side, which 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.





1           4.1.2 Second Civil Penalty. On or before January 15, 2014, United Stationers shall  
2 make a second civil penalty payment in the amount identified on Exhibit A. The amount of the  
3 second penalty may be reduced according to any penalty waiver United Stationers is eligible for  
4 under Sections 4.1.4(i) and 4.1.4(iii), below.

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

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

15                   4.1.4(i)   **Partial Penalty Waiver for Accelerated Reformulation of**  
16                   **Products Sold or Offered for Sale in California.**

17           If United Stationers so elects on Exhibit A, a portion of the second civil penalty shall be  
18 waived, to the extent that it has agreed that, as of November 1, 2013, and continuing into the future,  
19 it shall only manufacture or import for distribution or sale to California Customers or cause to be  
20 manufactured or imported for distribution or sale to California Customers, Reformulated Products.  
21 If United Stationers exercises this option, an officer or other authorized representative of United  
22 Stationers shall provide Moore with a written certification confirming compliance with such  
23 conditions, which certification must be received by Moore's counsel on or before December 15,  
24 2013.

25                   4.1.4(ii)   **Partial Penalty Waiver for Extended Reformulation.**

26           If United Stationers so elects on Exhibit A, a portion of the third civil penalty shall be  
27 waived, to the extent that it has agreed that, as of March 15, 2014, and continuing into the future, it  
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1 shall only manufacture or import for distribution or sale in California or cause to be manufactured  
2 or imported for distribution or sale in California, Reformulated Products which also do not contain  
3 tris(2, 3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per  
4 million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject  
5 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies  
6 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the  
7 presence, and measure the quantity, of TDBPP in a solid substance. If United Stationers exercises  
8 this option, an officer or other authorized representative of United Stationers shall provide Moore  
9 with a written certification confirming compliance with such conditions, which certification must  
10 be received by Moore’s counsel on or before November 15, 2014.

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

13 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or  
14 other authorized representative of United Stationers provides Moore with written certification, by  
15 December 15, 2013, confirming that each individual or establishment in California to which it  
16 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar  
17 Products held for sale in California.<sup>6</sup>

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

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

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27 <sup>6</sup> For purposes of this Section, the term Exemplar Products shall further include Products for  
28 which Moore has, prior to August 31, 2013, provided United Stationers 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           **4.2 Representations**

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

12           United Stationers further represents that in implementing the requirements set forth in  
13 Section 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to  
14 achieve reformulation of its Products and Additional Products on a nationwide basis and not  
15 employ statements that will encourage a vendor to limit its compliance with the Reformulation  
16 Standards to goods intended for sale to California Consumers.

17           **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

18           If Moore provides notice and appropriate supporting information to United Stationers that  
19 levels of the Listed Chemicals in excess of the Reformulation Standard have been detected in one or  
20 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported  
21 after a deadline for meeting the Reformulation Standard has arisen for United Stationers under  
22 Sections 3.1 or 3.6 above, United Stationers may elect to pay a stipulated penalty to relieve any  
23 further potential liability under Proposition 65 or sanction under this Consent Judgment as to  
24 Products sourced from the vendor in question.<sup>7</sup> The stipulated penalty shall be \$1,500 if the

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26           <sup>7</sup> This Section shall not be applicable where the vendor in question had previously been  
27 found by United Stationers to have provided unreliable certifications as to meeting the  
28 Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing,  
a stipulated penalty for a second exceedance by United Stationers’ vendor at a level between 100  
and 249 ppm shall not be available after July 1, 2015.

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

#### 11 4.4 Reimbursement of Fees and Costs

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

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28 <sup>8</sup> 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 its full required payment under this Section to a trust account at The Chanler Group (made payable  
2 “In Trust for The Chanler Group”) within two business days of the Effective Date. Such funds shall  
3 be released from the trust account upon the Court’s approval and entry of this Consent Judgment.

4 **4.5 Payment Procedures**

5 4.5.1 Issuance of Payments.

6 (a) All payments owed to Moore and his counsel, pursuant to Sections  
7 4.1, 4.3, and 4.4 shall be delivered to the following payment address:

8 The Chanler Group  
9 Attn: Proposition 65 Controller  
10 2560 Ninth Street  
11 Parker Plaza, Suite 214  
12 Berkeley, CA 94710

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

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics  
24 Fiscal Operations Branch Chief  
25 Office of Environmental Health Hazard Assessment  
26 1001 I Street  
27 Sacramento, CA 95814

28 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. United Stationers shall issue a separate 1099 form for  
each payment required by this Section to: (a) John Moore, whose address and tax identification  
number shall be furnished upon request after this Consent Judgment has been fully executed by the

1 Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard  
2 Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box  
3 4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set  
4 forth in Section 4.5.1(a) above.

5 **5. CLAIMS COVERED AND RELEASED**

6 **5.1 Moore’s Release of Proposition 65 Claims**

7 Moore, acting on his own behalf and in the public interest, releases United Stationers, its  
8 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents  
9 employees, attorneys, its vendor, Global Furniture(Zhejiang) Co., Ltd. (“Global”), and each entity  
10 to whom United Stationers directly or indirectly distributes or sells Products, including, but not  
11 limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative  
12 members, and licensees from all claims for violations of Proposition 65 through the Effective Date  
13 based on unwarned exposures to TDCPP in the Products sold by United Stationers in California, as  
14 set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes  
15 compliance with Proposition 65 with respect to exposures to TDCPP from the Products, as set forth  
16 in the Notices. The Parties further understand and agree that this release for TDCPP in the Products  
17 shall not extend upstream to any entities, other than the vendor Global, which manufactured the  
18 Products or any component parts thereof, or any distributors or suppliers who sold the Products or  
19 any component parts thereof to United Stationers. The release as to Global is specifically limited to  
20 those Products sold by United Stationers, as set forth in the Notice, and shall not apply to any other  
21 Products sold by Global or any of Global’s other customers.

22 Additionally, Moore, acting on his own behalf and in the public interest, releases United  
23 Stationers, its parents, subsidiaries, affiliated entities under common ownership, directors, officers,  
24 agents employees, attorneys, its vendor, Wok & Pan Ind. Inc., Limited (“Wok & Pan”), and each  
25 entity to whom United Stationers directly or indirectly distributes or sells Products, including, but  
26 not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative  
27 members, and licensees from all claims for violations of Proposition 65 through the Effective Date  
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1 based on unwarned exposures to DEHP in the Products sold by United Stationers in California, as  
2 set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes  
3 compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth  
4 in the Notices. The Parties further understand and agree that this release for DEHP in the Products  
5 shall not extend upstream to any entities, other than the vendor Wok & Pan, which manufactured  
6 the Products or any component parts thereof, or any distributors or suppliers who sold the Products  
7 or any component parts thereof to United Stationers. The release as to Wok & Pan is specifically  
8 limited to those Products sold by United Stationers, as set forth in the Notice, and shall not apply to  
9 any other Products sold by Wok & Pan or any of Wok & Pan's other customers.

10 **5.2 Moore's Individual Release of Claims**

11 Moore, in his individual capacity only and *not* in his representative capacity, provides a  
12 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
13 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
14 liabilities, and demands of Moore of any nature, character, or kind, whether known or unknown,  
15 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,  
16 TCEP, TDBPP, DEHP, DBP and/or BBP in the Products or Additional Products (as defined in  
17 Section 11.1 and delineated on Exhibit A) manufactured, imported, distributed, or sold by United  
18 Stationers in California prior to the Effective Date.<sup>9</sup> The Parties further understand and agree that  
19 this Section 5.2 release shall not extend upstream to any entities that manufactured the Products or  
20 Additional Products, or any component parts thereof, or any distributors or suppliers who sold the  
21 Products or Additional Products, or any component parts thereof to United Stationers. Nothing in  
22 this Section affects Moore's right to commence or prosecute an action under Proposition 65 against  
23 a releasee that does not involve United Stationers' Products or Additional Products.

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26  
27 <sup>9</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as  
28 otherwise specified.



1           **5.3     United Stationers’ Release of Moore**

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

8           **6.     COURT APPROVAL**

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

24           **7.     GOVERNING LAW**

25           The terms of this Consent Judgment shall be governed by the laws of the State of California.  
26 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by  
27 reason of law generally, or if any of the provisions of this Consent Judgment are rendered  
28

1 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered  
2 inapplicable by reason of law generally as to the Products, then United Stationers may provide  
3 written notice to Moore of any asserted change in the law, and shall have no further obligations  
4 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so  
5 affected. Nothing in this Consent Judgment shall be interpreted to relieve United Stationers from  
6 any obligation to comply with any pertinent state or federal law or regulation.

7 **8. NOTICES**

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

12 To United Stationers:

13 At the address shown on Exhibit A

To Moore:

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

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

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

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

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

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

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27  
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1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 11.1 In addition to the Products, where United Stationers has identified on Exhibit A  
3 additional products that contain Listed Chemicals and that are sold or offered for sale by it in  
4 California, or to California Customers (“Additional Products”), then by no later than October 15,  
5 2013, United Stationers may provide Moore with additional information or representations  
6 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit  
7 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.  
8 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,  
9 such as upholstered furniture, is specifically excluded from the definition of Additional Products  
10 and shall not be identified by United Stationers on Exhibit A as an Additional Product. Except as  
11 agreed upon by Moore, United Stationers shall not include a product, as an Additional Product, that  
12 is the subject of an existing 60-day notice issued by Moore or any other private enforcer at the time  
13 of execution. After receipt of the required information, Moore agrees to issue a supplemental 60-  
14 day notice in compliance with all statutory and regulatory requirements for the Additional Products.  
15 Moore will, and in no event later than October 1, 2014, prepare and file an amendment to this  
16 Consent Judgment to incorporate the Additional Products within the defined term “Products” and  
17 serve a copy thereof and its supporting papers (including the basis for supplemental stipulated  
18 penalties, if any) on the Office of the California Attorney General; upon the Court’s approval and  
19 finding that the supplemental stipulated penalty amount, if any, is reasonable, the Additional  
20 Products shall become subject to Section 5.1 in addition to Section 5.2. United Stationers shall, at  
21 the time it elects to utilize this Section and tenders the additional information or representations  
22 regarding the Additional Products to Moore, tender to The Chanler Group’s trust account an  
23 amount not to exceed \$8,750 as stipulated penalties and attorneys’ fees and costs incurred by Moore  
24 in issuing the new notice and engaging in other reasonably related activities, which may be released  
25 from the trust as awarded by the Court upon Moore’s application. Any fee award associated with  
26 the modification of the Consent Judgment to include Additional Products shall not offset any  
27 associated supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter  
28

1 shall be refunded to United Stationers within 15 days). Such payment shall be made to "in trust for  
2 The Chanler Group" and delivered as per Section 4.5.1(a) above.

3 11.2 Moore and United Stationers 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 Moore shall  
7 draft and file. If any third party objection to the noticed motion is filed, Moore and United  
8 Stationers shall work together to file a reply and appear at any hearing before the Court. This  
9 provision is a material component of the Consent Judgment and shall be treated as such in the event  
10 of a breach.

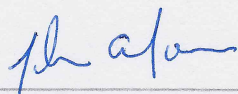
11 **12. MODIFICATION**

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**

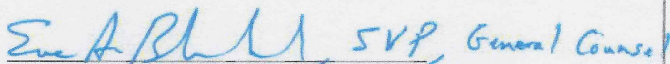
16 The undersigned are authorized to execute this Consent Judgment on behalf of their  
17 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
18 Consent Judgment.

19  
20 AGREED TO:

21 

22 \_\_\_\_\_  
23 Plaintiff John Moore

AGREED TO:

21  SVP, General Counsel  
22 Defendant: United Stationers Supply Co.

24  
25 Date: October 10, 2013

24  
25 Date: October 9, 2013

EXHIBIT A

I. Name of Settling Defendant (Mandatory)

UNITED STATIONERS SUPPLY CO.

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

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III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

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

Upholstered furniture

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

Car seats, strollers

Other (specify): Padded Upholstered Furniture including Chairs containing TDCPP  
Folding Chairs with Vinyl/PVC Upholstery containing DEHP

IV. Types of Additional Products United Stationers Supply Co. Elects to Address (if any):

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V. United Stationers Supply Co.'s Required Settlement Payments

A. Civil Penalties for United Stationers Supply Co.: \$96,000, as follows:

\$28,000 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).



1 VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

2 A. Fees and Costs for United Stationers Supply Co.: \$50,000.

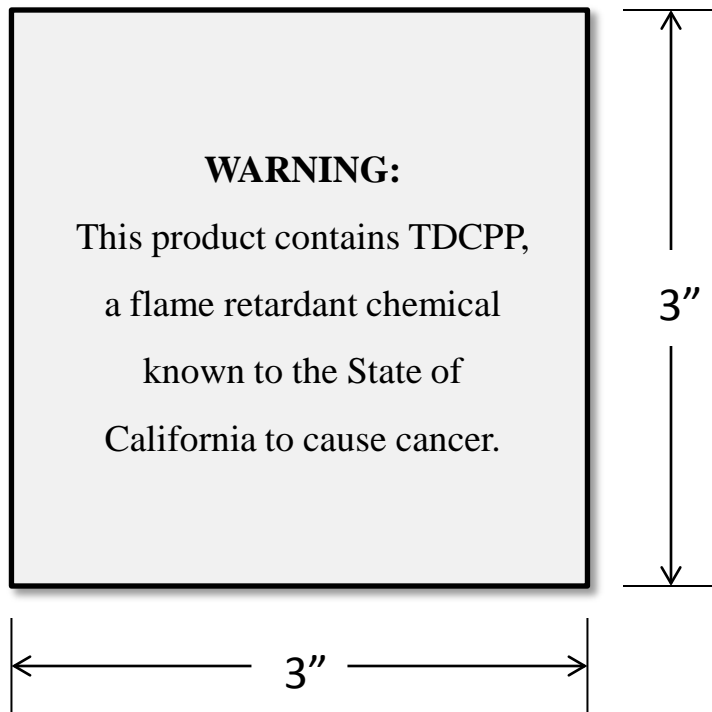
3  
4 VII. Person(s) to receive Notices pursuant to Section 8

5  
6 Bruce Nye  
7 Adams Nye Becht LLP  
8 222 Kearny Street, Suite 700  
9 San Francisco, CA 94108

10 Carrie O'Brien, Esq.  
11 Senior Corporate Attorney  
12 United Stationers Supply Co.  
13 One Parkway North, Suite 100  
14 Deerfield, IL 60015  
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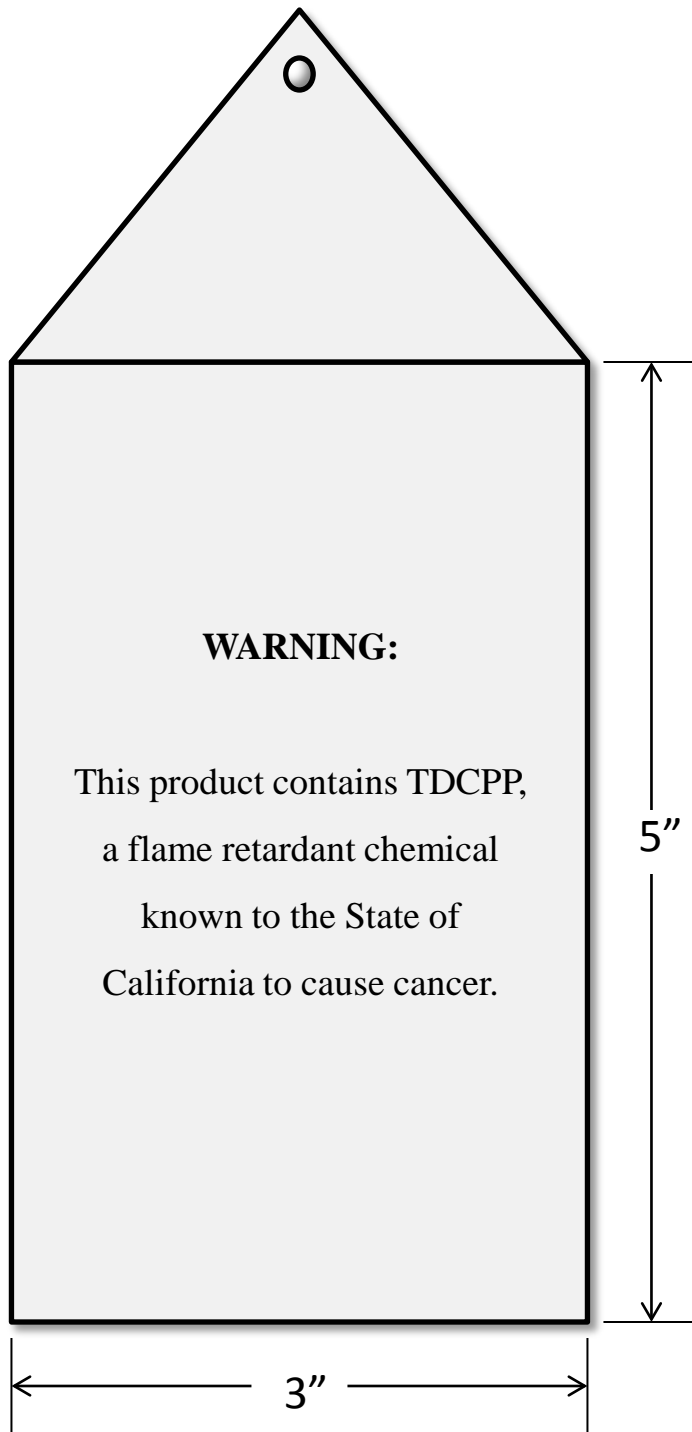
EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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



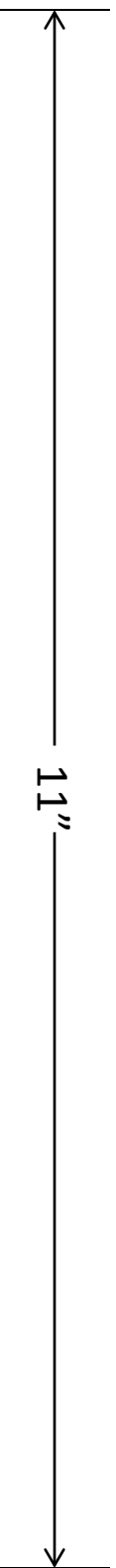


**INSTRUCTIONS:** Print warning on each side of hang tag.  
Minimum 12 pt. font. “WARNING:” text must be bold.

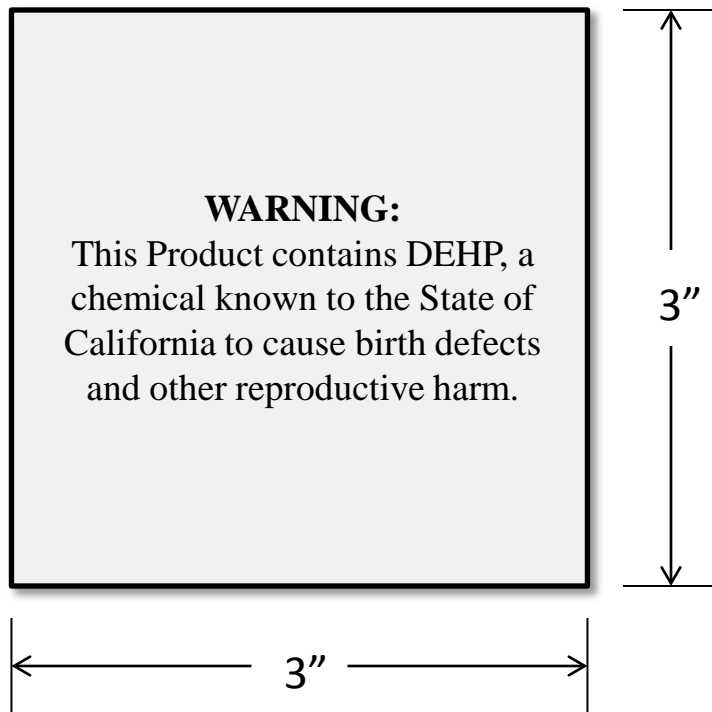
**WARNING:**

This product contains TDCCPP, a flame retardant 8.5"

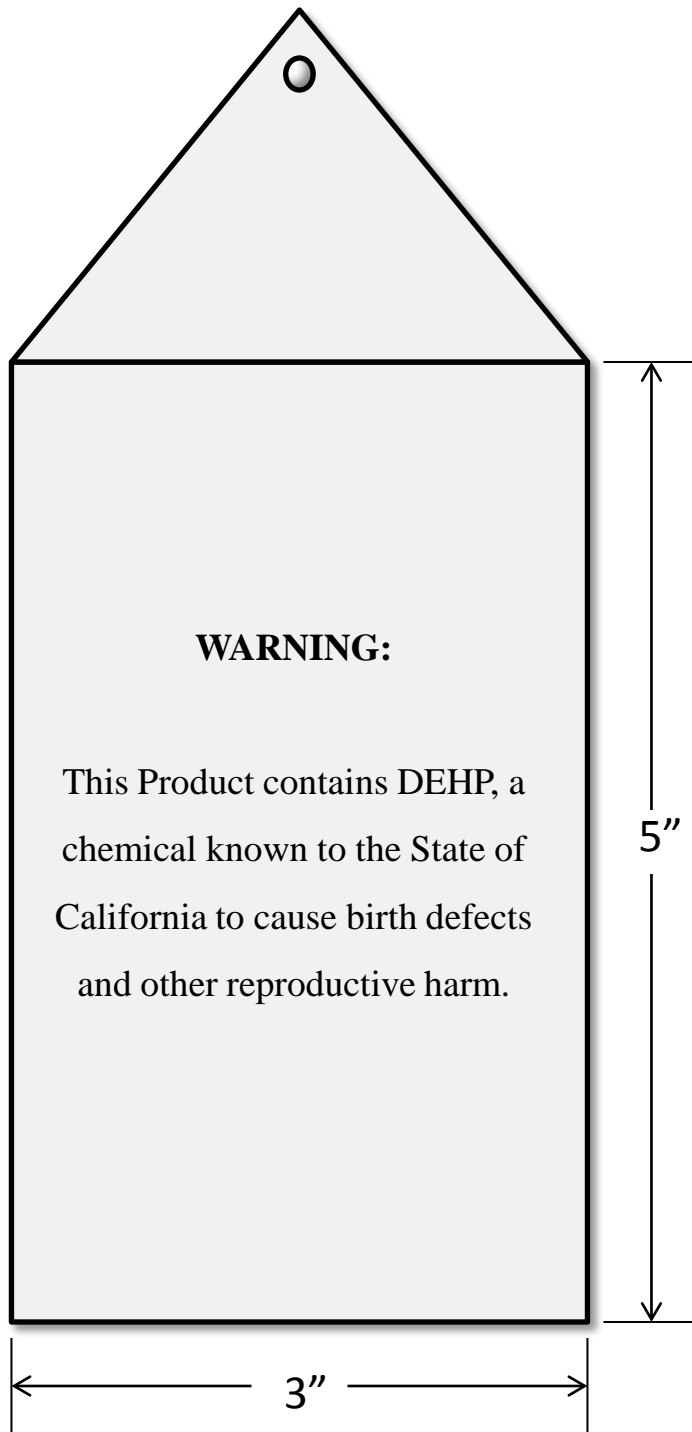
chemical known to the State of California to  
cause cancer.



**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 DEHP, 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.