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10 LAURENCE VINOUCUR

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

13 LAURENCE VINOUCUR

14 Plaintiff,

15 v.

16 FRY'S ELECTRONICS, INC.; et al.;

17 Defendants.

) Case No. RG 13675337

)

)

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

)

)

) **[PROPOSED] CONSENT JUDGMENT AS  
20 TO DEFENDANTS Z-LINE DESIGNS,  
21 INC.**

)

)

) **(Health & Safety Code § 25249.6 et seq.**  
22 **Complaint Filed: June 4, 2013)**

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur  
4 (“Vinocur”) and the defendant Z-Line Designs, Inc. (“Z-Line”) with Vinocur and Z-Line  
5 collectively referred to as the “Parties.”

6 **1.2 Laurence Vinocur**

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

10 **1.3 Defendant**

11 Z-Line 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 Z-Line manufactured, imported, sold and/or distributed  
16 for sale in California, padded upholstered furniture including office chairs containing tris(1,3-  
17 dichloro-2-propyl) phosphate (“TDCPP”) and tris(2-chloroethyl) phosphate (“TCEP”) without the  
18 requisite Proposition 65 health hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed  
20 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable  
21 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §  
22 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and  
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
25 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code  
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). TDCPP and TCEP  
27 are hereinafter collectively referred to as the “Listed Chemicals.” Vinocur alleges that the Listed  
28 Chemicals escape from foam padding, leading to human exposures.

1           **1.5 Product Description**

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

7           **1.6 Notices of Violation**

8           On January 28, 2013, Vinocur served Z-Line, others and certain requisite public  
9 enforcement agencies with a “60-Day Notice of Violation” (“January 28 Notice”) that provided the  
10 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn  
11 customers, consumers, and workers in California that the Products expose users to TDCPP.

12           On March 13, 2013, Vinocur served Z-Line and certain requisite public enforcement  
13 agencies with a “60-Day Notice of Violation” (“March 13 Notice”) that provided the recipients with  
14 notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,  
15 consumers, and workers in California that the Products expose users to TCEP.

16           The January 28 Notice and March 13 Notice shall hereinafter collectively be referred to as  
17 the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced or is  
18 diligently prosecuting the allegations set forth in the Notices.

19           **1.7 Complaint**

20           On June 4, 2013, Vinocur filed a First Amended Complaint in the Superior Court in and for  
21 the County of Alameda against Z-Line, among others, *Laurence Vinocur v. Fry’s Electronics, Inc.,*  
22 *et al.*, Case No. RG 13675337, alleging violations of Proposition 65, based in part on the alleged  
23 unwarned exposures to the Listed Chemicals in the Products (“Complaint”).

24           **1.8 No Admission**

25           Z-Line denies the material factual and legal allegations contained in Vinocur’s Notices and  
26 Complaint and maintains that all products that they have manufactured, imported, distributed,  
27 and/or sold in California, including the Products, have been and are in compliance with all laws.  
28 Nothing in this Consent Judgment shall be construed as an admission by Z-Line of any fact,

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

5 **1.9 Consent to Jurisdiction**

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

10 **2. DEFINITIONS**

11 **2.1 California Customers**

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

15 **2.2 Detectable**

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

21 **2.3 Effective Date**

22 "Effective Date" shall mean October 15, 2013.

23 **2.4 Private Label Covered Products**

24 "Private Label Covered Products" means Products that bear a brand or trademark owned or  
25 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of  
26 California.

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1           **2.5 Reformulated Products**

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

4           **2.6 Reformulation Standard**

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

7           **2.7 Retailer**

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

10 **3. INJUNCTIVE RELIEF: REFORMULATION**

11           **3.1 Reformulation Commitment**

12           Commencing on March 31, 2014, Z-Line shall not manufacture or import for distribution or  
13 sale to California Customers, or cause to be manufactured or imported for distribution or sale to  
14 California Customers, any Products that are not Reformulated Products.

15           **3.2 Vendor Notification/Certification**

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

25           **3.3 Products No Longer in Z-Line’s Control**

26           No later than 45 days after the Effective Date, Z-Line shall send a letter, electronic or  
27 otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after  
28 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notices

1 received by Z-Line from Vinocur (“Exemplar Product”); and (2) any California Customer and/or  
2 Retailer that Z-Line reasonably understands or believes had any inventory for resale in California of  
3 Exemplar Products as of the relevant Notice’s dates. The Notification Letter shall advise the  
4 recipient that the Exemplar Product “contains TDCPP and/or TCEP, chemicals known to the State  
5 of California to cause cancer,” and request that the recipient either: (a) label the Exemplar Products  
6 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or  
7 (b) return, at Z-Line’s sole expense, all units of the Exemplar Product held for sale in California, or  
8 to California Customers, to Z-Line or a party Z-Line has otherwise designated. The Notification  
9 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar  
10 Product will be labeled or returned. Z-Line shall maintain records of all correspondence or other  
11 communications generated pursuant to this Section for two years after the Effective Date and shall  
12 promptly produce copies of such records upon Vinocur’s written request.

### 13 3.4 Current Inventory

14 Any Products in, or manufactured and en route to, Z-Line’s inventory as of or after  
15 December 31, 2013, that do not qualify as Reformulated Products and that Z-Line has reason to  
16 believe may be sold or distributed for sale in California, shall contain a clear and reasonable  
17 warning as set forth in Section 3.5 below unless Section 3.6 applies.

### 18 3.5 Product Warnings

#### 19 3.5.1 Product Labeling

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

26 A warning provided pursuant to this Consent Judgment shall state:  
27  
28



1           **3.6 Alternatives to Interim Warnings**

2           The obligations of Z-Line under Section 3.3 shall be relieved provided Z-Line certifies on or  
3 before December 15, 2013 that only Exemplar Products meeting the Reformulation Standard will  
4 be offered for sale in California, or to California Customers for sale in California, after December  
5 31, 2013. The obligations of Z-Line under Section 3.4 shall be relieved provided Z-Line certifies  
6 on or before December 15, 2013 that, after June 30, 2014, it will only distribute or cause to be  
7 distributed for sale in, or sell in, California, or to California Customers for sale in California,  
8 Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard. The  
9 certifications provided by this Section are material terms and time is of the essence.

10 **4. MONETARY PAYMENTS**

11           **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

21           **4.1.1 Initial Civil Penalty.** On or before the Effective Date, Z-Line shall make an  
22 initial civil penalty payment in the amount identified on Z-Line’s Exhibit A.

23           **4.1.2 Second Civil Penalty.** On or before January 15, 2014, Z-Line shall make a  
24 second civil penalty payment in the amount identified on Z-Line’s Exhibit A. The amount of the  
25 second penalty may be reduced according to any penalty waiver Z-Line is eligible for under  
26 Sections 4.1.4(i) and 4.1.4(iii), below.

27           **4.1.3 Third Civil Penalty.** On or before November 30, 2014, Z-Line shall make a  
28 third civil penalty payment in the amount identified on Z-Line’s Exhibit A. The amount of the third

1 penalty may be reduced according to any penalty waiver Z-Line is eligible for under Sections  
2 4.1.4(ii) and 4.1.4(iv), below.

3 4.1.4 Reductions to Civil Penalty Payment Amounts. Z-Line may reduce the  
4 amount of the second and/or third civil penalty payments identified on Z-Line's Exhibit A by  
5 providing Vinocur with certification of certain efforts undertaken to reformulate their Products or  
6 limit the ongoing sale of non-reformulated Products in California. The options to provide a written  
7 certification in lieu of making a portion of Z-Line's civil penalty payment constitute material terms  
8 of this Consent Judgment, and with regard to such terms, time is of the essence.

9 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**  
10 **Products Sold or Offered for Sale in California.**

11 As shown on Z-Line's Exhibit A, a portion of the second civil penalty shall be waived, to  
12 the extent that it has agreed that, as of November 1, 2013, and continuing into the future, Z-Line  
13 shall only manufacture or import for distribution or sale to California Customers or cause to be  
14 manufactured or imported for distribution or sale to California Customers, Reformulated Products.  
15 An officer or other authorized representative of Z-Line that has exercised this election shall provide  
16 Vinocur with a written certification confirming compliance with such conditions, which  
17 certification must be received by Vinocur's counsel on or before December 15, 2013.

18 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

19 As shown on Z-Line's Exhibit A, a portion of the third civil penalty shall be waived, to the  
20 extent that it has agreed that, as of March 31, 2014, and continuing into the future, it shall only  
21 manufacture or import for distribution or sale in California or cause to be manufactured or imported  
22 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-  
23 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million  
24 ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product,  
25 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and  
26 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,  
27 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized  
28 representative of Z-Line that has exercised this election shall provide Vinocur with a written

1 certification confirming compliance with such conditions, which certification must be received by  
2 Vinocur's counsel on or before November 15, 2014.

3 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**  
4 **Exemplar Products from the California Market.**

5 As shown on Z-Line's Exhibit A, a portion of the second civil penalty shall be waived, if an  
6 officer or other authorized representative of Z-Line provides Vinocur with written certification, by  
7 December 15, 2013, confirming that each individual or establishment in California to which it  
8 supplied the Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to  
9 return all Exemplar Products held for in California to which it supplied the Exemplar Product after  
10 October 28, 2011, has elected to return all remaining Exemplar Products held for sale in California.<sup>4</sup>

11 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**  
12 **California of Unreformulated Inventory.**

13 As shown on Z-Line's Exhibit A, a portion of the third civil penalty shall be waived, if an  
14 officer or other authorized representative of Z-Line provides Vinocur with written certification, on  
15 or before November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to  
16 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated  
17 Products.

18 **4.2 Representations**

19 Z-Line represents that the sales data and other information concerning its size, knowledge of  
20 the Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Vinocur was  
21 truthful to its knowledge and a material factor upon which Vinocur has relied to determine the  
22 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent  
23 Judgment.

24 If, within nine months of the Effective Date, Vinocur discovers and presents to Z-Line,  
25 evidence demonstrating that the preceding representation and warranty was materially inaccurate,  
26

27 <sup>4</sup> For purposes of this Section, the term Exemplar Products shall further include Products for  
28 which Vinocur has, prior to August 31, 2013, provided Z-Line with test results from a NVLAP  
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 then Z-Line shall have 30 days to meet and confer regarding Vinocur's contention. Should this 30  
2 day period pass without any such resolution between Vinocur and Z-Line, Vinocur shall be entitled  
3 to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

4 Z-Line further represents that in implementing the requirements set forth in Sections 3.1 and  
5 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve  
6 reformulation of its Products and Additional Products on a nationwide basis and not employ  
7 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to  
8 goods intended for sale to California Consumers.

9 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**  
10 **Standard.**

11 If Vinocur provides notice and appropriate supporting information to Z-Line that levels of a Listed  
12 Chemical in excess of the Reformulation Standard have been detected in one or more Products  
13 labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline  
14 for meeting the Reformulation Standard has arisen for Z-Line under Sections 3.1 or 3.6 above, Z-  
15 Line may elect to pay a stipulated penalty to relieve any further potential liability under Proposition  
16 65 or sanction under this Consent Judgment as to Products sourced from the vendor in question.<sup>5</sup>

17 The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the  
18 violation level is between 100 ppm and 249 ppm, this being applicable for any amount in excess of  
19 the Reformulation Standards but under 250 ppm.<sup>6</sup> Vinocur shall further be entitled to  
20 reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the  
21 stipulated penalty level. Z-Line under this Section must provide notice and appropriate supporting  
22 information relating to the purchase (e.g. vendor name and contact information including  
23 representative, purchase order, certification (if any) received from vendor for the exemplar or  
24 subcategory of products), test results, and a letter from a company representative or counsel

25 \_\_\_\_\_  
26 <sup>5</sup> This Section shall not be applicable where the vendor in question had previously been  
27 found by Z-Line to have provided unreliable certifications as to meeting the Reformulation  
28 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated  
penalty for a second exceedance by Z-Line's vendor at a level between 100 and 249 ppm shall not  
be available after July 1, 2015.

<sup>6</sup> 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 attesting to the information provided, to Vinocur within 30 calendar days of receiving test results  
2 from Vinocur's counsel. Any violation levels at or above 250 ppm shall be subject to the full  
3 remedies provided pursuant to this Consent Judgment and at law.

#### 4           **4.4     Reimbursement of Fees and Costs**

5           The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute  
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
7 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
8 settled. Shortly after the other settlement terms had been finalized, Z-Line expressed a desire to  
9 resolve the fee and cost issue. Z-Line then agreed to pay Vinocur and his counsel under general  
10 contract principles and the private attorney general doctrine codified at California Code of Civil  
11 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,  
12 including the fees and costs incurred as a result of investigating, bringing this matter to Z-Line's  
13 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In  
14 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of  
15 time Vinocur's counsel will incur to monitor various provisions in this agreement over the next two  
16 years, with the exception of additional fees that may be incurred pursuant to Z-Line's election in  
17 Section 11. Z-Line more specifically agreed, upon the Court's approval and entry of this Consent  
18 Judgment, to pay Vinocur's counsel the amount of fees and costs indicated on Z-Line's Exhibit A.  
19 Z-Line further agreed to tender and shall tender its full required payment under this Section to a  
20 trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within two  
21 business days of the Effective Date. Such funds shall be released from the trust account upon the  
22 Court's approval and entry of this Consent Judgment.

#### 23           **4.5     Payment Procedures**

##### 24                   4.5.1    Issuance of Payments.

25                   (a)     All payments owed to Vinocur and his counsel, pursuant to Sections  
26                   4.1, 4.3 and 4.4 shall be delivered to the following payment address:

27  
28

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

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

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

24 4.5.3 Tax Documentation. Z-Line shall issue a separate 1099 form for each  
25 payment required by this Section to: (a) Laurence Vinocur, whose address and tax  
26 identification number shall be furnished upon request after this Consent Judgment has been  
27 fully executed by the Parties; (b) OEHHA, who shall be identified as "California Office of  
28 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 4.3.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

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

3 Vinocur, acting on his own behalf and in the public interest, releases Z-Line, its parents,  
4 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,  
5 attorneys, and each entity to whom Z-Line directly or indirectly distribute or sell Products,  
6 including, but not limited, to downstream distributors, wholesalers, customers, retailers,  
7 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for  
8 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed  
9 Chemicals in the Products, as set forth in the Notices. Compliance with the terms of this Consent  
10 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed  
11 Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree  
12 that this Section 5.1 release shall not extend upstream to any entities, other than Z-Line, that  
13 manufactured the Products or any component parts thereof, or any distributors or suppliers who  
14 sold the Products or any component parts thereof to Z-Line, except that entities upstream of Z-Line  
15 that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled  
16 Covered Products offered for sale in California, or to California Customers, by the Retailer in  
17 question.

18 **5.2 Vinocur's Individual Releases of Claims**

19 Vinocur, in his individual capacity only and *not* in his representative capacity, provides a  
20 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
21 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
22 liabilities, and demands of Vinocur of any nature, character, or kind, whether known or unknown,  
23 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,  
24 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and  
25 delineated on Z-Line's Exhibit A) manufactured, imported, distributed, or sold by Z-Line prior to  
26 the Effective Date.<sup>7</sup> The Parties further understand and agree that this Section 5.2 release shall not

27 \_\_\_\_\_  
28 <sup>7</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as  
otherwise specified.

1 extend upstream to any entities that manufactured the Products or Additional Products, or any  
2 component parts thereof, or any distributors or suppliers who sold the Products Additional  
3 Products, or any component parts thereof to Z-Line, except that entities upstream of Z-Line that is a  
4 Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the Private  
5 Labeled Covered (or Additional) Products offered for sale in California by the Retailer in question.  
6 Nothing in this Section affects Vinocur's right to commence or prosecute an action under  
7 Proposition 65 against a Releasee that does not involve Z-Line's Products or Additional Products.

### 8           **5.3    Z-Line's Release of Vinocur**

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

## 15    **6.    COURT APPROVAL**

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

1 have been provided to OEHHA or held in trust for Vinocur or his counsel pursuant to Section 4,  
2 above, shall be refunded to Z-Line within 15 days.

3 **7. GOVERNING LAW**

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

13 **8. NOTICES**

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

18 To Z-Line:

19 At the address shown on Exhibit A

To Vinocur:

20 Proposition 65 Coordinator  
21 The Chanler Group  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710-2565

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

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

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

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products, where Z-Line has identified on Exhibit A additional  
6 products that contain the Listed Chemicals and that are sold or offered for sale by it in California, or  
7 to California Customers, (“Additional Products”), then by no later than October 15, 2013, Z-Line  
8 may provide Vinocur with additional information or representations necessary to enable him to  
9 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &  
10 Safety Code § 25249.7, that includes the Additional Products. Polyurethane foam that is supplied,  
11 shaped or manufactured for use as a component of a product, such as upholstered furniture, is  
12 specifically excluded from the definition of Additional Products and shall not be identified by Z-  
13 Line on Exhibit A as an Additional Product. Except as agreed upon by Vinocur, Z-Line shall not  
14 include a product, as an Additional Product, that is the subject of an existing 60-day notice issued  
15 by Vinocur or any other private enforcer at the time of execution. After receipt of the required  
16 information, Vinocur agrees to issue a supplemental 60-day notice in compliance with all statutory  
17 and regulatory requirements for the Additional Products. Vinocur will, and in no event later than  
18 October 1, 2014, prepare and file an amendment to this Consent Judgment to incorporate the  
19 Additional Products within the defined term “Products” and serve a copy thereof and its supporting  
20 papers (including the basis for supplemental stipulated penalties, if any) on the Office of the  
21 California Attorney General; upon the Court’s approval and finding that the supplemental stipulated  
22 penalty amount, if any, is reasonable, the Additional Products shall become subject to Section 5.1 in  
23 addition to Section 5.2. Z-Line shall, at the time it elects to utilize this Section and tenders the  
24 additional information or representations regarding the Additional Products to Vinocur, tender to  
25 The Chanler Group’s trust account an amount not to exceed \$8,750 as stipulated penalties and  
26 attorneys’ fees and costs incurred by Vinocur in issuing the new notice and engaging in other  
27 reasonably related activities, which may be released from the trust as awarded by the Court upon  
28 Vinocur’s application. Any fee award associated with the modification of the Consent Judgment to

1 include Additional Products shall not offset any associated supplemental penalty award, in any  
2 (Any tendered funds remaining in the trust thereafter shall be refunded to Z-Line within 15 days).  
3 Such payment shall be made to “in trust for The Chanler Group” and delivered as per Section  
4 4.5.1(a) above.

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

12 **12. MODIFICATION**

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

16 **13. AUTHORIZATION**

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

21 AGREED TO:

22   
23  
24 \_\_\_\_\_  
25 Plaintiff, Laurence Vinocur

AGREED TO:

Settling Defendant:  
Z-Line Designs, Inc.

26   
27 By: \_\_\_\_\_  
28 Name:  
It's:

Date: October 14, 2013

Date: September \_\_, 2013

**EXHIBIT A**

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I. Name of Settling Defendant: Z-LINE DESIGNS, INC.

II. Names of Releasees (optional/partial):

FRY'S ELECTRONICS, INC. as to the Products manufactured, imported, distributed and/or sold by Z-LINE DESIGNS, INC.

III. Types of Covered Products Applicable to Z-Line Designs: Padded upholstered office chairs containing TDCPP and TCEP

IV. Types of Additional Products Z-Line Designs Elects to Address (if any):

V. Z-Line Design's Required Settlement Payments

A. Penalties of \$86,000, as follows:

\$20,000 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 attributable to Z-Line Designs, Inc.: \$47,000.

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

Lynn R. Levitan  
Name

Attorney  
Title

Company /Firm Name

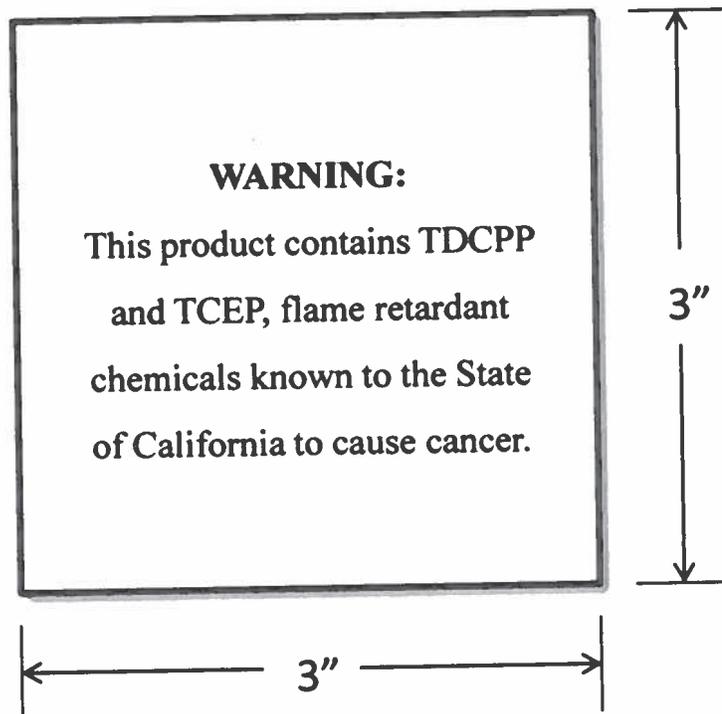
Address Crowell & Moring LLP

515 South Flower Street, 40<sup>th</sup> Floor

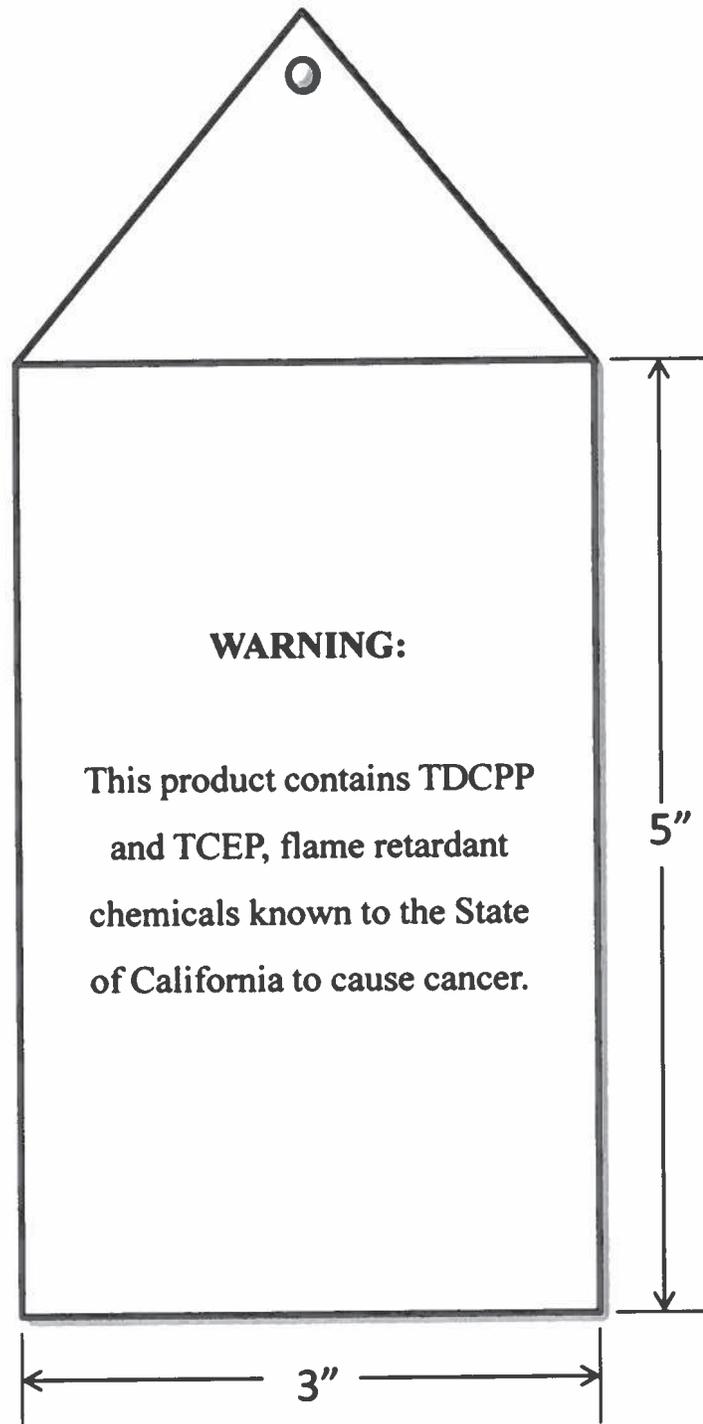
Los Angeles, CA 90071

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**EXHIBIT B**  
**(ILLUSTRATIVE WARNINGS)**



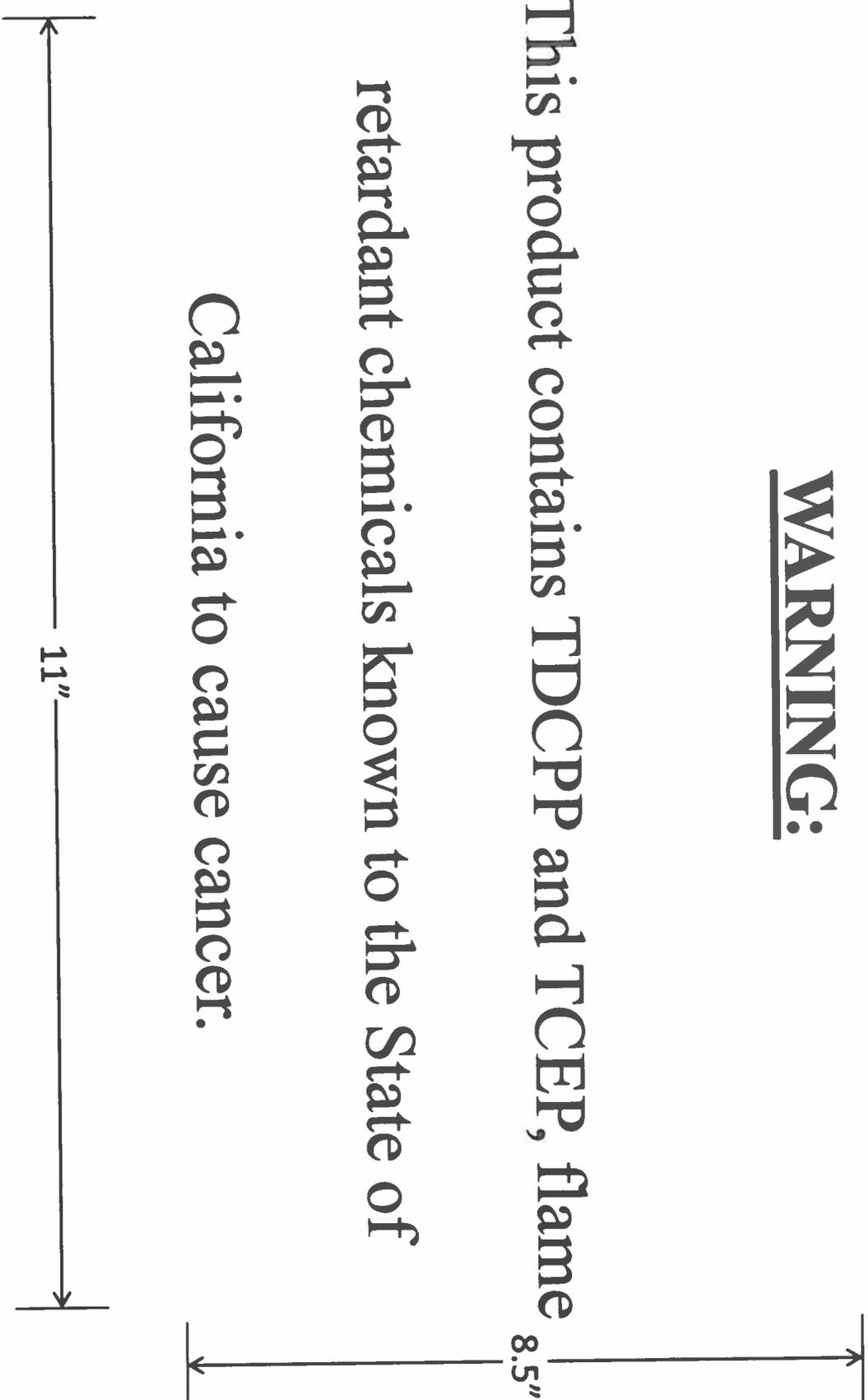
**INSTRUCTIONS:** Minimum 12 pt. font. "WARNING:" text must be bold.



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

**WARNING:**

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



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