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10 Attorneys for Plaintiff
11 LAURENCE VINOUCUR

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

14 LAURENCE VINOUCUR,) Case No. RG 13-690294
15 Plaintiff,)
16 v.) Assigned for All Purposes to
17 BUSH INDUSTRIES, INC.; et al.) Judge George C. Hernandez, Jr.,
18 Defendants.) Department 17
19) **[PROPOSED] CONSENT JUDGMENT AS**
20) **TO BUSH INDUSTRIES, INC.**
21) **(Health & Safety Code § 25249.6 et seq.)**
22)
23)
24)
25)
26)
27)
28) Complaint Filed: August 2, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and Bush Industries, Inc. (“Bush”), with Vinocur and Bush collectively referred to as
5 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 Bush Industries, Inc.**

11 Bush 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 Bush manufactured, imported, sold and/or distributed
16 for sale in California products with foam cushioned components containing tris(1,3-dichloro-2-
17 propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard warnings.
18 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 Bush 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
27 not itself a finished product, is specifically excluded from the definition of Products and shall not be
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1 identified by Bush on Exhibit A as a Product. The definition of “Products” as used in this Consent
2 Judgment is limited to Products which are offered for sale in or distributed in California and
3 excludes Products that a California Customer offers for sale or distributes outside of California,
4 including internet sales to customers located outside of California. “Exemplar Product” shall mean
5 the *Kathy Ireland Office by Bush Furniture Straight Back Chair with Cushion Seat (KICH30201-*
6 *03)*.

7 **1.6 Notice of Violation**

8 On or about May 17, 2013, Vinocur issued to Bush and certain requisite public enforcement
9 agencies a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of
10 alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and
11 workers in California that the Products expose users to TDCPP. To the best of the Parties’
12 knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth
13 in the Notice.

14 **1.7 Complaint**

15 On August 2, 2013, Vinocur filed a Complaint in the Superior Court in and for the County
16 of Alameda against Bush, other defendants and Does 1 through 150, *Laurence Vinocur v. Bush*
17 *Industries Inc., et al.*, Case No. RG 13-690294 (“Complaint”), alleging violations of Proposition 65,
18 based in part on the alleged unwarned exposures to the TDCPP contained in the Products.

19 **1.8 No Admission**

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

1 **1.9 Consent to Jurisdiction**

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

7 **2. DEFINITIONS**

8 **2.1 California Customers**

9 “California Customer” shall mean any customer of Bush’s that Bush reasonably understands
10 is located in California, has a California warehouse or distribution center, maintains a retail outlet in
11 California, or has made internet sales into California on or after January 1, 2011.

12 **2.2 Detectable**

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

19 **2.3 Effective Date**

20 “Effective Date” shall mean the date that this Consent Judgment is executed by the Parties.

21 **2.4 Private Label Products**

22 “Private Label Products” means Products manufactured or purchased by Bush that bear a
23 brand or trademark owned or licensed by a Retailer or affiliated entity that are sold or offered for
24 sale by a Retailer in the State of California.

25 **2.5 Reformulated Products**

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

1 **2.6 Reformulation Standard**

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

4 **2.7 Retailer**

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

7 **3. INJUNCTIVE RELIEF: REFORMULATION**

8 **3.1 Reformulation Commitment**

9 Commencing on October 30, 2014, Bush shall not manufacture or purchase for distribution
10 or sale to California Customers, or cause to be manufactured or purchased for distribution or sale to
11 California Customers, any Products that are not Reformulated Products.

12 **3.2 Vendor Notification/Certification**

13 On or before September 30, 2014, Bush shall provide written notice to all of its then-current
14 vendors of the Products that will be sold or offered for sale in California or distributed in California,
15 instructing each such vendor to use reasonable efforts to provide only Reformulated Products for
16 potential sale in California. In addressing the obligation set forth in the preceding sentence, Bush
17 shall not employ statements that will encourage a vendor to delay compliance with the
18 Reformulation Standard. Bush shall subsequently seek written certifications, no later than October
19 30, 2014, from such vendors, and any newly engaged vendors, that the Products manufactured by
20 such vendors for sale or distribution in California are in compliance with the Reformulation
21 Standard. Certifications shall be held by Bush for at least two years after their receipt and shall be
22 made available to Vinocur upon request.

23 **3.3 Products No Longer in Bush’s Control**

24 No later than September 30, 2014, Bush shall send a letter, electronic or otherwise
25 (“Notification Letter”) to any California Customer and/or Retailer that Bush reasonably understands
26 or believes has any inventory for resale in California of the Exemplar Product as of the Effective
27 Date. The Notification Letter shall advise the recipient that the Exemplar Product contains TDCPP,
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1 a chemical known to the State of California to cause cancer and request that the recipient: (1)
2 confirm whether it has any units of the Exemplar Product in inventory; (2) if it has such units of the
3 Exemplar Product in inventory for sale in or distribution to California to label the Exemplar Product
4 pursuant to Section 3.5 or return, at Bush's sole expense, all units of the Exemplar Product to Bush
5 or a party Bush has otherwise designated; and (3) provide Bush with notification of the action
6 taken. Bush shall maintain records of all correspondence or other communications generated
7 pursuant to this Section for two years after the Effective Date and shall promptly produce copies of
8 such records upon Vinocur's written request.

9 **3.4 Current Inventory**

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

14 **3.5 Product Warnings**

15 **3.5.1 Product Labeling**

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

22 A warning provided pursuant to this Consent Judgment shall state:
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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 examples of template warnings developed by Vinocur and any one of them is 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, Bush remains free not to utilize the template warnings.

3.5.2 Internet Website Warning

A warning shall be given in conjunction with the sale into California of Products that do not comply with the Reformulation Standard via the Bush website, which warning shall appear on one or more web pages displayed to a purchaser either before or 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; or (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 of California to cause cancer.³

¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Bush had begun to use it, prior to the Effective Date. If Bush 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, Bush 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 hang tag measuring approximately 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; or (b) a warning sign measuring approximately 8.5” x 11”, with no less than 32 point font, with the warning language printed on each side, which shall be affixed directly to the Product; or (c) for Products sold in a box or packaging, a warning sticker measuring approximately 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 Bush under Section 3.3 shall be relieved provided Bush certifies on or
3 before September 30, 2014 that only Exemplar Products meeting the Reformulation Standard will
4 be offered for sale or distribution in California, after September 30, 2014. The obligations of Bush
5 under Section 3.4 shall be relieved provided Bush certifies by September 30, 2014 that on or before
6 September 30, 2014, and continuing thereafter, Bush will only distribute or cause to be distributed
7 for sale Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard.
8 The certifications provided by this Section are material terms and time is of the essence.

9 **4. MONETARY PAYMENTS**

10 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

11 In settlement of all the claims referred to in this Consent Judgment, Bush shall pay the civil
12 penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment will be
13 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75%
14 of the funds remitted to the California Office of Environmental Health Hazard Assessment
15 (“OEHHA”), 25% of the penalty remitted to Laurence Vinocur. Each penalty payment shall be
16 made within four (4) business days of the date it is due and be delivered to the addresses listed in
17 Section 4.5 below. Bush shall be liable for payment of interest, at a rate of 10% per annum simple
18 interest, for all amounts due and owing under this Section that are not received within four (4)
19 business days of the due date.

20 4.1.1 Initial Civil Penalty. Within ten (10) business days of the mutual execution
21 of this Consent Judgment, Bush shall issue a check for its initial civil penalty payment in the
22 amount identified on Exhibit A to “Steptoe & Johnson LLP.” Steptoe & Johnson LLP shall provide
23 The Chanler Group with written confirmation within five (5) business days of receipt that the funds
24 have been deposited in a trust account. Within five (5) business days of the date that this Consent
25 Judgment is approved by the Court, Steptoe & Johnson LLP shall issue two separate checks for the
26 initial civil penalty payment to “OEHHA” and “The Chanler Group in Trust for Laurence Vinocur.”
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1 4.1.2 Second Civil Penalty. On or before November 14, 2014, Bush shall make a
2 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
3 penalty may be reduced according to any penalty waiver Bush is eligible for under Sections 4.1.4(i)
4 and 4.1.4(iii), below.

5 4.1.3 Third Civil Penalty. On or before December 31, 2014, Bush shall make a
6 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
7 may be reduced according to any penalty waiver Bush is eligible for under Sections 4.1.4(ii) and
8 4.1.4(iv), below.

9 4.1.4 Reductions to Civil Penalty Payment Amounts. Bush may reduce the amount
10 of the second and/or third civil penalty payments identified on Exhibit A by providing Vinocur with
11 certification of certain efforts undertaken to reformulate their Products or limit the ongoing sale of
12 non-reformulated Products. The options to provide a written certification in lieu of making a
13 portion of a civil penalty payment constitute material terms of this Consent Judgment, and with
14 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 As shown on Exhibit A, a portion of the second civil penalty shall be waived, to the extent
18 that Bush has agreed that, as of September 30, 2014, and continuing into the future, it shall only
19 manufacture or purchase for distribution or sale in California Products that are Reformulated
20 Products. An officer or other authorized representative of Bush shall provide Vinocur with a
21 written certification confirming compliance with such conditions, which certification must be
22 received by Vinocur's counsel on or before October 10, 2014.

23 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation**

24 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
25 Bush has agreed that, as of October 30, 2014, and continuing into the future, it shall only
26 manufacture or purchase for distribution or sale in California or cause to be manufactured or
27 purchased for distribution or sale in California, Products which are Reformulated Products that also
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1 do not contain tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than
2 25 parts per million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent
3 of a subject product, when analyzed by an accredited laboratory pursuant to EPA testing
4 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
5 determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or
6 other authorized representative of Bush shall provide Vinocur with a written certification
7 confirming compliance with such conditions, which certification must be received by Vinocur’s
8 counsel on or before December 31, 2014.

9 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
10 **Exemplar Products from the California Market.**

11 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
12 other authorized representative of Bush provides Vinocur with written certification, by October 30,
13 2014, confirming that Bush reasonably believes that there is no inventory for resale in California of
14 the Exemplar Product.

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

17 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
18 other authorized representative of Bush provides Vinocur with written certification, on or before
19 December 31, 2014, confirming that, as of September 30, 2014, Bush has and will continue to offer
20 for sale, or sell in California, or offer to California Customers for sale in or distribution in
21 California only Products that are Reformulated Products.

22 **4.2 Representations**

23 Bush represents that the sales data and other information concerning its size, financial
24 status, knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Vinocur
25 was truthful to its knowledge and a material factor upon which Vinocur has relied to determine the
26 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
27 Judgment. If, within nine months of the Effective Date, Vinocur discovers and presents to Bush,
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1 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
2 then Bush shall have thirty (30) days to meet and confer regarding Vinocur's contention. Should
3 this 30 day period pass without any such resolution between the Parties, Vinocur shall be entitled to
4 file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

5 Bush further represents that in implementing the requirements set forth in Section 3.1 and
6 3.2 of this Consent Judgment, it will voluntarily not employ statements that will encourage a vendor
7 to limit its compliance with the Reformulation Standards to goods intended for sale in or
8 distribution to California.

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

10 If Vinocur provides notice and appropriate supporting information to Bush that levels of
11 TDCPP and/or TCEP in excess of the Reformulation Standard have been detected in one or more
12 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a
13 deadline for meeting the Reformulation Standard has arisen for Bush under Sections 3.1 or 3.6
14 above (Non-Compliant Product), then Vinocur shall notify Bush in writing of the alleged violation
15 of the Reformulation Standard, together with all laboratory test results demonstrating the alleged
16 violation. Within thirty (30) days following its receipt of such notice, Bush shall (a) provide
17 Vinocur with the name, address and telephone number of the vendor/supplier of the allegedly Non-
18 Compliant Product; and (b) product specifications or other documentation confirming that Bush
19 took reasonable steps to prevent the alleged violation. Bush shall also advise the vendor/supplier of
20 the alleged violation, and shall require that the Reformulation Standard be achieved. Upon
21 confirmation (such as by additional testing, or a determination by the Court in the event of any
22 dispute) of any alleged violation, Bush shall also take action to ensure that any Non-Compliant
23 Products are not offered for sale, or sold, in California.

24 Bush may elect to exercise the foregoing procedures once for any one supplier or two times
25 altogether, and Vinocur agrees in those instances to forego enforcement for any alleged breach of
26 the injunctive relief agreed to in this Consent Judgment. Upon any other or subsequent violation of
27 the terms of this Consent Judgment, Vinocur may pursue all remedies available at law.

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

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

24 4.5.3 Tax Documentation. Bush or its counsel shall issue a separate 1099 form for
25 each payment required by this Section to: (a) Laurence Vinocur, whose address and tax
26 identification number shall be furnished after this Consent Judgment has been fully executed by the
27 Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard
28 Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set
forth in Section 4.5.1(a) above. Laurence Vinocur and The Chanler Group shall provide Bush’s
counsel with a copy of a current W-9 form within twelve (12) business days after this Consent
Judgment has been fully executed by the Parties.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Vinocur’s Release of Proposition 65 Claims**

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

15 **5.2 Vinocur’s Individual Releases of Claims**

16 Vinocur, in his individual capacity only and *not* in his representative capacity, provides a
17 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
18 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
19 liabilities, and demands of Vinocur of any nature, character, or kind, whether known or unknown,
20 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP and
21 TCEP in the Products or Additional Products (as defined in Section 11.1 and delineated on Exhibit
22 A) manufactured, purchased, distributed, or sold by Bush prior to the Effective Date.⁴ The Parties
23 further understand and agree that this Section 5.2 release shall not extend upstream to any entities
24 that manufactured the Products or Additional Products, or any component parts thereof, or any
25 distributors or suppliers who sold the Products or Additional Products, or any component parts

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27 ⁴ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

1 thereof to Bush. Nothing in this Section affects Vinocur’s right to commence or prosecute an
2 action under Proposition 65 against a Releasee that does not involve Bush’s Products or Additional
3 Products.

4 **5.3 Bush’s Release of Vinocur**

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

11 **6. COURT APPROVAL**

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

1 **7. GOVERNING LAW**

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

11 **8. NOTICES**

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

16 To Bush:

17 At the address shown on Exhibit A

To Vinocur:

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

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

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

24 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
25 each of which shall be deemed an original, and all of which, when taken together, shall constitute
26 one and the same document. A facsimile or pdf signature shall be as valid as the original.
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1 Vinocur's application. Any fee award associated with the modification of the Consent Judgment to
2 include Additional Product shall not offset any associate supplemental penalty award, if any. (Any
3 tendered funds remaining in the trust thereafter shall be refunded to Bush within fifteen (15) days).
4 Such payment shall be made "In Trust for The Chanler Group" and delivered as per Section 4.5.1(a)
5 above.

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

13 **12. MODIFICATION**


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

17 **13. AUTHORIZATION**

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

21 AGREED TO:

AGREED TO:

22 
23 _____

24 Laurence Vinocur

Bush Industries, Inc.

25 September 25, 2014

26 September ____, 2014

1 Vinocur's application. Any fee award associated with the modification of the Consent Judgment to
2 include Additional Product shall not offset any associate supplemental penalty award, if any. (Any
3 tendered funds remaining in the trust thereafter shall be refunded to Bush within fifteen (15) days).
4 Such payment shall be made "In Trust for The Chanler Group" and delivered as per Section 4.5.1(a)
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8 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
9 motion is required to obtain judicial approval of this Consent Judgment, which Vinocur shall draft
10 and file. If any third party objection to the noticed motion is filed, Vinocur and Bush shall work
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15 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
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17 **13. AUTHORIZATION**

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

21 AGREED TO:

AGREED TO:

22
23 _____
24 Laurence Vinocur

22
23 
24 _____
Bush Industries, Inc.

25
26 September __, 2014

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26 September 24, 2014

EXHIBIT A

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I. Name of Settling Defendant (Mandatory)

Bush Industries, Inc.

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

Hayneedle, Inc.

III. Types of covered Products Applicable to Bush Industries, Inc.

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

____ Upholstered furniture

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

____ Car seats, strollers

X Other (specify): Upholstered chairs with foam padding distributed to or sold in California excluding Private Label Products

IV. Types of Additional Products Bush Industries, Inc. Elects to Address (if any):

V. Bush Industries, Inc.'s Required Settlement Payments

A. Civil Penalties for Bush Industries, Inc.: \$45,000, as follows:

\$10,000 initial payment due within ten (10) business days of the Court's approval of the Consent Judgment;

\$20,000 second payment due on or before November 14, 2014, of which \$14,500 may be waived pursuant to Section 4.1.4(i) and \$5,500 may be waived pursuant to Section 4.1.4(iii); and

\$15,000 third payment due on or before December 31, 2014, of which \$9,500 may be waived pursuant to Section 4.1.4(ii) and \$5,500 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 Bush Industries, Inc.: \$35,000.

3 VII. Person(s) to receive notices pursuant to Section 8:

4

5 Jim Garde, CEO
6 Bush Industries, Inc.
7 1 Mason Drive
8 Jamestown, NY 14702

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8 Jason Levin, Esq.
9 Steptoe & Johnson LLP
10 633 West 5th Street
11 Suite 700
12 Los Angeles, CA 90071

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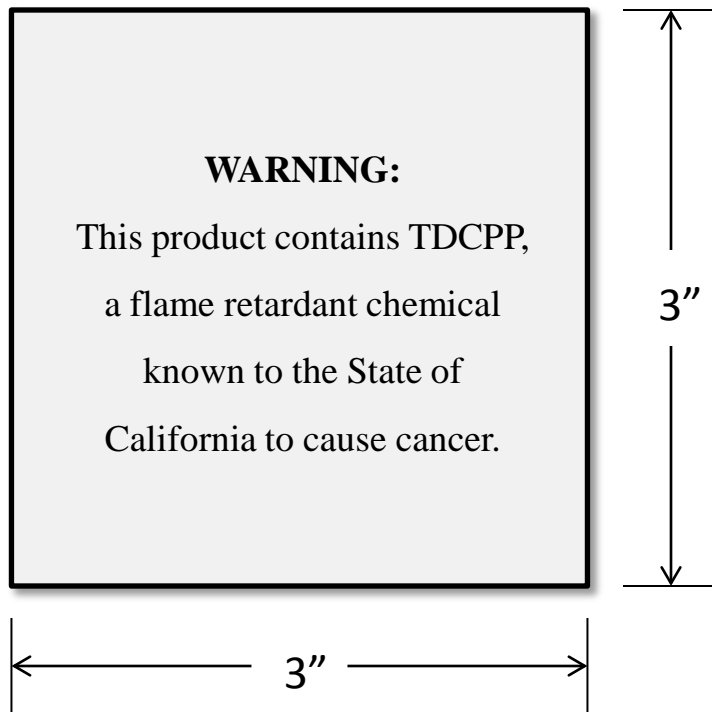
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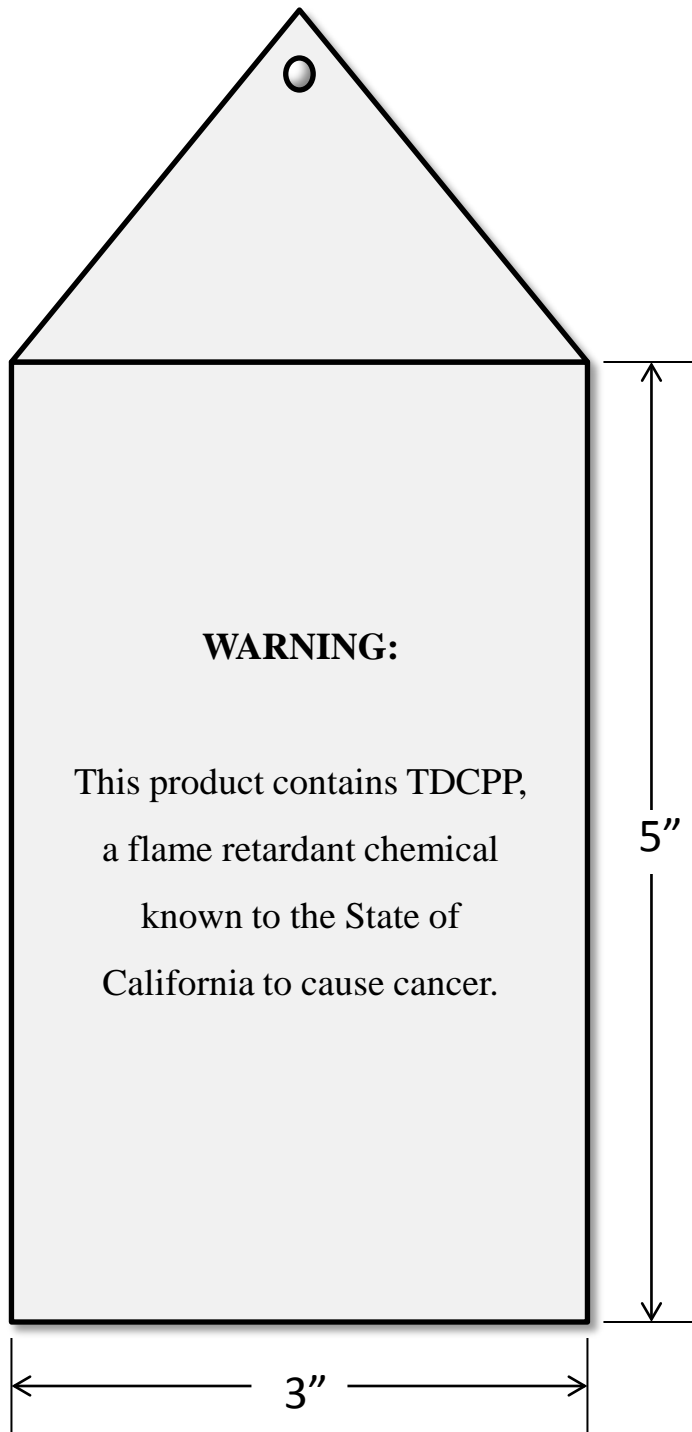
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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

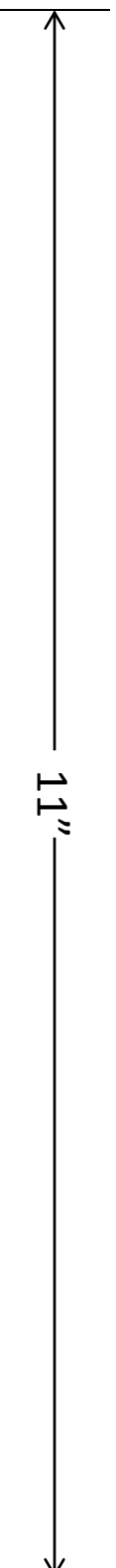


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

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.