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

11
12 LAURENCE VINO CUR,
13 Plaintiff,
14 v.
15 JESPER OFFICE, LLC; et al.,
16 Defendants.

) Case No. RG 13-678547
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO WILD SALES, LLC**
)
) **(Health & Safety Code § 25249.6 et seq.)**
)
) Complaint Filed: May 8, 2013

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and Wild Sales, LLC (“Wild Sales”), with Vinocur and Wild Sales collectively referred
5 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 Wild Sales, LLC**

11 Wild Sales 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 Wild Sales manufactured, imported, sold and/or
16 distributed for sale in California products with foam cushioned components 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).

23 **1.5 Product Description**

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

3 **1.6 Notice of Violation**

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

10 **1.7 Complaint**

11 On May 8, 2013, Vinocur filed a Complaint in the Superior Court in and for the County of
12 Alameda against Wild Sales, other defendants and Does 1 through 150, *Laurence Vinocur v. Jesper*
13 *Office, LLC, et al.*, Case No. RG 13-678547 (“Complaint”), alleging violations of Proposition 65,
14 based in part on the alleged unwarned exposures to TDCPP contained in the Products.

15 **1.8 No Admission**

16 Wild Sales denies the material factual and legal allegations contained in Vinocur’s Notice
17 and Complaint and maintains that all products that it has manufactured, imported, distributed,
18 and/or sold in California, including the Products, have been and are in compliance with all laws.
19 Nothing in this Consent Judgment shall be construed as an admission by Wild Sales of any fact,
20 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
21 Judgment constitute or be construed as an admission by Wild Sales of any fact, finding, conclusion,
22 issue of law, or violation of law. However, this section shall not diminish or otherwise affect Wild
23 Sales’ obligations, 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 Wild Sales as to the allegations contained in the Notice and Complaint, that venue
27 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
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1 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
2 Procedure § 664.6.

3 **2. DEFINITIONS**

4 **2.1 California Customers**

5 “California Customer” shall mean any customer that Wild Sales reasonably understands is
6 located in California, has a California warehouse or distribution center, maintains a retail outlet in
7 California, or has made internet sales into California on or after January 1, 2011.

8 **2.2 Detectable**

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

15 **2.3 Effective Date**

16 “Effective Date” shall mean June 2, 2014.

17 **2.4 Private Label Covered Products**

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

21 **2.5 Reformulated Products**

22 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
23 or TCEP.

24 **2.6 Reformulation Standard**

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

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2.7 Retailer

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

3. INJUNCTIVE RELIEF: REFORMULATION

3.1 Reformulation Commitment

Commencing on June 17, 2014, Wild Sales shall not manufacture or import for distribution or sale to California Customers, or cause to be manufactured or imported for distribution or sale to California Customers, any Products that are not Reformulated Products.

3.2 Vendor Notification/Certification

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

3.3 Products No Longer in Wild Sales’ Control

No later than 30 days after the Effective Date, Wild Sales shall send a letter, electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice Wild Sales received from Vinocur (“Exemplar Product”); and (2) any California Customer and/or Retailer that Wild Sales reasonably understands or believes had any inventory for resale in California of Exemplar Products as of the relevant Notice’s date. The Notification Letter shall advise the recipient that the Exemplar Product contains TDCPP, a chemical known to the State of

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

10 **3.4 Current Inventory**

11 Any Products in, or manufactured and en route to, Wild Sales' inventory as of or after June
12 2, 2014, that do not qualify as Reformulated Products and that Wild Sales has reason to believe may
13 be sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth
14 in Section 3.5 below unless Section 3.6 applies.

15 **3.5 Product Warnings**

16 **3.5.1 Product Labeling**

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

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

Attached as Exhibit B are template warnings developed by Vinocur that are deemed to be clear and reasonable for purposes of this Consent Judgment.² 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, Wild Sales 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) appear 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.³

¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Wild Sales had begun to use it, prior to the Effective Date. If Wild Sales 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, Wild Sales must obtain the 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.”

² 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.

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

1 **3.6 Alternatives to Interim Warnings**

2 The obligations of Wild Sales under Section 3.3 shall be relieved provided Wild Sales
3 certifies on or before June 17, 2014 that only Exemplar Products meeting the Reformulation
4 Standard will be offered for sale in California, or to California Customers for sale in California,
5 after July 17, 2014. The obligations of Wild Sales under Section 3.4 shall be relieved provided
6 Wild Sales certifies on or before June 17, 2014 that, after August 17, 2014, it will only distribute or
7 cause to be distributed for sale in, or sell in, California, or to California Customers for sale in
8 California, Products (i.e., Products beyond the Exemplar Products) meeting the Reformulation
9 Standard. The certifications provided by this Section are material terms and time is of the essence.

10 **4. MONETARY PAYMENTS**

11 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

21 4.1.1 Initial Civil Penalty. Within five business days of the mutual execution of
22 this Consent Judgment, Wild Sales shall issue a check for its initial civil penalty payment in the
23 amount identified on Exhibit A to “Bose McKinney & Evans LLP.” Bose McKinney & Evans LLP
24 shall provide The Chanler Group with written confirmation within five business days of receipt that
25 the funds have been deposited in a trust account. Within two business days of the date that this
26 Consent Judgment is approved by the Court, Bose McKinney & Evans LLP shall issue two separate

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1 checks for the initial civil penalty payment to “OEHHA” and “Laurence Vinocur, Client Trust
2 Account.”

3 4.1.2 Second Civil Penalty. On or before August 17, 2014, Wild Sales shall make
4 a second civil penalty payment in the amount identified on Exhibit A. The amount of the second
5 penalty may be reduced according to any penalty waiver Wild Sales is eligible for under Sections
6 4.1.4(i) and 4.1.4(iii), below.

7 4.1.3 Third Civil Penalty. On or before February 27, 2015, Wild Sales shall make
8 a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
9 penalty may be reduced according to any penalty waiver Wild Sales is eligible for under Sections
10 4.1.4(ii) and 4.1.4(iv), below.

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

17 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
18 **Products Sold or Offered for Sale in California.**

19 If Wild Sales so elects on Exhibit A, a portion of the second civil penalty shall be waived, to
20 the extent that it has agreed that, as of June 17, 2014, and continuing into the future, it shall only
21 manufacture or import for distribution or sale to California Customers or cause to be manufactured
22 or imported for distribution or sale to California Customers, Reformulated Products. If this option
23 is exercised, an officer or other authorized representative of Wild Sales shall provide Vinocur with
24 a written certification confirming compliance with such conditions, which certification must be
25 received by Vinocur’s counsel on or before July 2, 2014.

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4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.

If Wild Sales so elects on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that it has agreed that, as of August 17, 2014, and continuing into the future, it shall only manufacture or import for distribution or sale in California or cause to be manufactured or imported for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 ppm (the equivalent of .0025%) in any material, component, or constituent of a Product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence, and measure the quantity of, TDBPP in a solid substance. If this option is exercised, an officer or other authorized representative of Wild Sales shall provide Vinocur with a written certification confirming compliance with such conditions, which certification must be received by Vinocur’s counsel on or before January 30, 2015.

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

As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of Wild Sales provides Vinocur with written certification, by June 17, 2014, confirming that each individual or establishment in California to which it supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products held for sale in California.

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

As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of Wild Sales provides Vinocur with written certification, on or before February 13, 2015, confirming that, as of November 14, 2014, it has and will continue to distribute, offer for sale, or sell in California, or to California Customers, only Reformulated Products.

1 not be limited to, the following: a copy of the test report(s) identifying the laboratory undertaking
2 the testing, the test method(s) used, and the test result(s); a statement of the
3 material/component/constituent of the Product that was tested; a photo of the Product that was
4 tested; and the receipt(s) demonstrating the place, date and amount of purchase of the Product. The
5 stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation
6 level is between 100 ppm and 249 ppm, this being applicable for any amount in excess of the
7 Reformulation Standards but under 250 ppm.⁵ Vinocur shall further be entitled to reimbursement of
8 his associated expense in an amount not to exceed \$5,000 regardless of the stipulated penalty level.
9 Any violation levels at or above 250 ppm shall be subject to the full remedies provided pursuant to
10 this Consent Judgment and at law.

11 **4.4 Reimbursement of Fees and Costs**

12 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 this fee reimbursement issue to be resolved after the material terms of the agreement had been
15 settled. Shortly after the other settlement terms had been finalized, Wild Sales expressed a desire to
16 resolve the fee and cost issue. The Parties then attempted to (and did) reach an accord on the
17 compensation due to Vinocur and his counsel under general contract principles and the private
18 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
19 performed through the mutual execution of this agreement, including the fees and costs incurred as
20 a result of investigating, bringing this matter to Wild Sales' attention, negotiating a settlement in the
21 public interest, and seeking court approval of the same. In addition, the negotiated fee and cost
22 figure expressly includes the anticipated significant amount of time Plaintiff's counsel will incur to
23 monitor various provisions in this agreement over the next two years, with the exception of
24 additional fees that may be incurred pursuant to Wild Sales' election in Section 11.1 and that are set
25 forth in that Section. Wild Sales more specifically agreed, upon the Court's approval and entry of
26 this Consent Judgment, to pay Vinocur's counsel the amount of fees and costs indicated on Exhibit

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28 ⁵Any 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 A. Wild Sales shall, within five business days of the dates specified on Exhibit A, issue a check
2 payable to "Bose McKinney & Evans LLP" in the amount of fees and costs indicated on Exhibit A
3 to be held in trust by Bose McKinney & Evans LLP for The Chanler Group. Bose McKinney &
4 Evans LLP shall provide The Chanler Group with written confirmation within five business days of
5 receipt that the funds have been deposited in a trust account. Within two business days of the date
6 this Consent Judgment is approved by the Court or within two business days of the dates specified
7 on Exhibit A, whichever is later date, Bose McKinney & Evans LLP shall issue a check payable to
8 "The Chanler Group" to the address found in Section 8 below.

9 **4.5 Payment Procedures**

10 **4.5.1 Issuance of Payments.**

11 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
12 4.1, 4.3, and 4.4 shall be delivered to the following payment address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

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

21 For United States Postal Service Delivery:

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

27 For Non-United States Postal Service Delivery:

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

1 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
2 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
3 Section 4.5.1(a) above, as proof of payment to OEHHA.

4 **5. CLAIMS COVERED AND RELEASED**

5 5.1 **Vinocur's Release of Proposition 65 Claims**

6 Vinocur, acting on his own behalf and in the public interest, releases Wild Sales, its parents,
7 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
8 attorneys, and each entity to whom Wild Sales directly or indirectly distributes or sell Products,
9 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
10 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
11 violations of Proposition 65 through the Effective Date based on unwarned exposures to TDCPP in
12 the Products, as set forth in the Notice. Compliance with the terms of this Consent Judgment
13 constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the Products,
14 as set forth in the Notice. The Parties further understand and agree that this Section 5.1 release shall
15 not extend upstream to any entities, other than Wild Sales, that manufactured the Products or any
16 component parts thereof, or any distributors or suppliers who sold the Products or any component
17 parts thereof to Wild Sales, except any entities upstream of Wild Sales that is a Retailer of a Private
18 Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for
19 sale in California, or to California Customers, by the Retailer in 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 and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
27 delineated on Exhibit A) manufactured, imported, distributed, or sold by Wild Sales prior to the
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1 Effective Date.⁶ The Parties further understand and agree that this Section 5.2 release shall not
2 extend upstream to any entities that manufactured the Products or Additional Products, or any
3 component parts thereof, or any distributors or suppliers who sold the Products or Additional
4 Products, or any component parts thereof to Wild Sales, except that entities upstream of Wild Sales
5 that is a Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the
6 Private Labeled Covered (or Additional) Products offered for sale in California by the Retailer in
7 question. Nothing in this Section affects Vinocur's right to commence or prosecute an action under
8 Proposition 65 against a Releasee that does not involve Wild Sales' Products or Additional
9 Products.

10 **5.3 Wild Sales' Release of Vinocur**

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

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
20 after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment,
21 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
22 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
23 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
24 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
25 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its

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27 ⁶ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

1 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by
2 the Court and subsequently overturned by any appellate court, any monies that have been provided
3 to OEHHA, Vinocur or his counsel pursuant to Section 4, above, shall be refunded within 15 days
4 of the appellate decision becoming final. If the Court does not approve and enter the Consent
5 Judgment within one year of the Effective Date, any monies that have been provided to OEHHA or
6 held in trust for Vinocur or his counsel pursuant to Section 4, above, shall be refunded to Wild
7 Sales within 15 days.

8 **7. GOVERNING LAW**

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

18 **8. NOTICES**

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

23 To Wild Sales:

24 At the address shown on Exhibit A

To Vinocur:

25 Proposition 65 Coordinator
26 The Chanler Group
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

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

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

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

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

10 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

11 11.1 In addition to the Products, where Wild Sales has identified on Exhibit A additional
12 products that contain TDCPP and/or TCEP and that are sold or offered for sale by it in California,
13 or to California Customers ("Additional Products"), then by no later than July 2, 2014, Wild Sales
14 may provide Vinocur with additional information or representations necessary to enable them to
15 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &
16 Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam that is
17 supplied, shaped or manufactured for use as a component of a product, such as upholstered
18 furniture, is specifically excluded from the definition of Additional Products and shall not be
19 identified by Wild Sales on Exhibit A as an Additional Product. Except as agreed upon by Vinocur,
20 Wild Sales shall not include a product, as an Additional Product, that is the subject of an existing
21 60-day notice issued by Vinocur or any other private enforcer at the time of execution. After
22 receipt of the required information, Vinocur agrees to issue a supplemental 60-day notice in
23 compliance with all statutory and regulatory requirements for the Additional Products. Vinocur
24 will, and in no event later than November 1, 2014, prepare and file an amendment to this Consent
25 Judgment to incorporate the Additional Products within the defined term "Products" and serve a
26 copy thereof and its supporting papers (including the basis for supplemental stipulated penalties, if
27 any, and an updated fee chart verifying any additional fees and costs) on the Office of the California
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1 Attorney General; upon the Court's approval and finding that the supplemental stipulated penalty
2 amount, if any, is reasonable, the Additional Products shall become subject to Section 5.1 in
3 addition to Section 5.2. Wild Sales shall, at the time it elects to utilize this Section and tenders the
4 additional information or representations regarding the Additional Products to Vinocur, tender to
5 The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated penalties and
6 attorneys' fees and costs incurred by Vinocur in issuing the new notice and engaging in other
7 reasonably related activities, which may be released from the trust as awarded by the Court upon
8 Vinocur's application. Any fee award associated with the modification of the Consent Judgment to
9 include Additional Products shall not offset any associated supplemental penalty award, if any.
10 (Any tendered funds remaining in the trust thereafter shall be refunded to Wild Sales within 15
11 days). Such payment shall be made "In Trust for The Chanler Group" and delivered as per Section
12 4.5.1(a) above.

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

20 **12. MODIFICATION**

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


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13. AUTHORIZATION

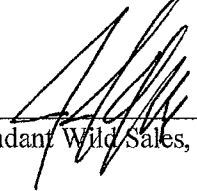
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:



Plaintiff Laurence Vinocur

AGREED TO:



Defendant Wild Sales, LLC

Date: May 26, 2014

Date: May 29 2014

EXHIBIT A

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I. Name of Settling Defendant (Mandatory)

Wild Sales, LLC

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

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 Chairs

IV. Types of Additional Products Wild Sales, LLC Elects to Address (if any):

V. Wild Sales, LLC's Required Settlement Payments

A. Civil Penalties for Wild Sales, LLC: \$53,000, as follows:

\$15,000 initial payment due within two business days of the Court's approval of the Consent Judgment;

\$24,000 second payment due on or before August 17, 2014, of which \$15,000 may be waived pursuant to Section 4.1.4(i) and \$9,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before February 27, 2015, of which \$9,000 may be waived pursuant to Section 4.1.4(ii) and \$5,000 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. Total amount in Fees and Costs for Wild Sales, LLC: \$35,000.

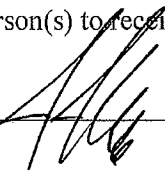
3 Payment Schedule for Fees and Costs owed:

4 1. June 2, 2014: \$12,000

5 2. July 2, 2014: \$12,000

6 3. August 2, 2014: \$11,000

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

8 Name  Name

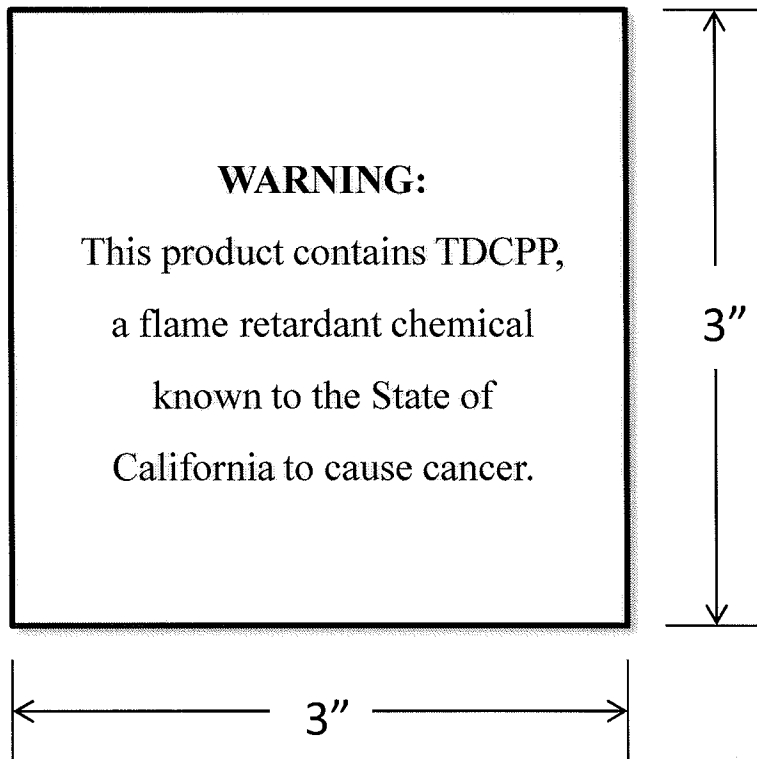
9 Jack Queally Scott Tarter

10 Title Title
11 President Partner

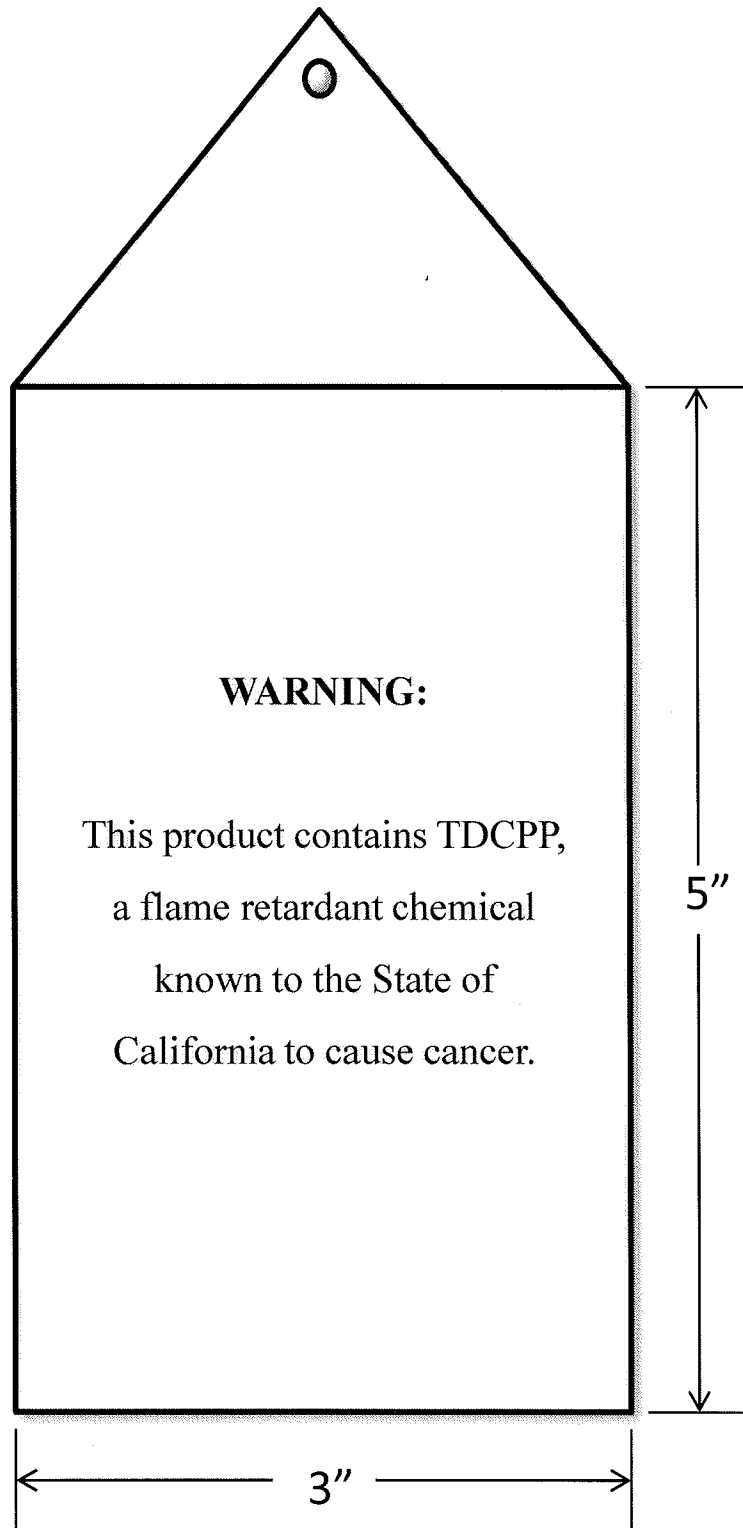
12 Address Address
13 Wild Sports Bose McKinney & Evans LLP
14 17401 Tiller Ct., Suite A 111 Monument Circle, Suite 2700
Westfield, IN 46074 Indianapolis, IN 46204

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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

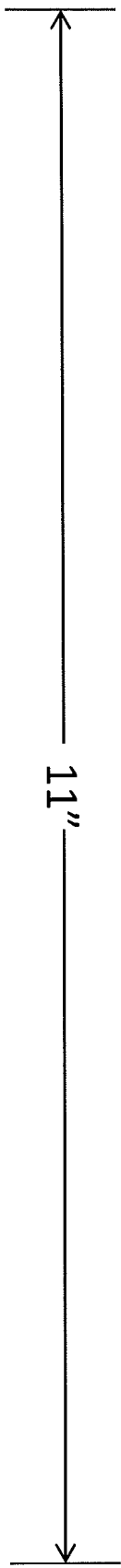


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains 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.