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

12 LAURENCE VINOCUR  
13 Plaintiff,

14 v.

15 The Boppy Company, LLC; et al.,  
16 Defendants.

Case No. RG 13698459

**[PROPOSED] CONSENT JUDGMENT AS  
TO THE BOPPY COMPANY, LLC,**

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1. Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur  
4 (“Vinocur” or “Plaintiff”) and The Boppy Company, LLC. (“Boppy” or “Defendant”), with  
5 Plaintiff and Boppy 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 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 section 25249.6, *et seq.* (“Proposition 65”).

14 **1.4. General Allegations**

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

19 **1.5. Notice of Violation**

20 On April 11, 2013, Plaintiff served Boppy, Toys “R” Us, Inc. (“Toys “R” Us”), and certain  
21 requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided  
22 recipients with notice of alleged violations of Proposition 65 based on Boppy’s and Toys “R” Us’s  
23 alleged failure to warn their customers and consumers that their pregnancy pillows and cushions  
24 made with foam padding (“Foam Pregnancy Cushions”) expose users in California to TDCPP. To  
25 the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting  
26 the allegations set forth in the Notice.

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1           **1.6. Product Description**

2           This Consent Judgment covers all Boppy foam pregnancy cushions (hereinafter “Product”)  
3 including, but not limited to *The Original Boppy Pregnancy Wedge – Sea Spray*, #5200100C (#7  
4 69662 52100 0) manufactured on or before August 31, 2012.

5           **1.7. Complaint**

6           On October 8, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County  
7 of Alameda against Boppy, Toys “R” Us, and Does 1 through 150, *Laurence Vinocur v. The Boppy*  
8 *Co., LLC, et al.*, Case No. RG 13698459, alleging violations of Proposition 65, based in part on the  
9 alleged unwarned exposures to TDCPP contained in the Product.

10           **1.8. No Admission**

11           Boppy denies the material factual and legal allegations contained in Vinocur’s Notice and  
12 Complaint and maintains that all products that it has manufactured, imported, distributed, and/or  
13 sold in California, including the Product, have been and are in compliance with all laws. Nothing in  
14 this Consent Judgment shall be construed as an admission by Boppy of any fact, finding,  
15 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
16 constitute or be construed as an admission by Boppy of any fact, finding, conclusion, issue of law,  
17 or violation of law. However, this section shall not diminish or otherwise affect Boppy’s  
18 obligations, responsibilities, and duties under this Consent Judgment.

19           **1.9. Consent to Jurisdiction**

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

24           **2. DEFINITIONS**

25           **2.1. Detectable**

26           “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent  
27 of .0025%) each of TDCPP, tris(2-chloroethyl) phosphate (“TCEP”), and/or tris(2,3-

1 dibromopropyl)phosphate (“TDBPP”) in any material, component, or constituent of a subject  
2 product, when analyzed pursuant to EPA testing methodologies 3545 and 8270C, or equivalent  
3 methodologies utilized by federal or state agencies to determine the presence, and measure the  
4 quantity, of TDCPP, TCEP, and TDBPP in a solid substance, by a laboratory accredited by the  
5 State of California, Consumer Products Safety Commission, Federal Drug Administration, and/or  
6 National Voluntary Laboratory Accreditation Program (“NVLAP”).

7 **2.2. Effective Date**

8 “Effective Date” shall mean January 1, 2014.

9 **2.3. Entry Date**

10 “Entry Date” is the date upon which the Court approves and enters this Consent Judgment.

11 **2.4. Listed Chemicals**

12 TDCPP, TDBPP, and TCEP collectively shall hereinafter be referred to as the “Listed  
13 Chemicals.”

14 **2.5. Reformulated Products**

15 “Reformulated Products” shall mean any product that contains no Detectable amount each  
16 of TDCPP, TDBPP, or TCEP.

17 **2.6. Reformulation Standard**

18 The “Reformulation Standard” shall mean containing no Detectable amount each of  
19 TDCPP, TDBPP, or TCEP.

20 **3. INJUNCTIVE RELIEF: REFORMULATION**

21 **3.1. Reformulation Commitment**

22 Commencing on December 24, 2013, Settling Defendant shall not manufacture or import for  
23 distribution or sale in the United States, or cause to be manufactured or imported for distribution or  
24 sale in the United States, any Product unless it is a Reformulated Product.

25 **3.2. Vendor Notification/Certification**

26 On or before January 17, 2014, Boppy shall provide written notice to all of its then-current  
27 vendors of Foam Pregnancy Cushions, instructing each such vendor to use reasonable efforts to

1 provide only Reformulated Products. In addressing the obligation set forth in this Section, Boppy  
2 shall not employ statements that will encourage a vendor to delay compliance with the  
3 Reformulation Standard. Boppy shall subsequently obtain written certifications, no later than April  
4 1, 2014, from such vendors, and any vendors engaged subsequent to the Effective Date and before  
5 April 1, 2014, that the Foam Pregnancy Cushions manufactured by such vendors are in compliance  
6 with the Reformulation Standard. Certifications shall be held by Boppy for at least two years after  
7 their receipt and shall be made available to Vinocur upon request.

8 **4. MONETARY PAYMENTS**

9 In settlement of all the claims referred to in this Consent Judgment, Boppy shall pay civil  
10 penalties and the fees and costs incurred by Vinocur in bringing and prosecuting this action. Each  
11 payment shall be made within fourteen business days of the date it is due and be delivered to the  
12 addresses listed in Section 4.5 below. Boppy shall be liable for payment of interest, at a rate of  
13 10% simple interest, for all amounts due and owing under Section 4 that are not received within  
14 fourteen business days of the due date.

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

16 Boppy shall make a civil penalty payment in the amount of \$8,000. The portion of the civil  
17 penalty due to Vinocur shall be delivered within fourteen days of the Effective Date; the portion  
18 due to OAHHA shall be delivered within fourteen days of the Entry Date.

19 The civil penalty payment will be allocated in accordance with California Health & Safety  
20 Code section 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of  
21 Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty  
22 remitted to “The Chanler Group in Trust for Vinocur.”

23 **4.2. Representation**

24 Boppy represents that the sales data and other information concerning its size, knowledge of  
25 Listed Chemicals, and prior reformulation efforts that it provided to Vinocur was truthful to its  
26 knowledge and a material factor upon which Vinocur has relied to determine the amount of civil  
27 penalties assessed pursuant to Health & Safety Code section 25249.7 in this Consent Judgment. If,  
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1 within one year of the Effective Date, Vinocur discovers and presents to Boppy, evidence  
2 demonstrating that the preceding representation and warranty was materially inaccurate, then  
3 Boppy shall have thirty days to meet and confer regarding Vinocur's contention. Should this thirty  
4 day period pass without any such resolution between Vinocur and Boppy, Vinocur shall be entitled  
5 to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

6 **4.3. Stipulated Penalties for Certain Violations of the Reformulation Standard**

7 If Vinocur provides notice and appropriate supporting information to Boppy that the  
8 Reformulation Standard has been exceeded in any Product manufactured after December 24, 2013,  
9 then Boppy may elect to pay a stipulated penalty to relieve any further potential liability under  
10 Proposition 65 or sanction under this Consent Judgment as to the Product or Foam Pregnancy  
11 Cushions sourced from the vendor in question and identified by Vinocur as failing to meet the  
12 Reformulation Standard ("Unreformulated Product"). Boppy shall have fourteen calendar days to  
13 respond to any notice issued by Vinocur pursuant to this Section. The stipulated penalty shall be  
14 \$1,500 if the concentration of any one or more of the Listed Chemicals is Detectable but less than  
15 100 ppm each, and \$3,000 if the concentration of any one or more of the Listed Chemicals is  
16 between 100 ppm and 249 ppm each.

17 In order to elect payment of stipulated penalties in lieu of defending an enforcement action  
18 by Vinocur, Boppy must provide notice and appropriate supporting information relating to its  
19 purchase of the Unreformulated Product, including but not limited to, the following, as available:  
20 vendor name and contact information including the name of an appropriate representative of the  
21 vendor, purchase order, certification (if any) received from the vendor covering the Unreformulated  
22 Product, and test results. Boppy shall also provide to Vinocur, within thirty calendar days of the  
23 date of election to pay a stipulated penalty, certification from counsel for or an officer or director of  
24 Boppy attesting to the information provided.

25 Vinocur shall be entitled to reimbursement of his expense associated with Boppy's election  
26 pursuant to this Section in an amount not to exceed \$6,000 regardless of the stipulated penalty level.

1 Vinocur shall provide appropriate documentation for any associated expenses for which it seeks  
2 reimbursement pursuant to this Section.

3 This Section shall not be applicable where the vendor in question had previously been found  
4 by Boppy to provide unreliable certifications as to meeting the Reformulation Standard in its  
5 products. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by Boppy's  
6 vendor at a level between 100 and 249 ppm shall not be available after March 15, 2014. Stipulated  
7 penalties shall not be available for Unreformulated Products containing any one or more of the  
8 Listed Chemicals in excess of 249 ppm.

9 Nothing in this section shall be construed as a waiver of any rights or defenses of Boppy in  
10 the event that Boppy declines to elect to pay a stipulated penalty and an enforcement action or other  
11 is instituted. Boppy reserves all rights with respect thereto.

12 **4.4. Reimbursement of Fees and Costs**

13 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute  
14 without reaching terms on the amount of fees and costs to be reimbursed to Vinocur, thereby  
15 leaving this fee reimbursement issue to be resolved after the material terms of the agreement had  
16 been settled. Shortly after the other settlement terms had been finalized, Boppy expressed a desire  
17 to resolve the fee and cost issue. Boppy then agreed to pay Vinocur and his counsel under general  
18 contract principles and the private attorney general doctrine codified at California Code of Civil  
19 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,  
20 including the fees and costs incurred as a result of investigating, bringing this matter to Boppy's  
21 attention, negotiating a settlement in the public interest, and seeking court approval of the same.  
22 Boppy agreed, upon the Court's approval and entry of this Consent Judgment, to pay Vinocur's  
23 counsel the amount of fees and costs in the amount of \$40,000. Boppy further agreed to tender, and  
24 shall tender, its full required payment under this Section to a trust account at The Chanler Group  
25 (checks made payable "In Trust for The Chanler Group") within fourteen business days of the  
26 Effective Date. Such funds shall be released from the trust account on or after the Entry Date.

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1           **4.5. Payment Procedures**

2                   **4.5.1. Issuance of Payments**

3                           (a) All payments owed to Vinocur and his counsel shall be delivered to  
4 the following payment address:

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

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

13   For United States Postal Service Delivery:

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

19   For Non-United States Postal Service Delivery:

20   Mike Gyurics  
21   Fiscal Operations Branch Chief  
22   Office of Environmental Health Hazard Assessment  
23   1001 I Street  
24   Sacramento, CA 95814

25                   **4.5.2. Proof of Payment to OEHHA**

26                           A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to  
27 The Chanler Group at the address set forth in Section 4.6.1(a) above, as proof of payment to  
28 OEHHA.

29                   **4.5.3. Tax Documentation**

30                           Bopp shall issue a separate 1099 form for each payment required by this Section to: (a)  
31 Laurence Vinocur, whose address and tax identification number shall be furnished upon request  
32 after this Consent Judgment has been fully executed by the Parties; (b) OEHHA, who shall be  
33 identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486)

1 in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and  
2 (c) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 4.6.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1. Plaintiff’s Release of Proposition 65 Claims**

5 Vinocur, acting on his own behalf and in the public interest, releases Boppy, its parents,  
6 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,  
7 attorneys, and each entity to whom Boppy directly or indirectly distributes or sells Product  
8 including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees,  
9 cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of  
10 Proposition 65 through the Effective Date based on unwarned exposures to TDCPP in the Product.  
11 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
12 with respect to exposures to TDCPP from the Product. The Parties further understand and agree  
13 that this Section 5.1 release shall not extend upstream to any entities that manufactured the Product  
14 or any component parts thereof, or any distributors or suppliers who sold the Product or any  
15 component parts thereof to Boppy.

16 **5.2. Plaintiff’s Individual Releases of Claims**

17 Vinocur, in his individual capacity only and *not* in his representative capacity, provides a  
18 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
19 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,  
20 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,  
21 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed  
22 Chemicals in the Product manufactured, imported, distributed, or sold by Boppy prior to the  
23 Effective Date. The Parties further understand and agree that this Section 5.2 release shall not  
24 extend upstream to any entities that manufactured the Products, or any component parts thereof, or  
25 any distributors or suppliers who sold the Product, or any component parts thereof to Boppy.  
26 Nothing in this Section 5 affects Plaintiff’s rights to commence or prosecute an action under  
27 Proposition 65 against a Releasee that does not involve Boppy’s Product.



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 Product and/or the Foam Pregnancy Cushions,  
3 then Boppy may provide written notice to Vinocur of any asserted change in the law, and shall have  
4 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
5 Product and/or Foam Pregnancy Cushions are so affected. Nothing in this Consent Judgment shall  
6 be interpreted to relieve Boppy from any obligation to comply with any pertinent state or federal  
7 law or regulation.

8 **8. NOTICES**

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

13 To Boppy:	To Plaintiff:
14 The Boppy Company, LLC	Proposition 65 Coordinator
15 c/o Nancy Bartley	The Chanler Group
16 560 Golden Ridge Road, Suite 150	2560 Ninth Street
Golden, CO 80401	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

18 with a copy to:  
19 Collie F. James, Esq.  
20 Morgan Lewis & Bockius LLP  
21 5 Park Plaza, suite 1750  
Irvine, CA 92614

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

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

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

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. POST EXECUTION ACTIVITIES**

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

12 **12. MODIFICATION**

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

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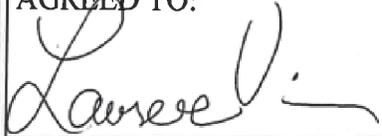
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1 **13. AUTHORIZATION**

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

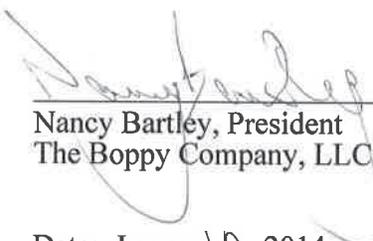
6 AGREED TO:

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8 \_\_\_\_\_

9 Plaintiff Laurence Vinocur

10 Date: January 14, 2014

AGREED TO:

  
\_\_\_\_\_

Nancy Bartley, President  
The Boppy Company, LLC

Date: January 10, 2014