

1 Clifford A. Chanler, State Bar No. 135534
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

5 Christopher C. Moscone, State Bar No. 170250
Rachel J. Sater, State Bar No. 147976

6
7 MOSCONE EMBLIDGE SATER & OTIS LLP
220 Montgomery Street, Suite 2100
San Francisco, CA 94104
8 Telephone: (415) 362-3599
9 Facsimile: (415) 362-2006

10 Attorneys for Plaintiffs
LAURENCE VINOCUR and PETER ENGLANDER

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
14

15 LAURENCE VINOCUR and PETER
ENGLANDER

16 Plaintiffs,

17 v.

18 CHEYENNE INDUSTRIES, LLC; et al.

19 Defendants.
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Case No. RG 13-673710

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

**[PROPOSED] CONSENT JUDGMENT AS
TO STEIN WORLD OPERATING
COMPANY; RESTORATION
HARDWARE, INC; AND KMART
CORPORATION**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: April 2, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiffs LAURENCE VINOCUR
4 and PETER ENGLANDER (“Plaintiffs”) on the one hand and defendants STEIN WORLD
5 OPERATING COMPANY; RESTORATION HARDWARE, INC; and KMART CORPORATION
6 as further identified in the Exhibit A’s attached hereto (collectively referred to herein as the
7 “Settling Defendants”) on the other hand, with Plaintiffs and the Settling Defendants collectively
8 referred to as the “Parties.”

9 **1.2 Plaintiffs**

10 Plaintiffs are individuals residing in the State of California who seek to promote awareness
11 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
12 substances contained in consumer and commercial products.

13 **1.3 Settling Defendants**

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

17 **1.4 General Allegations**

18 1.4.1 Plaintiffs allege that each Settling Defendant manufactured, imported, sold
19 and/or distributed for sale in California, products with foam cushioned components containing
20 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”)
21 without the requisite Proposition 65 health hazard warnings.

22 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed
23 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
24 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §
25 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

26 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
27 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
28

1 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
2 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

3 TDCPP and TCEP are hereinafter collectively referred to as the “Listed Chemicals.” Plaintiffs
4 allege that the Listed Chemicals escape from foam padding, leading to human exposures.

5 1.5 Product Description

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

11 1.6 Notices of Violation

12 Beginning in December 2012, Plaintiffs served Settling Defendants and certain requisite
13 public enforcement agencies with “60-Day Notices of Violation” (“Notices”) that provided the
14 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
15 customers, consumers, and workers in California that the Products expose users to one or more
16 Listed Chemicals.¹ To the best of the Parties’ knowledge, no public enforcer has commenced or is
17 diligently prosecuting the allegations set forth in the Notices.

18 1.7 Complaint

19 On April 19, 2013, Plaintiffs filed a First Amended Complaint in the Superior Court in and
20 for the County of Alameda against the Settling Defendants, other defendants and Does 4 through
21 150, *Laurence Vinocur and Peter Englander v. Cheyenne Industries, LLC, et al.*, Case No. RG 13-
22 673710, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to
23 TDCPP contained in the Products. On July 9, 2013, Englander filed a Second Amended Complaint
24 (“Complaint”), alleging additional violations of Proposition 65, including unwarned exposures to
25 TCEP.

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27 ¹ Based on their further investigation, Plaintiffs have also issued supplemental 60-day notices to
28 some of the Settling Defendants alleging that the Products contain and expose Californians to di(2-
ethylhexyl)phthalate (“DEHP”). DEHP and other phthalates including butyl benzyl phthalate (“BBP”) and
Di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and
other reproductive harm.

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1.8 No Admission

The Settling Defendants deny the material factual and legal allegations contained in Plaintiffs' Notices and Complaints and maintain that all products that they have manufactured, imported, distributed, and/or sold in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by a Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by any Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the Settling Defendants as to the allegations contained in the Complaints, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

2. DEFINITIONS

2.1 California Customers

"California Customer" shall mean any customer that a Settling Defendant reasonably understands is located in California, has a California warehouse or distribution center, maintains a retail outlet in California, or has made internet sales into California on or after January 1, 2011.

2.2 Detectable

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

1 **2.3 Effective Date**

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

3 **2.4 Private Label Covered Products**

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

7 **2.5 Reformulated Products**

8 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
9 or TCEP.²

10 **2.6 Reformulation Standard**

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

13 **2.7 Retailer**

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

16 **3. INJUNCTIVE RELIEF: REFORMULATION**

17 **3.1 Reformulation Commitment**

18 Commencing on March 31, 2014, Settling Defendants shall not manufacture or import for
19 distribution or sale to California Customers, or cause to be manufactured or imported for
20 distribution or sale to California Customers, any Products that are not Reformulated Products.

21 **3.2 Vendor Notification/Certification**

22 On or before the Effective Date, each Settling Defendant shall provide written notice to all
23 of its then-current vendors of the Products, instructing each such vendor to use reasonable efforts to
24 provide it with only Reformulated Products. In addressing the obligation set forth in the preceding
25 sentence, a Settling Defendant shall not employ statements that will encourage a vendor to delay
26 compliance with the Reformulation Standard. The Settling Defendant shall subsequently obtain

27 _____
28 ² As to the Settling Defendants who received supplemental Notices concerning DEHP, the term
“Reformulated Products” further requires that the Products for which claims concerning DEHP were noticed
(the “Phthalate Products”) contain no more than 1000 ppm each of DEHP, BBP, and DBP.

1 written certifications, no later than April 1, 2014, from such vendors, and any newly engaged
2 vendors, that the Products manufactured by such vendors are in compliance with the Reformulation
3 Standard. Certifications shall be held by the Settling Defendant for at least two years after their
4 receipt and shall be made available to Plaintiffs upon request.

5 **3.3 Products No Longer in a Settling Defendant's Control**

6 No later than 45 days after the Effective Date, each Settling Defendant shall send a letter,
7 electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer
8 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
9 in the Notice(s) the Settling Defendant received from Plaintiffs ("Exemplar Product"); and (2) any
10 California Customer and/or Retailer that the Settling Defendant reasonably understands or believes
11 had any inventory for resale in California of Exemplar Products as of the relevant Notice's dates.
12 The Notification Letter shall advise the recipient that the Exemplar Product "contains TDCPP
13 and/or TCEP, chemicals known to the State of California to cause cancer," and request that the
14 recipient either: (a) label the Exemplar Products remaining in inventory for sale in California, or to
15 California Customers, pursuant to Section 3.5; or (b) return, at the Settling Defendant's sole
16 expense, all units of the Exemplar Product held for sale in California, or to California Customers, to
17 the Settling Defendant or a party the Settling Defendant has otherwise designated. The Notification
18 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar
19 Product will be labeled or returned. The Settling Defendant shall maintain records of all
20 correspondence or other communications generated pursuant to this Section for two years after the
21 Effective Date and shall promptly produce copies of such records upon Plaintiffs' written request.

22 **3.4 Current Inventory**

23 Any Products in, or manufactured and en route to, a Settling Defendant's inventory as of or
24 after December 31, 2013, that do not qualify as Reformulated Products and that the Settling
25 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a
26 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.³

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28 ³ This shall not apply to Products which are Private Label Covered Products in a Retailer Settling
Defendants' inventory as of December 31, 2013.

1 **3.5 Product Warnings**

2 **3.5.1 Product Labeling**

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

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

10 **WARNING:** This product contains [TDCPP and/or
11 TCEP], flame retardant chemicals
12 known to the State of California to
 cause cancer.⁴

13 Attached as Exhibit B are template warnings developed by Plaintiffs that are deemed to be clear and
14 reasonable for purposes of this Consent Judgment.⁵ Provided that the other requirements set forth
15 in this Section are addressed, including as to the required warning statement and method of
16 transmission as set forth above, Settling Defendants remain free not to utilize the template
17 warnings.

18 **3.5.2 Internet Website Warning**

19 A warning shall be given in conjunction with the sale of the Products to California, or
20 California Customers, via the internet, which warning shall appear on one or more web pages

21 ⁴ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if
22 the Settling Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to
23 use alternative warning language, other than the language specified above or the safe harbor warning
24 specified in 27 CCR § 25603.2, or that seeks to use an alternate method of transmission of the warning, must
25 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.”

26 ⁵ The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3” x
27 5”, with no less than 12 point font, with the warning language printed on each side of the hang tag, which
28 shall be affixed directly to the Product; (b) a yellow warning sign measuring 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;
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 displayed to a purchaser during the checkout process. The following warning statement shall be
2 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
3 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

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

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

8 3.6 Alternatives to Interim Warnings

9 The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the
10 Settling Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting
11 the Reformulation Standard will be offered for sale in California, or to California Customers for
12 sale in California, after December 31, 2013. The obligations of a Settling Defendant under Section
13 3.4 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013 that,
14 after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in,
15 California, or to California Customers for sale in California, Products (i.e., Products beyond the
16 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
17 Section are material terms and time is of the essence.

18 4. MONETARY PAYMENTS

19 4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

20 In settlement of all the claims referred to in this Consent Judgment, a Settling Defendant
21 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.⁷

22 Each penalty payment will be allocated in accordance with California Health & Safety Code
23 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
24 Health Hazard Assessment (“OEHHA”), 12.5% of the penalty remitted to “The Chanler Group in
25 Trust for Englander” and the remaining 12.5% of the penalty remitted to “The Chanler Group in
26

27 ⁶ Footnote 4, *supra*, applies in this context as well.

28 ⁷ For Settling Defendants that received supplemental Notices alleging violations of Proposition 65 concerning DEHP in Phthalate Products, the penalty amount shown on Exhibit A includes an additional component to address the resolution of those additional claims.

1 Trust for Vinocur.” Each penalty payment shall be made within two business days of the date it is
2 due and be delivered to the addresses listed in Section 4.5 below. A Settling Defendant shall be
3 liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under
4 this Section that are not received within two business days of the due date.

5 4.1.1 Initial Civil Penalty. On or before the Effective Date, each Settling
6 Defendant shall make an initial civil penalty payment in the amount identified on the Settling
7 Defendant’s Exhibit A.

8 4.1.2 Second Civil Penalty. On or before January 15, 2014, each Settling
9 Defendant shall make a second civil penalty payment in the amount identified on the Settling
10 Defendant’s Exhibit A. The amount of the second penalty may be reduced according to any penalty
11 waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

12 4.1.3 Third Civil Penalty. On or before November 30, 2014, each Settling
13 Defendant shall make a third civil penalty payment in the amount identified on the Settling
14 Defendant’s Exhibit A. The amount of the third penalty may be reduced according to any penalty
15 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

16 4.1.4 Reductions to Civil Penalty Payment Amounts. Each Settling Defendant
17 may reduce the amount of the second and/or third civil penalty payments identified on the Settling
18 Defendant’s Exhibit A by providing Plaintiffs with certification of certain efforts undertaken to
19 reformulate their Products or limit the ongoing sale of non-reformulated Products in California.
20 The options to provide a written certification in lieu of making a portion of a Settling Defendant’s
21 civil penalty payment constitute material terms of this Consent Judgment, and with regard to such
22 terms, time is of the essence.

23 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
24 **Products Sold or Offered for Sale in California.**

25 As shown on an electing Settling Defendant’s Exhibit A, a portion of the second civil
26 penalty shall be waived, to the extent that it has agreed that, as of November 1, 2013, and
27 continuing into the future, it shall only manufacture or import for distribution or sale to California
28 Customers or cause to be manufactured or imported for distribution or sale to California Customers,

1 Reformulated Products. An officer or other authorized representative of a Settling Defendant that
2 has exercised this election shall provide Plaintiffs with a written certification confirming
3 compliance with such conditions, which certification must be received by Plaintiffs' counsel on or
4 before December 15, 2013.

5 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

6 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil penalty
7 shall be waived, to the extent that it has agreed that, as of March 15, 2014, and continuing into the
8 future, it shall only manufacture or import for distribution or sale in California or cause to be
9 manufactured or imported for distribution or sale in California, Reformulated Products which also
10 do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than
11 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent
12 of a subject product, when analyzed by an accredited laboratory pursuant to EPA testing
13 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
14 determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or
15 other authorized representative of a Settling Defendant that has exercised this election shall provide
16 Plaintiffs with a written certification confirming compliance with such conditions, which
17 certification must be received by Plaintiffs' counsel on or before November 15, 2014.

18 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
19 **Exemplar Products from the California Market.**

20 As shown on a Settling Defendant's Exhibit A, a portion of the second civil penalty shall be
21 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiffs
22 with written certification, by December 15, 2013, confirming that each individual or establishment
23 in California to which it supplied the Exemplar Product after October 28, 2011, has elected to return
24 all remaining Exemplar Products held for sale in California.⁸

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26
27 ⁸ For purposes of this Section, the term Exemplar Products shall further include Products for which
28 Plaintiffs have, prior to August 31, 2013, provided the Settling Defendants with test results from an
accredited laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm pursuant to
EPA testing methodologies 3545 or 8270C.

1 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**
2 **California of Unreformulated Inventory.**

3 As shown on a Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
4 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiffs
5 with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it
6 has and will continue to distribute, offer for sale, or sell in California, or to California Customers,
7 only Reformulated Products.

8 4.2 **Representations**

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

19 Each Settling Defendant further represents that in implementing the requirements set forth
20 in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts
21 to achieve reformulation of its Products and Additional Products on a nationwide basis and not
22 employ statements that will encourage a vendor to limit its compliance with the Reformulation
23 Standard to goods intended for sale to California Consumers.

24 4.3 **Stipulated Penalties for Certain Violations of the Reformulation**
25 **Standard.**

26 If Plaintiffs provide notice and appropriate supporting information to a Settling Defendant
27 that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one
28 or more Products labeled or otherwise marked in an identifiable manner as manufactured or

1 imported after a deadline for meeting the Reformulation Standard has arisen for a Settling
2 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated
3 penalty to relieve any further potential liability under Proposition 65 or sanction under this Consent
4 Judgment as to Products sourced from the vendor in question.⁹ The stipulated penalty shall be
5 \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm
6 and 249 ppm, this being applicable for any amount in excess of the Reformulation Standards but
7 under 250 ppm.¹⁰ Plaintiffs shall further be entitled to reimbursement of their associated expense in
8 an amount not to exceed \$5,000 regardless of the stipulated penalty level. A Settling Defendant
9 under this Section must provide notice and appropriate supporting information relating to the
10 purchase (e.g. vendor name and contact information including representative, purchase order,
11 certification (if any) received from vendor for the exemplar or subcategory of products), test results,
12 and a letter from a company representative or counsel attesting to the information provided, to
13 Plaintiffs within 30 calendar days of receiving test results from Plaintiffs' counsel. Any violation
14 levels at or above 250 ppm shall be subject to the full remedies provided pursuant to this Consent
15 Judgment and at law.

16 4.4 Reimbursement of Fees and Costs

17 The Parties acknowledge that Plaintiffs and their 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, the Settling Defendants
21 expressed a desire to resolve the fee and cost issue. The Settling Defendants then agreed to pay
22 Plaintiffs and their counsel under general contract principles and the private attorney general
23 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
24 through the mutual execution of this agreement, including the fees and costs incurred as a result of

25 ⁹ This Section shall not be applicable where the vendor in question had previously been found by the
26 Settling Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its
27 Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second
28 exceedance by a Settling Defendant's vendor at a level between 100 and 249 ppm shall not be available after
July 1, 2015.

¹⁰ 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 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in
2 the public interest, and seeking court approval of the same. In addition, the negotiated fee and cost
3 figure expressly includes the anticipated significant amount of time plaintiffs' counsel will incur to
4 monitor various provisions in this agreement over the next two years, with the exception of
5 additional fees that may be incurred pursuant to a Settling Defendant's election in Section 11. Each
6 Settling Defendant more specifically agreed, upon the Court's approval and entry of this Consent
7 Judgment, to pay Plaintiffs' counsel the amount of fees and costs indicated on the Settling
8 Defendant's Exhibit A. Each Settling Defendant further agreed to tender and shall tender its full
9 required payment under this Section to a trust account at The Chanler Group (made payable "In
10 Trust for The Chanler Group") within two business days of the Effective Date. Such funds shall be
11 released from the trust account upon the Court's approval and entry of this Consent Judgment.

12 **4.5 Payment Procedures**

13 4.5.1 Issuance of Payments.

14 (a) All payments owed to Plaintiffs and their counsel, pursuant to Sections 4.1,
15 4.3 and 4.4 shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

22 For United States Postal Service Delivery:

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

26 For Non-United States Postal Service Delivery:

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

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

4 4.5.3 Tax Documentation. A Settling Defendant shall issue a separate 1099 form
5 for each payment required by this Section to: (a) Peter Englander, whose address and tax
6 identification number shall be furnished upon request after this Consent Judgment has been fully
7 executed by the Parties; (b) Laurence Vinocur, whose address and tax identification number shall be
8 furnished upon request after this Consent Judgment has been fully executed by the Parties; (c)
9 OEHHA, who shall be identified as "California Office of Environmental Health Hazard
10 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
11 4010, Sacramento, CA 95814; and (d) "The Chanler Group" (EIN: 94-3171522) to the address set
12 forth in Section 4.5.1(a) above.

13 **5. CLAIMS COVERED AND RELEASED**

14 **5.1 Plaintiffs' Release of Proposition 65 Claims**

15 Plaintiffs, acting on their own behalf and in the public interest, release each Settling
16 Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
17 agents employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
18 distribute or sell Products, including, but not limited, to downstream distributors, wholesalers,
19 customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"),
20 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
21 exposures to the Listed Chemicals in the Products, as set forth in the Notices. Compliance with the
22 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
23 exposures to the Listed Chemicals from the Products, as set forth in the Notices. The Parties further
24 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other
25 than Settling Defendants, that manufactured the Products or any component parts thereof, or any
26 distributors or suppliers who sold the Products or any component parts thereof to a Settling
27 Defendant, except as to entities that are within the Settling Defendant's same corporate family;
28 nevertheless entities upstream of a Settling Defendant that is a Retailer of a Private Labeled

1 Covered Product shall be released as to the Private Labeled Covered Products offered for sale in
2 California, or to California Customers, by the Retailer in question.¹¹

3 **5.2 Plaintiffs' Individual Releases of Claims**

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

20 **5.3 Settling Defendants' Release of Plaintiffs**

21 Each Settling Defendant, on behalf of itself, its past and current agents, representatives,
22 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiffs and their
23 attorneys and other representatives, for any and all actions taken or statements made (or those that

24 _____
25 ¹¹ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals" shall
include DEHP with respect to those Settling Defendants that received supplemental Notices alleging
violations of Proposition 65 as to exposures to DEHP.

26 ¹² The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise
27 specified.

28 ¹³ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals" shall
include DEHP, BBP and DBP with respect to those Settling Defendants that received supplemental Notices
alleging violations of Proposition 65 as to exposures to DEHP.

1 could have been taken or made) by Plaintiffs and their attorneys and other representatives, whether
2 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
3 matter with respect to the Products or Additional Products.

4 **6. COURT APPROVAL**

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California.
22 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
23 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
24 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
25 inapplicable by reason of law generally as to the Products, then a Settling Defendant may provide
26 written notice to Plaintiffs of any asserted change in the law, and shall have no further obligations
27 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
28

1 affected. Nothing in this Consent Judgment shall be interpreted to relieve a Settling Defendant
2 from any obligation to comply with any pertinent state or federal law or regulation.

3 **8. NOTICES**

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

8 For Plaintiffs: Proposition 65 Coordinator, The Chanler Group, 2560 Ninth Street,
9 Parker Plaza, Suite 214, Berkeley, CA 94710-2565

10 For Defendants: At the address shown on Exhibit A.

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

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

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

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

18 Plaintiffs and their attorneys agree to comply with the reporting form requirements
19 referenced in California Health & Safety Code section 25249.7(f).

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

21 11.1 In addition to the Products, where a Settling Defendant has identified on Exhibit A
22 additional products that contain Listed Chemicals and that are sold or offered for sale by it in
23 California, or to California Customers, (“Additional Products”), then by no later than October 15,
24 2013, the Settling Defendant may provide Plaintiffs with additional information or representations
25 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit
26 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.
27 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
28 such as upholstered furniture, is specifically excluded from the definition of Additional Products

1 and shall not be identified by a Settling Defendant on Exhibit A as an Additional Product. Except
2 as agreed upon by Plaintiffs, Settling Defendants shall not include a product, as an Additional
3 Product, that is the subject of an existing 60-day notice issued by Plaintiffs or any other private
4 enforcer at the time of execution. After receipt of the required information, Plaintiffs agree to issue
5 a supplemental 60-day notice in compliance with all statutory and regulatory requirements for the
6 Additional Products. Plaintiffs will, and in no event later than October 1, 2014, prepare and file an
7 amendment to this Consent Judgment to incorporate the Additional Products within the defined
8 term "Products" and serve a copy thereof and its supporting papers (including the basis for
9 supplemental stipulated penalties, if any) on the Office of the California Attorney General; upon the
10 Court's approval and finding that the supplemental stipulated penalty amount, if any, is reasonable,
11 the Additional Products shall become subject to Section 5.1 in addition to Section 5.2. The Settling
12 Defendant shall, at the time it elects to utilize this Section and tenders the additional information or
13 representations regarding the Additional Products to Plaintiffs, tender to The Chanler Group's trust
14 account an amount not to exceed \$8,750 as stipulated penalties and attorneys' fees and costs
15 incurred by Plaintiffs in issuing the new notice and engaging in other reasonably related activities,
16 which may be released from the trust as awarded by the Court upon Plaintiffs' application. Any fee
17 award associated with the modification of the Consent Judgment to include Additional Products
18 shall not offset any associated supplemental penalty award, if any. (Any tendered funds remaining
19 in the trust thereafter shall be refunded to the Settling Defendant within 15 days). Such payment
20 shall be made to "in trust for The Chanler Group" and delivered as per Section 4.5.1(a) above.

21 11.2 Plaintiffs and Settling Defendant(s) agree to support the entry of this agreement as a
22 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
23 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
24 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiffs
25 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiffs and each
26 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.
27 This provision is a material component of the Consent Judgment and shall be treated as such in the
28 event of a breach.

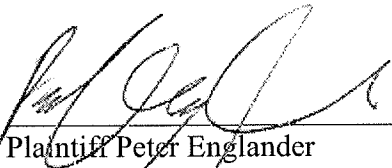
1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

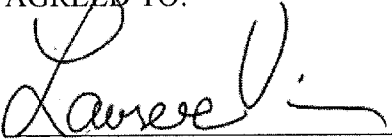
6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

10 AGREED TO:

11 
12 _____
13 Plaintiff Peter Englander

14 Date: October 7, 2013

AGREED TO:


15 _____
16 Plaintiff Laurence Vinocur

Date: October 4, 2013

17 AGREED TO:

18 _____
19
20 By:
21 Title:
22 For: Settling Defendant

23 Date: September __, 2013
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1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9

10 AGREED TO:

AGREED TO:

11

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Plaintiff Peter Englander

Plaintiff Laurence Vinocur

13

14

Date: September __, 2013

Date: September __, 2013

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16

17 AGREED TO:

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Donna Brockman

20

By: *Donna Brockman*

21

Title: CFO

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For: *Stem World Operating Co.*
Settling Defendant

23

Date: *October*
~~September~~ 11, 2013

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1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9
10 AGREED TO:

AGREED TO:

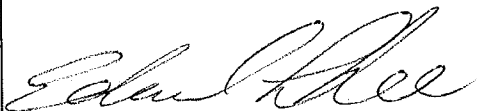
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12 _____
13 Plaintiff Peter Englander

_____ Plaintiff Laurence Vinocur

14 Date: September __, 2013

Date: September __, 2013

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17 AGREED TO:

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20 By: Edward J. Lee
21 Title: VP + Deputy General Counsel
22 For: Restoration Hardware, Inc.
Settling Defendant

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Date: September 30, 2013

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

10 AGREED TO:

AGREED TO:

12 _____
13 Plaintiff Peter Englander

12 _____
13 Plaintiff Laurence Vinocur

14 Date: September __, 2013

Date: September __, 2013

17 AGREED TO:


18 
19 _____
20 By: *CARY MILLER*
20 Title: *VP / Deputy General Counsel*
21 For: *KMAR CORPORATION / SEAHY HOLDINGS CORPORATION*
21 Settling Defendant
22 Date: *October 14* September __, 2013

EXHIBIT A

- I. Name of Settling Defendant: STEIN WORLD OPERATING COMPANY
- II. Names of Releasees (optional/partial): CONNOLLY'S APPLIANCE-FURNITURE, INC.
- III. Types of Covered Products Applicable to Settling Defendant: Upholstered furniture
- IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

V. Settling Defendant's Required Settlement Payments

A. Penalties of \$53,000, as follows:

\$15,000 initial payment due on or before the Effective Date;

\$24,000 second payment due on or before January 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iv).

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs totaling \$48,000, as follows:

Fees and Costs attributable to Stein World: \$40,000.

Additional Fees and Costs attributable to action filed by Plaintiff(s) before the Effective Date naming an unaffiliated third party that is released by the Settling Defendant's participation in the Consent Judgment: \$8,000

VI. Person(s) to receive Notices pursuant to Section 8

Stephen Kosmaliski

Name

President & CEO

Title

Stein World Operating Company

Company/Firm Name

Address 5800 Challenge Dr

Memphis, TN 38115

EXHIBIT A

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- I. Name of Settling Defendant: RESTORATION HARDWARE, INC.
- II. Names of Releasees (optional/partial):
- III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received):
- Foam-cushioned pads for children and infants to lie on, such as rest mats
 - Upholstered furniture
 - Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds
 - Car seats, strollers
 - Other (specify): Vinyl Shower Curtains (for DEHP)
- IV. Types of Additional Products the Settling Defendant Elects to Address (if any):
-

- V. Settling Defendant's Required Settlement Payments
- A. Penalties of \$84,000, as follows:
- \$18,000 initial payment due on or before the Effective Date;
 - \$42,000 second payment due on or before January 15, 2014, of which \$23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be waived pursuant to Section 4.1.4(iii); and
 - \$24,000 third payment due on or before November 30, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be waived pursuant to Section 4.1.4(iv).
- B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs totaling \$60,000.

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

Eugene Chang
Name

Title

Restoration Hardware, Inc.
Company/Firm Name

1 Address 15 Koch Rd, Suite J
2 Corte Madera, CA 94925
3 Attn: Legal Dept.

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EXHIBIT A

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- I. Name of Settling Defendant: KMART CORPORATION.
- II. Names of Releasees (optional/partial): SEARS HOLDING CORPORATION
- 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 (exclusive of Jaclyn Smith branded upholstered furniture distributed to Kmart by Largo International, Inc.)
 - Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds
 - Car seats, strollers
 - Other (specify):
- IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

- V. Settling Defendant's Required Settlement Payments
 - A. Penalties of \$50,000, as follows:
 - \$12,000 initial payment due on or before the Effective Date;
 - \$24,000 second payment due on or before January 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(iii); and
 - \$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iv).
 - B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs totaling \$48,000, as follows:
 - Fees and Costs attributable to Kmart: \$40,000.
 - Additional Fees and Costs attributable to additional action filed by Plaintiff(s) before the Effective Date naming Kmart that is released by the Settling Defendant's participation in the Consent Judgment: \$8,000.

1 VI. Person(s) to receive Notices pursuant to Section 8

2
3 CAROL MERVILE
Name

4 VP / DEPUTY GENERAL COUNSEL
Title

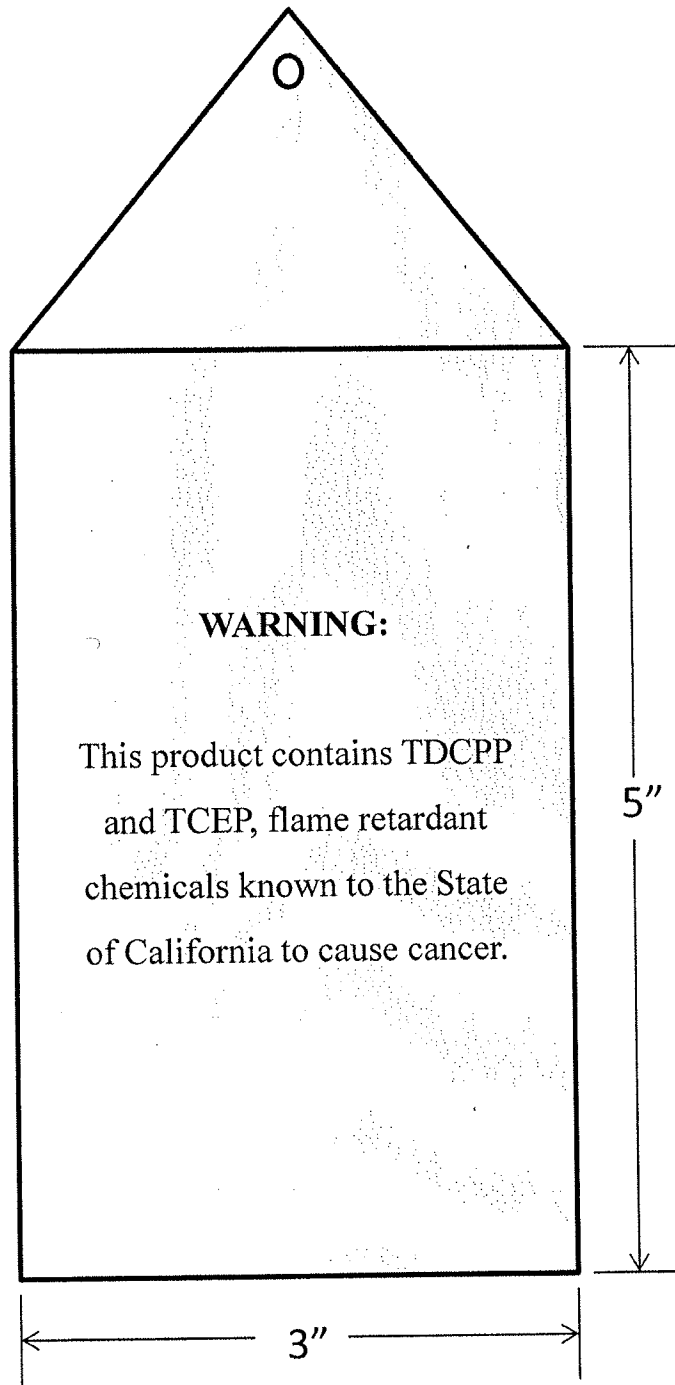
5
6 KMART CORPORATION
Company/Firm Name

7
8 Address 3333 BEVERLY ROAD
9 HOFFMAN ESTATES, IL 60179

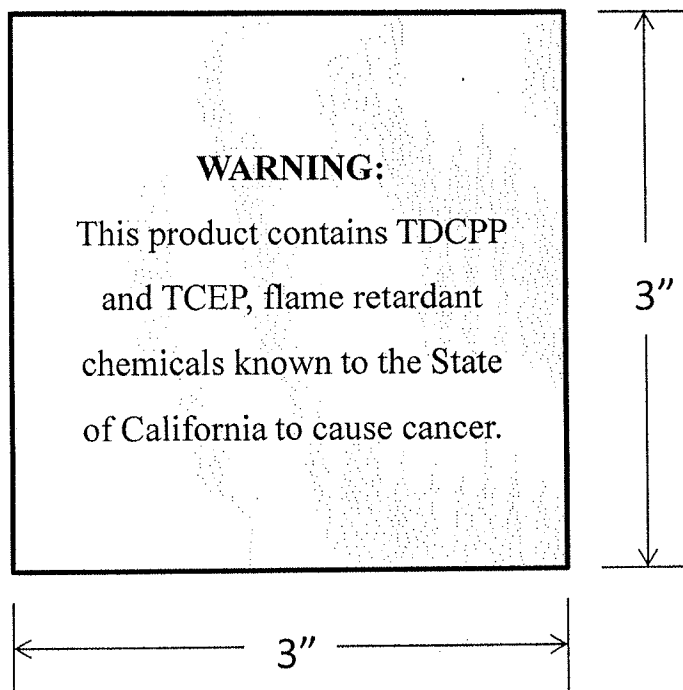
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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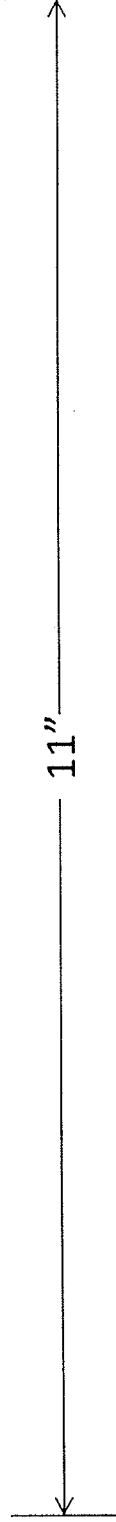
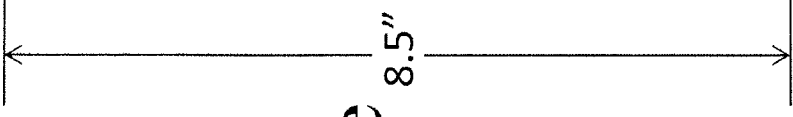
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.



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

WARNING:

This product contains TDCPP and TCEP, flame
retardant chemicals known to the State of
California to cause cancer.



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