

1 Clifford A. Chanler, State Bar No. 135534
2 Christopher M. Martin, State Bar No. 186021
3 Stephen E. Cohen, State Bar No. 284416
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710
8 Telephone:(510) 848-8880
9 Facsimile: (510) 848-8118

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,

15 Plaintiff,

16 v.

17 FOURSTAR GROUP USA INC.; et al.

18 Defendants.

) Case No. RG14712013

)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17

) [PROPOSED] CONSENT JUDGMENT AS
) TO FOURSTAR GROUP USA INC.

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

) Complaint Filed: January 30, 2014

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 ("Vinocur") and Fourstar Group USA Inc. ("Fourstar"), with Vinocur and Fourstar collectively
5 referred 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 Fourstar Group USA Inc.**

11 Fourstar 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 Fourstar 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") and tris(2-chloroethyl) phosphate ("TCEP") without the requisite
18 Proposition 65 health hazard warnings. Vinocur alleges that TDCPP and TCEP escape from foam
19 padding, leading to human exposures.

20 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed
21 TCEP as a chemical known to cause cancer. TCEP became subject to the "clear and reasonable
22 warning" requirements of Proposition 65 one year later on April 1, 1993. Cal. Code Regs., tit. 27, §
23 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

24 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
25 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the "clear and
26 reasonable warning" requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
27 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

1 TDCPP and TCEP shall hereinafter be collectively referred to as the "Listed Chemicals."

2 **1.5 Product Description**

3 The categories of products that are covered by this Consent Judgment are identified on
4 Exhibit A (hereinafter "Products"). Polyurethane foam that is supplied, shaped or manufactured for
5 use as a component of another product, such as upholstered furniture, but which is not itself a
6 finished product, is specifically excluded from the definition of Products and shall not be identified
7 on Exhibit A as a Product. The "Exemplar Product" is the product identified in Vinocur's July 5,
8 2013 60-Day Notice of Violation, the *Interiors by Design Mesh Back Desk Chair, Style No.*
9 *11225134A, SKU 0626129 V-80842 (#0 32251 04725 1)*.

10 **1.6 Notice of Violation**

11 On or about July 5, 2013, Vinocur issued to Fourstar and certain requisite public
12 enforcement agencies a "60-Day Notice of Violation" ("Notice") that provided the recipients with
13 notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
14 consumers in California that the Products expose users to Listed Chemicals. To the best of the
15 Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations
16 set forth in the Notice.

17 **1.7 Complaint**

18 On January 30, 2014, Vinocur filed a Complaint in the Superior Court in and for the County
19 of Alameda against Fourstar, other defendants and Does 1 through 150, *Laurence Vinocur v.*
20 *Fourstar Group USA Inc., et al.*, Case No. RG14712013 ("Complaint"), alleging violations of
21 Proposition 65, based in part on the alleged unwarned exposures to the Listed Chemicals contained
22 in the Products.

23 **1.8 No Admission**

24 Fourstar denies the material factual and legal allegations contained in Vinocur's Notice and
25 Complaint and maintains that all products that it has manufactured, imported, distributed, and/or
26 sold in California, including the Products, have been and are in compliance with all laws. Nothing
27 in this Consent Judgment shall be construed as an admission by Fourstar of any fact, finding,
28

1 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
2 constitute or be construed as an admission by Fourstar of any fact, finding, conclusion, issue of law,
3 or violation of law. However, this section shall not diminish or otherwise affect Fourstar's
4 obligations, responsibilities, and duties under this Consent Judgment.

5 **1.9 Consent to Jurisdiction**

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

11 **2. DEFINITIONS**

12 **2.1 California Customers**

13 "California Customer" shall mean any customer (except for individuals who purchased
14 Products for their own use) that Fourstar reasonably understands is located in California, has a
15 California warehouse or distribution center, maintains a retail outlet in California, or has made
16 internet sales into California on or after January 1, 2011.

17 **2.2 Detectable**

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

24 **2.3 Effective Date**

25 "Effective Date" shall mean April, 1, 2014.
26
27
28

1 2.4 **Private Label Covered Products**

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

5 2.5 **Reformulated Products**

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

8 2.6 **Reformulation Standard**

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

11 2.7 **Retailer**

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

14 **3. INJUNCTIVE RELIEF: REFORMULATION**

15 3.1 **Reformulation Commitment**

16 Commencing on June 30, 2014, Fourstar shall not manufacture or import for distribution or
17 sale to California Customers, or cause to be manufactured or imported for distribution or sale to
18 California Customers, any Products that are not Reformulated Products.

19 3.2 **Vendor Notification/Certification**

20 On or before March 1, 2014, Fourstar shall provide written notice to all of its then-current
21 vendors of the Products that will be sold or offered for sale in California, or to California
22 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
23 Products for potential sale in California. In addressing the obligation set forth in the preceding
24 sentence, Fourstar shall not employ statements that will encourage a vendor to delay compliance
25 with the Reformulation Standard. Fourstar shall subsequently obtain written certifications, no later
26 than July 1, 2014, from such vendors, and any newly engaged vendors, that the Products
27 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications
28

1 shall be held by Fourstar for at least two years after their receipt and shall be made available to
2 Vinocur upon request.

3 3.3 Products No Longer in Fourstar's Control

4 No later than March 15, 2014, Fourstar shall send a letter, electronic or otherwise
5 ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after October 28,
6 2011, supplied the Exemplar Product; and (2) any California Customer and/or Retailer, including
7 Family Dollar, Inc., that Fourstar reasonably understands or believes had any inventory for resale in
8 California of Exemplar Products as of the relevant Notice's date. The Notification Letter shall
9 advise the recipient that the Exemplar Product contains TDCPP and TCEP, chemicals known to the
10 State of California to cause cancer and request that the recipient either: (a) label the Exemplar
11 Product(s) remaining in inventory for sale in California, or to California Customers, pursuant to
12 Section 3.5; or (b) return, at Fourstar's sole expense, all units of the Exemplar Products held for sale
13 in California, or to California Customers, to Fourstar or a party Fourstar has otherwise designated.
14 The Notification Letter shall require a response from the recipient within 15 days confirming
15 whether the Exemplar Products will be labeled or returned. Fourstar shall maintain records of all
16 correspondence or other communications generated pursuant to this Section for two years after the
17 Effective Date and shall promptly produce copies of such records upon Vinocur's written request.

18 3.4 Current Inventory

19 Any Products in, or manufactured and en route to, Fourstar's inventory as of or after April
20 1, 2014, that do not qualify as Reformulated Products and that Fourstar has reason to believe may
21 be sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth
22 in Section 3.5 below unless Section 3.6 applies.

23 3.5 Product Warnings

24 3.5.1 Product Labeling

25 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
26 labeling, or directly on each Product. Each warning shall be prominently placed with such
27 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
28

1 to be read and understood by an ordinary individual under customary conditions before purchase.
2 Each warning shall be provided in a manner such that the consumer or user understands to which
3 specific Product the warning applies, so as to minimize the risk of consumer confusion.

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

5 **WARNING:** This product contains TDCPP and
6 TCEP, flame retardant chemicals
7 known to the State of California to
8 cause cancer.¹

9 Attached as Exhibit B are template warnings developed by Vinocur that are deemed to be
10 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
11 set forth in this Section are addressed, including as to the required warning statement and method of
12 transmissions as set forth above, Fourstar remains free not to utilize the template warnings.

13 3.5.2 Internet Website Warning

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

19 The warning text shall be the same type size or larger than the Product description text:

20 ¹The regulatory safe harbor warning language specified in 27 CCR §25603.2 may also be
21 used if Fourstar had begun to use it, prior to the Effective Date. If Fourstar seeks to use alternative
22 warning language, other than the language specified above or the safe harbor warning specified in
23 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, Fourstar
24 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."

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

1 deposited in a trust account. Within two days of the date that this Consent Judgment is approved by
2 the Court, Grimaldi Law Offices shall issue two separate checks for the initial civil penalty payment
3 to "OEHHA" and "The Chanler Group in Trust for Laurence Vinocur."

4 4.1.2 Second Civil Penalty. On or before June 30, 2014, Fourstar shall make a
5 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
6 penalty may be reduced according to any penalty waiver Fourstar is eligible for under Sections
7 4.1.4(i) and 4.1.4(iii), below.

8 4.1.3 Third Civil Penalty. On or before January 15, 2015, Fourstar shall make a
9 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
10 may be reduced according to any penalty waiver Fourstar is eligible for under Sections 4.1.4(ii) and
11 4.1.4(iv), below.

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

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

20 If Fourstar so elects on Exhibit A, a portion of the second civil penalty shall be waived, to
21 the extent that it has agreed that, as of April 1, 2014, and continuing into the future, it shall only
22 manufacture or import for distribution or sale to California Customers or cause to be manufactured
23 or imported for distribution or sale to California Customers, Reformulated Products. If this option
24 is exercised, an officer or other authorized representative of Fourstar shall provide Vinocur with a
25 written certification confirming compliance with such conditions, which certification must be
26 received by Vinocur's counsel on or before April 15, 2014.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.

If Fourstar 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 June 30, 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 a NVLAP 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 Fourstar shall provide Vinocur with a written certification confirming compliance with such conditions, which certification must be received by Vinocur’s counsel on or before December 15, 2014.

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 Fourstar provides Vinocur with written certification, by April 30, 2014, confirming that each individual (except an individual who purchased the Exemplar Product for his/her own use) or establishment in California to which it supplied the Exemplar Product after October 28, 2011, has elected to refrain from selling 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 Fourstar provides Vinocur with written certification, on or before December 31, 2014, confirming that, as of September 30, 2014, it has and will continue to

1 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
2 Products.

3 **4.2 Representations**

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

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

18 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

19 If Vinocur provides notice and appropriate supporting information to Fourstar that levels of
20 the Listed Chemicals in excess of the Reformulation Standard have been detected in one or more
21 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a
22 deadline for meeting the Reformulation Standard has arisen for Fourstar under Sections 3.1 or 3.6
23 above, Fourstar may elect to pay a stipulated penalty to relieve any further potential liability under
24 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
25
26
27
28

1 question.⁴ Supporting information to be provided to Fourstar shall include, but shall not be limited
2 to, the following: a copy of the test report(s) identifying the laboratory undertaking the testing, the
3 test method(s) used, and the test result(s); a statement of the material/component/constituent of the
4 Product that was tested; a photo of the Product that was tested; and the receipt(s) demonstrating the
5 place, date and amount of purchase of the Product. The stipulated penalty shall be \$1,500 if the
6 violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249
7 ppm, this being applicable for any amount in excess of the Reformulation Standards but under 250
8 ppm.⁵ Vinocur shall further be entitled to reimbursement of his associated expense in an amount not
9 to exceed \$5,000 regardless of the stipulated penalty level. Fourstar under this Section must
10 provide notice and appropriate supporting information relating to the purchase (e.g. vendor name
11 and contact information including representative, purchase order, certification (if any) received
12 from vendor for the exemplar or subcategory of products), test results, and a letter from a company
13 representative or counsel attesting to the information provided, to Vinocur within 30 calendar days
14 of receiving test results from Vinocur's counsel. Any violation levels at or above 250 ppm shall be
15 subject to the full remedies provided pursuant to this Consent Judgment and at law.

16 4.4 Reimbursement of Fees and Costs

17 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
19 this fee reimbursement issue to be resolved after the material terms of the agreement had been
20 settled. Shortly after the other settlement terms had been finalized, Fourstar expressed a desire to
21 resolve the fee and cost issue. The Parties then attempted to (and did) reach an accord on the
22 compensation due to Vinocur and his counsel under general contract principles and the private
23 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
24

25 ⁴ This Section shall not be applicable where the vendor in question had previously been
26 found by Fourstar to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
28 penalty for a second exceedance by Fourstar's vendor at a level between 100 and 249 ppm shall not
be available after July 1, 2015.

⁵ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 performed through the mutual execution of this agreement, including the fees and costs incurred as
2 a result of investigating, bringing this matter to Fourstar's attention, negotiating a settlement in the
3 public interest, and seeking court approval of the same. In addition, the negotiated fee and cost
4 figure expressly includes the anticipated significant amount of time plaintiff's counsel will incur to
5 monitor various provisions in this agreement over the next two years, with the exception of
6 additional fees that may be incurred pursuant to Fourstar's election in Section 11.1 and that are set
7 forth in that Section. Fourstar more specifically agreed, upon the Court's approval and entry of this
8 Consent Judgment, to pay Vinocur's counsel the amount of fees and costs indicated on Exhibit A.
9 Fourstar shall, within five days of the mutual execution of this Consent Judgment by the Parties,
10 issue a check payable to "Grimaldi Law Offices" in the amount of fees and costs indicated on
11 Exhibit A to be held in trust by Grimaldi Law Offices for The Chanler Group. Grimaldi Law
12 Offices shall provide The Chanler Group with written confirmation within five days of receipt that
13 the funds have been deposited in a trust account. Within two business days of the date this Consent
14 Judgment is approved by the Court, Grimaldi Law Offices shall issue a check payable to "The
15 Chanler Group" to the address found in Section 8 below.

16 **4.5 Payment Procedures**

17 **4.5.1 Issuance of Payments.**

18 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
19 4.1, 4.3, and 4.4 shall be delivered to the following payment address:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710

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

28 For United States Postal Service Delivery:

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

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

12 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
14 Section 4.5.1(a) above, as proof of payment to OEHHA.

15 4.5.3 Tax Documentation. Fourstar shall issue a separate 1099 form for each
16 payment required by this Section to: (a) Laurence Vinocur, whose address and tax identification
17 number shall be furnished upon request after this Consent Judgment has been fully executed by the
18 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard
19 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
20 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set
21 forth in Section 4.5.1(a) above.

22 5. CLAIMS COVERED AND RELEASED

23 5.1 Vinocur's Release of Proposition 65 Claims

24 This Consent Judgment is a full, final and binding resolution of the claims that were or
25 could have been asserted in the Notice and/or Complaint. Vinocur, acting on his own behalf and in
26 the public interest, releases Fourstar, its parents, subsidiaries, affiliated entities under common
27 ownership, directors, officers, agents employees, attorneys, and each entity to whom Fourstar
28 directly or indirectly distributes or sell Products, including, but not limited, to downstream
distributors, wholesalers, customers, retailers (including, but not limited to, Family Dollar, Inc.),
franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed

1 Chemicals in the Products, as set forth in the Notice. Compliance with the terms of this Consent
2 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
3 Chemicals from the Products, as set forth in the Notice. The Parties further understand and agree
4 that this Section 5.1 release shall not extend upstream to any entities, other than Fourstar, that
5 manufactured the Products or any component parts thereof, or any distributors or suppliers who
6 sold the Products or any component parts thereof to Fourstar, except any entities upstream of
7 Fourstar that is a Retailer of a Private Labeled Covered Product shall be released as to the Private
8 Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer
9 in question.

10 **5.2 Vinocur's Individual Releases of Claims**

11 Vinocur, in his individual capacity only and *not* in his representative capacity, provides a
12 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
13 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
14 liabilities, and demands of Vinocur of any nature, character, or kind, whether known or unknown,
15 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
16 TCEP and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
17 delineated on Exhibit A) manufactured, imported, distributed, or sold by Releasees prior to the
18 Effective Date.⁶ The Parties further understand and agree that this Section 5.2 release shall not
19 extend upstream to any entities that manufactured the Products or Additional Products, or any
20 component parts thereof, or any distributors or suppliers who sold the Products or Additional
21 Products, or any component parts thereof to Fourstar, except that entities upstream of Fourstar that
22 is a Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the Private
23 Labeled Covered (or Additional) Products offered for sale in California by the Retailer in question.
24 Nothing in this Section affects Vinocur's right to commence or prosecute an action under
25 Proposition 65 against a Releasee that does not involve Fourstar's Products or Additional Products.

26
27 ⁶ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

1 5.3 **Fourstar's Release of Vinocur**

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

8 **6. COURT APPROVAL**

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

24 **7. GOVERNING LAW**

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

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

7 **8. NOTICE**

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

12 To Fourstar:

13 At the address shown on Exhibit A

To Vinocur:

14 Proposition 65 Coordinator
15 The Chanler Group
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710-2565

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

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

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

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

24 Vinocur and his attorneys agree to comply with the reporting form requirements referenced
25 in California Health & Safety Code section 25249.7(f).
26
27
28

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1 Such payment shall be made to "In Trust for The Chanler Group" and delivered as per Section
2 4.5.1(a) above.

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

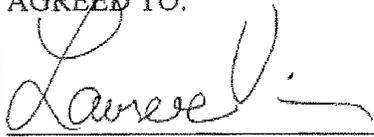
10 **12. MODIFICATION**

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

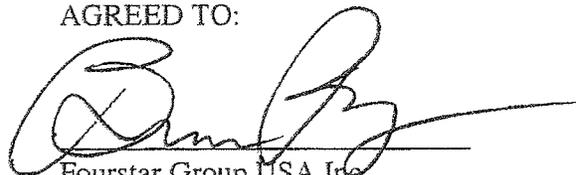
14 **13. AUTHORIZATION**

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

18
19 AGREED TO:

20 
21 _____
22 Laurence Vinocur

AGREED TO:

20 
21 _____
22 Fourstar Group USA Inc.

23 Date: March 3, 2014

23 Date: February 26, 2014

24
25
26
27
28

EXHIBIT A

I. Name of Settling Defendant (Mandatory)

Fourstar Group USA Inc.

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

Family Dollar, Inc.

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): Upholstered Chairs with Foam Padding containing TDCPP and TCEP

IV. Types of Additional Products Fourstar Group USA Inc. Elects to Address (if any):

V. Fourstar Inc.'s Required Settlement Payments

A. Civil Penalties for Fourstar Inc.: \$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 June 30, 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 January 30, 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. Fees and Costs for Fourstar Group USA Inc.: \$35,000.

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

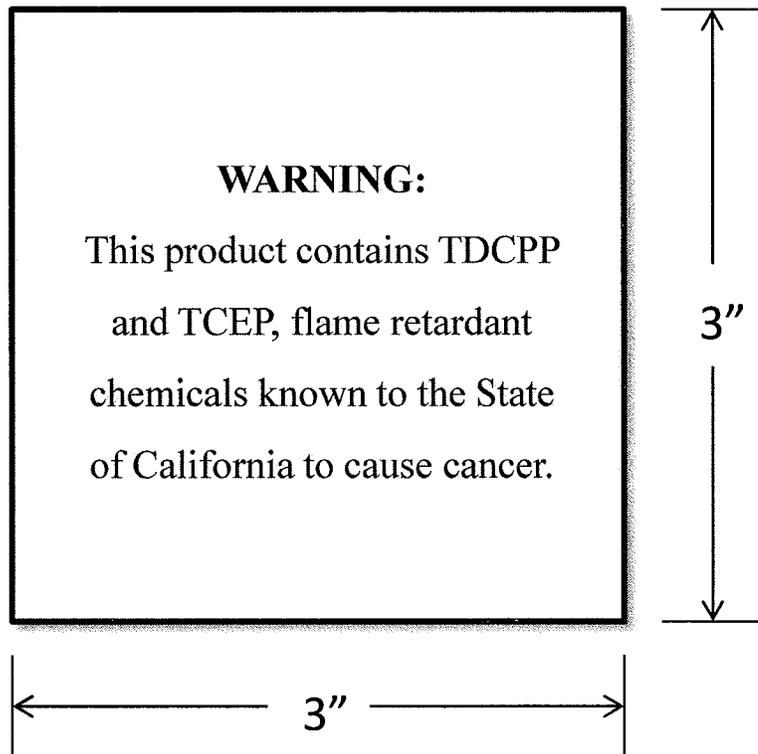
5 Bruce Peloquin, President
6 Fourstar Group USA
7 189 Main Street, Suite 31
8 Milford, MA 01757

9 Ann G. Grimaldi
10 Grimaldi Law Offices
11 50 California Street
12 Suite 1500
13 San Francisco, CA 94111

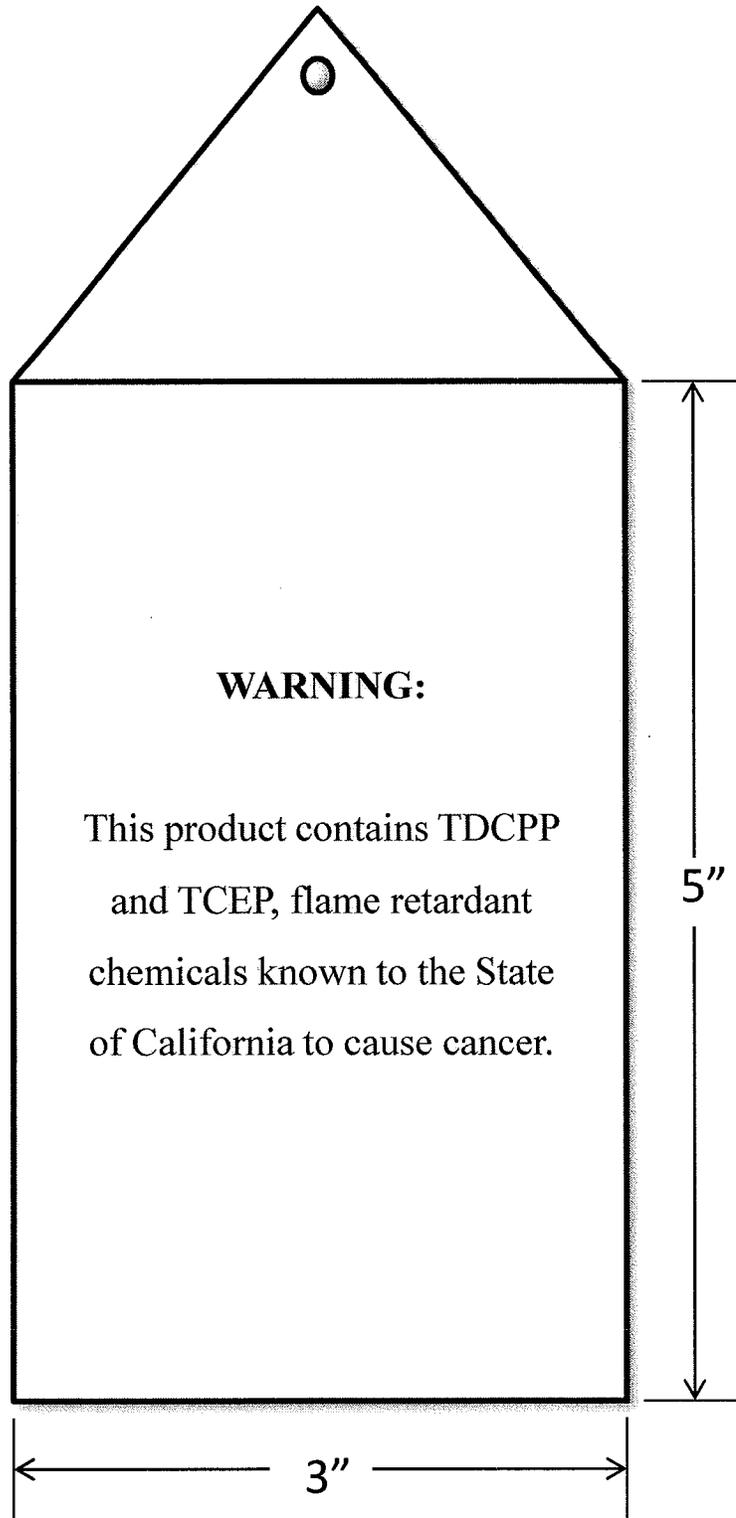
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



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

WARNING:

This product contains TDCPP and TCPEP, flame
8.5"

retardant chemicals known to the State of
California to cause cancer.

11"

INSTRUCTIONS:

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