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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 JESPER OFFICE LLC; et al.
18 Defendants.

19) Case No. RG 13-678547
20)
21) Assigned for All Purposes to
22) Judge George C. Hernandez, Jr.,
23) Department 17
24) **[PROPOSED] CONSENT JUDGMENT AS**
25) **TO JESPER OFFICE LLC**
26) **(Health & Safety Code § 25249.6 et seq.)**
27)
28) Complaint Filed: May 8, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”) and Jesper Office LLC (“Jesper”), with Vinocur and Jesper collectively referred to as
5 the “Parties.”

6 **1.2 Laurence Vinocur**

7 Vinocur is an individual residing in the State of California who seeks to promote awareness
8 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Jesper Office LLC**

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

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
22 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 **1.5 Product Description**

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

1 **1.6 Notice of Violation**

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

8 **1.7 Complaint**

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

13 **1.8 No Admission**

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

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Jesper as to the allegations contained in the Notice and Complaint, that venue is
25 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
26 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
27 Procedure § 664.6.

28

1 **2. DEFINITIONS**

2 **2.1 California Customers**

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

6 **2.2 Detectable**

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

13 **2.3 Effective Date**

14 “Effective Date” shall mean February 28, 2014.

15 **2.4 Private Label Covered Products**

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

19 **2.5 Reformulated Products**

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

22 **2.6 Reformulation Standard**

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

25 **2.7 Retailer**

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

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on March 31, 2014, Jesper shall not manufacture or import for distribution or
4 sale to California Customers, or cause to be manufactured or imported for distribution or sale to
5 California Customers, any Products that are not Reformulated Products.

6 **3.2 Vendor Notification/Certification**

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

16 **3.3 Products No Longer in Jesper's Control**

17 No later than 45 days after the Effective Date, Jesper shall send a letter, electronic or
18 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
19 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
20 Jesper received from Vinocur ("Exemplar Product"); and (2) any California Customer and/or
21 Retailer that Jesper reasonably understands or believes had any inventory for resale in California of
22 Exemplar Product as of the Notice date. The Notification Letter shall advise the recipient that the
23 Exemplar Products contain TDCPP, a chemical known to the State of California to cause cancer
24 and request that the recipient either: (a) label the Exemplar Products remaining in inventory for sale
25 in California, or to California Customers, pursuant to Section 3.5; or (b) return, at Jesper's sole
26 expense, all units of the Exemplar Product held for sale in California, or to California Customers, to
27 Jesper or a party Jesper has otherwise designated. The Notification Letter shall require a response
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1 from the recipient within 15 days confirming whether the Exemplar Product will be labeled or
2 returned. Jesper shall maintain records of all correspondence or other communications generated
3 pursuant to this Section for two years after the Effective Date and shall promptly produce copies of
4 such records upon Vinocur's written request.

5 **3.4 Current Inventory**

6 Any Products in, or manufactured and en route to, Jesper's inventory as of or after February
7 28, 2014, that do not qualify as Reformulated Products and that Jesper has reason to believe may be
8 sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth in
9 Section 3.5 below unless Section 3.6 applies.

10 **3.5 Product Warnings**

11 **3.5.1 Product Labeling**

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

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

19
20 **WARNING:** This product contains TDCPP, a flame
21 retardant chemical known to the State
22 of California to cause cancer.¹

23
24 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
25 used if Jesper had begun to use it, prior to the Effective Date. If Jesper seeks to use alternative
26 warning language, other than the language specified above or the safe harbor warning specified in
27 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, Jesper must
28 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."

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

5 3.5.2 Internet Website Warning

6 A warning shall be given in conjunction with the sale of the Products to California, or
7 California Customers, via the internet, which warning shall appear on one or more web pages
8 displayed to a purchaser during the checkout process. The following warning statement shall be
9 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
10 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.
11 The warning text shall be the same type size or larger than the Product description text:

12 **WARNING:** This product contains TDCPP, a flame
13 retardant chemical known to the State
if California to cause cancer.³

14 3.6 Alternatives to Interim Warnings

15 The obligations of Jesper under Section 3.3 shall be relieved provided Jesper certifies on or
16 before February 28, 2014 that only Exemplar Products meeting the Reformulation Standard will be
17 offered for sale in California, or to California Customers for sale in California, after February 28,
18 2014. The obligations of Jesper under Section 3.4 shall be relieved provided Jesper certifies on or
19 before February 28, 2014 that, after June 30, 2014, it will only distribute or cause to be distributed
20 for sale in, or sell in, California, or to California Customers for sale in California, Products (i.e.,
21 Products beyond the Exemplar Product) meeting the Reformulation Standard. The certifications
22 provided by this Section are material terms and time is of the essence.

23
24 _____
25 ² The 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 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.

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

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, Jesper shall pay the civil
4 penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment will be
5 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75%
6 of the funds remitted to the California Office of Environmental Health Hazard Assessment
7 (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for Laurence Vinocur.”
8 Each penalty payment shall be made within two business days of the date it is due and be delivered
9 to the addresses listed in Section 4.5 below. Jesper shall be liable for payment of interest, at a rate
10 of 10% simple interest, for all amounts due and owing under this Section that are not received
11 within two business days of the due date.

12 4.1.1 Initial Civil Penalty. On or before the Effective Date, Jesper shall make an
13 initial civil penalty payment in the amount identified on Exhibit A.

14 4.1.2 Second Civil Penalty. On or before April 15, 2014, Jesper shall make a
15 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
16 penalty may be reduced according to any penalty waiver Jesper is eligible for under Sections
17 4.1.4(i) and 4.1.4(iii), below.

18 4.1.3 Third Civil Penalty. On or before November 30, 2014, Jesper shall make a
19 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
20 may be reduced according to any penalty waiver Jesper is eligible for under Sections 4.1.4(ii) and
21 4.1.4(iv), below.

22 4.1.4 Reductions to Civil Penalty Payment Amounts. Jesper may reduce the
23 amount of the second and/or third civil penalty payments identified on Exhibit A by providing
24 Vinocur with certification of certain efforts undertaken to reformulate their Products or limit the
25 ongoing sale of non-reformulated Products in California. The options to provide a written
26 certification in lieu of making a portion of a civil penalty payment constitute material terms of this
27 Consent Judgment, and with regard to such terms, time is of the essence.

1 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
2 **Products Sold or Offered for Sale in California.**

3 If Jesper so elects on Exhibit A, a portion of the second civil penalty shall be waived, to the
4 extent that it has agreed that, as of February 28, 2014, and continuing into the future, it shall only
5 manufacture or import for distribution or sale to California Customers or cause to be manufactured
6 or imported for distribution or sale to California Customers, Reformulated Products. An officer or
7 other authorized representative of Jesper that has exercised this election shall provide Vinocur with
8 a written certification confirming compliance with such conditions, which certification must be
9 received by Vinocur’s counsel on or before February 28, 2014.

10 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation**

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

23 4.1.4(iii) **Partial Penalty Waiver for Withdrawal of Unreformulated**
24 **Exemplar Products from the California Market.**

25 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
26 other authorized representative of Jesper provides Vinocur with written certification, by February
27 28, 2014, confirming that each individual or establishment in California to which it supplied the
28 Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products

1 held for sale in California.⁴

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

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

8 4.2 **Representations**

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

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

23 4.3 **Stipulated Penalties for Certain Violations of the Reformulation Standard.**

24 If Vinocur provides notice and appropriate supporting information to Jesper that levels of
25 the TDCPP and/or TCEP in excess of the Reformulation Standard have been detected in one or

26 _____
27 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Vinocur has, prior to August 31, 2013, provided Jesper with test results from a NVLAP
accredited laboratory showing the presence of a TDCPP and/or TCEP at a level in excess of 250
ppm pursuant to EPA testing methodologies 3545 or 8270C.

1 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported
2 after a deadline for meeting the Reformulation Standard has arisen for Jesper under Sections 3.1 or
3 3.6 above, Jesper may elect to pay a stipulated penalty to relieve any further potential liability under
4 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
5 question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000
6 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
7 excess of the Reformulation Standards but under 250 ppm.⁶ Vinocur shall further be entitled to
8 reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the
9 stipulated penalty level. Jesper under this Section must provide notice and appropriate supporting
10 information relating to the purchase (e.g. vendor name and contact information including
11 representative, purchase order, certification (if any) received from vendor for the exemplar or
12 subcategory of products), test results, and a letter from a company representative or counsel
13 attesting to the information provided, to Vinocur within 30 calendar days of receiving test results
14 from Vinocur's counsel. Any violation levels at or above 250 ppm shall be subject to the full
15 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, Jesper expressed a desire to
21 resolve the fee and cost issue. Jesper then agreed to pay Vinocur and his counsel under general
22 contract principles and the private attorney general doctrine codified at California Code of Civil
23 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,
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25 ⁵ This Section shall not be applicable where the vendor in question had previously been
26 found by Jesper to have provided unreliable certifications as to meeting the Reformulation Standard
27 in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a
28 second exceedance by Jesper's vendor at a level between 100 and 249 ppm shall not be available
after July 1, 2015.

⁶ 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 including the fees and costs incurred as a result of investigating, bringing this matter to Jesper's
2 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In
3 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of
4 time Plaintiff's counsel will incur to monitor various provisions in this agreement over the next two
5 years, with the exception of additional fees that may be incurred pursuant to Jesper's election in
6 Section 11. Jesper more specifically agreed, upon the Court's approval and entry of this Consent
7 Judgment, to pay Vinocur's counsel the amount of fees and costs indicated on Exhibit A.

8 **4.5 Payment Procedures**

9 4.5.1 Issuance of Payments. All payments owed to Vinocur for the initial penalty
10 and fees and costs shall be delivered to the attorney of record for Jesper within 2 days of the date
11 they are due pursuant to Exhibit A, and shall be held in trust pending the Court's approval of this
12 Consent Judgment, including any tentative rulings not opposed by either of the Parties. Such
13 counsel shall confirm, in writing within 5 days of deposit, that the funds have been deposited into
14 the trust account. Within ten days of the date on which the Court approves the Consent Judgment,
15 including any tentative rulings not opposed by the Parties, the payments being held in trust by the
16 attorney of record for Jesper shall be delivered to The Chanler Group in two separate checks
17 payable to: (i) "The Chanler Group in Trust for Laurence Vinocur" in the amount of \$2,500; and (ii)
18 "The Chanler Group" in the amount of \$20,000.

19 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
20 4.1, 4.3, and 4.4 shall be delivered to the following payment address:

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

26 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
27 Section 4.1, 4.3 and 4.4 shall be delivered directly to OEHHA (Memo line "Prop 65
28 Penalties") at one of the following addresses, as appropriate:

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For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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

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

5. CLAIMS COVERED AND RELEASED

5.1 Vinocur’s Release of Proposition 65 Claims

Vinocur, acting on his own behalf and in the public interest, releases Jesper, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Jesper directly or indirectly distributes or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to TDCPP in the Products, as set forth in the Notice. Compliance with the terms of this Consent Judgment

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

8 **5.2 Vinocur's Individual Releases of Claims**

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

24 **5.3 Jesper's Release of Vinocur**

25 Jesper, on behalf of itself, its past and current agents, representatives, attorneys, successors,
26 and assignees, hereby waives any and all claims against Vinocur and his attorneys and other

27 _____
28 ⁷ The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

1 representatives, for any and all actions taken or statements made (or those that could have been
2 taken or made) by Vinocur and his attorneys and other representatives, whether in the course of
3 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
4 respect to the Products or Additional Products.

5 **6. COURT APPROVAL**

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

21 **7. GOVERNING LAW**

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

1 Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in
2 this Consent Judgment shall be interpreted to relieve Jesper from any obligation to comply with any
3 pertinent state or federal law or regulation.

4 **8. NOTICES**

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

9 To Jesper:

To Vinocur:

10 At the address shown on Exhibit A

11 Proposition 65 Coordinator
12 The Chanler Group
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710-2565

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

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

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

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

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

25 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

26 11.1 In addition to the Products, where Jesper has identified on Exhibit A additional
27 products that contain TDCPP and/or TCEP and that are sold or offered for sale by it in California,
28 or to California Customers (“Additional Products”), then by no later than February 28, 2014, Jesper
may provide Vinocur with additional information or representations necessary to enable them to

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

25 11.2 Vinocur and Jesper agree to support the entry of this agreement as a Consent
26 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
27 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
28

1 motion is required to obtain judicial approval of this Consent Judgment, which Vinocur shall draft
2 and file. If any third party objection to the noticed motion is filed, Vinocur and Jesper shall work
3 together to file a reply and appear at any hearing before the Court. This provision is a material
4 component of the Consent Judgment and shall be treated as such in the event of a breach.

5 **12. MODIFICATION**

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

9 **13. AUTHORIZATION**

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

13 AGREED TO:

14 

15 _____
16 Plaintiff: Laurence Vinocur

AGREED TO:

Defendant: Jesper Office LLC

17 Date: February 10, 2014

Date: February ____, 2014

1 motion is required to obtain judicial approval of this Consent Judgment, which Vinocur shall draft
2 and file. If any third party objection to the noticed motion is filed, Vinocur and Jesper shall work
3 together to file a reply and appear at any hearing before the Court. This provision is a material
4 component of the Consent Judgment and shall be treated as such in the event of a breach.

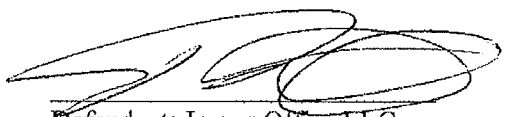
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9 **13. AUTHORIZATION**

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

13 AGREED TO:
14
15 _____
16 Plaintiff: Laurence Vinocur

AGREED TO:

17 Defendant: Jesper Office LLC

17 Date: February __, 2014

Date: February 12, 2014

EXHIBIT A

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I. Name of Settling Defendant (Mandatory)

Jesper Office LLC

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

RC Willey Home Furnishings

III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

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

Upholstered furniture

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

Car seats, strollers

Other (specify): Padded Upholstered Office Chairs

IV. Types of Additional Products Jesper Office LLC Elects to Address (if any):

V. Jesper Office LLC's Required Settlement Payments

A. Civil Penalties for Jesper Office LLC: \$38,000, as follows:

\$10,000 initial payment due on or before the February 28, 2014;

\$17,000 second payment due on or before April 15, 2014, of which \$10,000 may be waived pursuant to Section 4.1.4(i) and \$7,000 may be waived pursuant to Section 4.1.4(iii); and

\$11,000 third payment due on or before November 30, 2014, of which \$7,000 may be waived pursuant to Section 4.1.4(ii) and \$4,000 may be waived pursuant to Section 4.1.4(iv).

1 VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

2 A. Total amount in Fees and Costs for Jesper Office LLC: \$20,000.

3 Payment Schedule for Fees and Costs owed:

- 4 1. February 28, 2014: \$8,000
5 2. March 31, 2014: \$6,000
6 3. April 30, 2014: \$6,000

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

7 Paul S. Rosenlund, Esq.

8 Duane Morris LLP

9 Spear Tower

10 One Market Plaza, Suite 2200

11 San Francisco, CA 94105

12 Joern Skarregaard, President/CEO

13 Jesper Office LLC

14 745 Route 202 / 206 South, Suite 300

15 Bridgewater, NJ 08807

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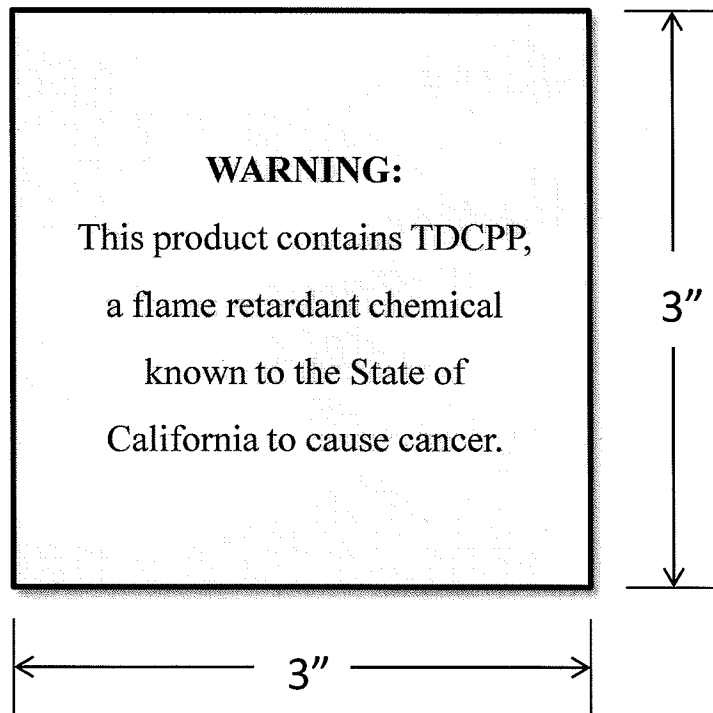
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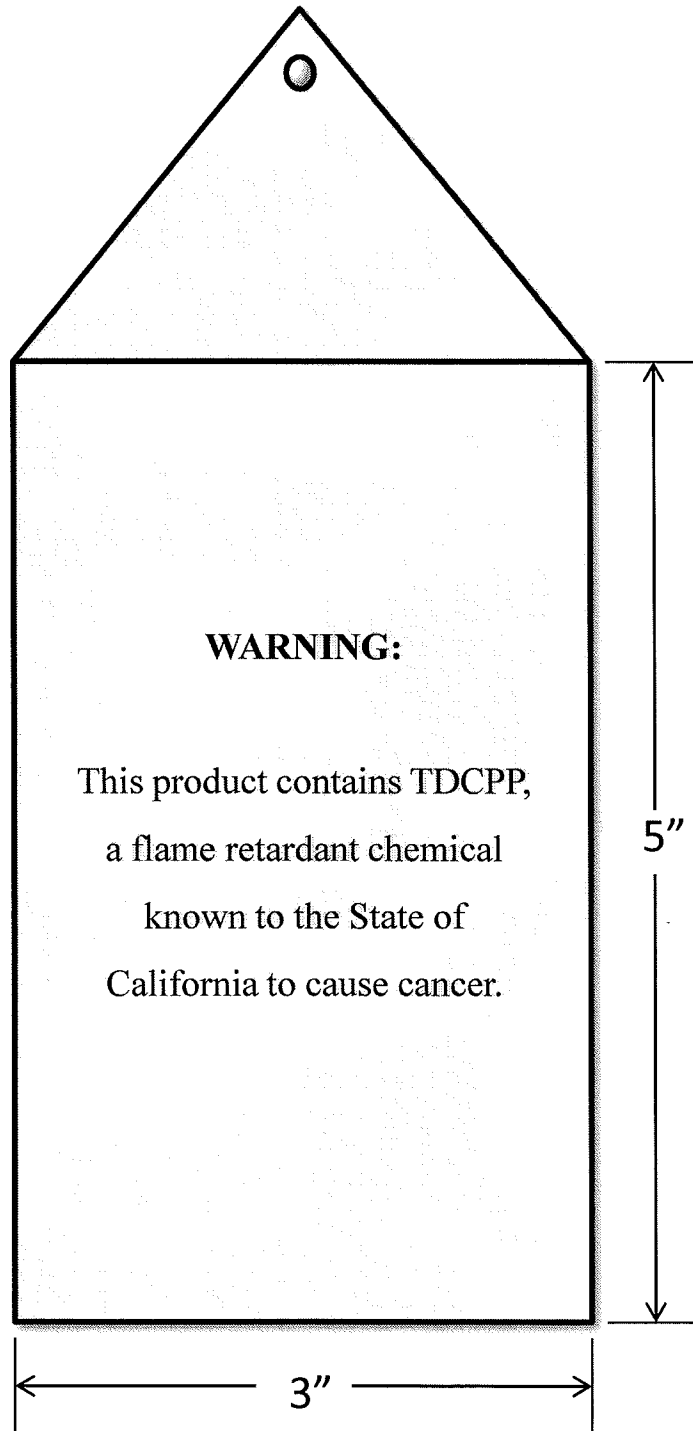
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



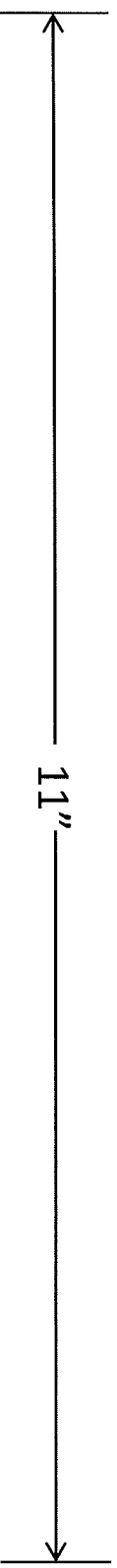
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



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

WARNING:

This product contains TDCPP, a flame retardant
8.5"
chemical known to the State of California to
cause cancer.



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