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6 Attorneys for Plaintiffs
LAURENCE VINOCUR, JOHN MOORE and
PETER ENGLANDER
7

ENDORSED
FILED
ALAMEDA COUNTY

MAR - 7 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA duty

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

12 LAURENCE VINOCUR, JOHN MOORE
13 and PETER ENGLANDER,

14 Plaintiffs,

15 v.

16 COSTCO WHOLESALE
17 CORPORATION; CRAFTMASTER
FURNITURE, INC.; EMERALD HOME
18 FURNISHINGS, LLC; FOUR HANDS,
LLC; GRACO CHILDREN'S
19 PRODUCTS, INC.; HOMELEGANCE,
INC.; KINWAI USA INCA.; LEGACY
20 CLASSIC FURNITURE, INC.; LINON
HOME DÉCOR PRODUCTS, INC.;
21 NEWELL RUBBERMAID INC.; PIER 1
IMPORTS, INC.; PIER 1 IMPORTS
(U.S.), INC.; TUESDAY MORNING
22 CORPORATION; et al.

23 Defendants.
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25
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27
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Case No. RG13672233

**~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENTS AND CONSENT
JUDGMENTS AS TO DEFENDANTS
GRACO CHILDREN'S PRODUCTS INC.,
LEGACY CLASSIC FURNITURE, INC.,
FOUR HANDS, LLC AND PIER 1
IMPORTS, INC.**

Date: March 7, 2014

Time: 9:00 a.m.

Dept.: 17

Judge: Hon. George C. Hernandez, Jr.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgments attached hereto as **Exhibits 1, 2, 3, and 4**, and as further modified by the Order approving the Proposition 65 settlements and Consent Judgments. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlements pursuant to Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: MAR - 7 2014

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT

Exhibit 1
(To Judgment)

1 Clifford A. Chanler, State Bar No. 135534
2 Troy C. Bailey, State Bar No. 277424
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7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiff
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 COSTCO WHOLESALE
17 CORPORATION; et al.,
18 Defendants.

) Case No. RG 13672233
)
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO GRACO CHILDREN'S PRODUCTS**
) **INC.**
)
)
) **(Health & Safety Code § 25249.6 et seq.**
) **First Amended Complaint Filed: April 12, 2013)**

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 Graco Children’s Products Inc. (“Graco”) with Vinocur and Graco
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 Graco Children’s Products Inc.**

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

24 **1.4.3 Vinocur alleges that Graco manufactured, imported, sold and/or distributed**
25 **for sale in California, vinyl/PVC car seat protectors containing lead and di(2-ethylhexyl)phthalate**
26 **(“DEHP”) without the requisite Proposition 65 health hazard warnings.**

27 **1.4.4 Pursuant to Proposition 65, on October 24, 2003, California identified and**
28 **listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP**

1 became subject to the “clear and reasonable warning” requirements of Proposition 65 one year later
2 on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
3 25249.10(b).

4 1.4.5 Pursuant to Proposition 65, on February 27, 1987, California identified and
5 listed lead as a chemical known to cause birth defects and other reproductive harm. Lead became
6 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
7 February 27, 1988. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
8 25249.10(b).

9 TDCPP, DEHP and lead shall hereinafter be collectively referred to as the “Listed
10 Chemicals.”

11 1.5 Product Description

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

17 1.6 Notices of Violation

18 On or about January 4, 2013, Vinocur served Graco and certain requisite public enforcement
19 agencies with a “60-Day Notice of Violation” (“January 4, 2013, Notice”) that provided the
20 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
21 customers, consumers, and workers in California that certain Products expose users to TDCPP.

22 Based on their further investigation, Vinocur also issued a “Supplemental 60-Day Notice of
23 Violation” (“July 12, 2013, Notice”) to Graco and certain requisite public enforcement agencies,
24 alleging that certain Products expose users to TDCPP and that certain vinyl/PVC car seat protectors
25 expose Californians to di(2-ethylhexyl)phthalate (“DEHP”) and lead (“Phthalate/lead Products”).
26 DEHP and other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate
27 (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and other
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1 reproductive harm. Lead is listed under Proposition 65 as a chemical known to cause birth defects
2 and other reproductive harm.

3 The January 4, 2013, Notice and the July 12, 2013, Notice shall hereinafter collectively be
4 referred to as the "Notices." To the best of the Parties' knowledge, no public enforcer has
5 commenced or is diligently prosecuting the allegations set forth in the Notices.

6 **1.7 Complaint**

7 On March 20, 2013, Vinocur filed a Complaint in the Superior Court in and for the County
8 of Alameda against Graco and other defendants, *Peter Englander et al. v Costco Wholesale*
9 *Corporation, et al.*, Case No. RG 13672233, alleging violations of Proposition 65, based in part on
10 the alleged unwarned exposures to TDCPP contained in the Products. On April 12, 2013, Vinocur
11 filed a First Amended Complaint ("Complaint"), alleging additional violations of Proposition 65
12 against Graco. Upon entry of this Consent Judgment, the Complaint shall be deemed amended
13 *nunc pro tunc* to include the violations of Proposition 65 alleged by Englander in the July 12, 2013,
14 Notice.

15 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

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

1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 "California Customer" shall mean any customer that Graco reasonably understands is
4 located in California, has a California warehouse or distribution center, maintains a retail outlet in
5 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
9 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
10 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
11 determine the presence, and measure the quantity, of TDCPP and/or tris(2-chloroethyl) phosphate
12 ("TCEP") in a solid substance.

13 **2.3 Effective Date**

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

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 and Phthalate/lead Products which contain no more than 1000 ppm each of, DEHP, BBP,
22 and DBP and no more than 100 ppm each of lead.

23 **2.6 Reformulation Standard**

24 The "Reformulation Standard" shall mean containing no more than 25 ppm for each of
25 TDCPP and TCEP, and for Phthalate/lead Products, no more than 1000 ppm each of, DEHP, BBP,
26 and DBP and no more than 100 ppm each of lead.

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1 **2.7 Retailer**

2 "Retailer" means an individual or entity that offers a Product for retail sale to consumers in
3 the State of California.

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 **3.1 Reformulation Commitment**

6 Commencing on March 31, 2014, Graco shall not manufacture or import for distribution or
7 sale to California Customers, or cause to be manufactured or imported for distribution or sale to
8 California Customers, any Products that are not Reformulated Products.

9 **3.2 Vendor Notification/Certification**

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

19 **3.3 Products No Longer in Graco's Control**

20 No later than 45 days after the Effective Date, Graco shall send a letter, electronic or
21 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
22 October 28, 2011, supplied the item for resale in California described as an exemplar in each of the
23 Notices Graco received from Vinocur ("Exemplar Product(s)"); and (2) any California Customer
24 and/or Retailer that Graco reasonably understands or believes had any inventory for resale in
25 California of Exemplar Product(s) as of the relevant Notice's dates. The Notification Letter shall
26 advise the recipient that each Exemplar Product(s) contains TDCPP, a chemical known to the State
27 of California to cause cancer and/or DEHP and lead, chemicals known to the State of California to
28 cause birth defects and other reproductive harm, as appropriate depending on the allegations in the

1 Notices, and request that the recipient either: (a) label the Exemplar Product(s) remaining in
2 inventory for sale in California, or to California Customers; pursuant to Section 3.5; or (b) return, at
3 Graco's sole expense, all units of the Exemplar Product(s) held for sale in California, or to
4 California Customers, to Graco or a party Graco has otherwise designated. The Notification Letter
5 shall require a response from the recipient within 15 days confirming whether the Exemplar
6 Product(s) will be labeled or returned. Graco shall maintain records of all correspondence or other
7 communications generated pursuant to this Section for two years after the Effective Date and shall
8 promptly produce copies of such records upon Vinocur's written request.

9 3.4 Current Inventory

10 Any Products in, or manufactured and en route to, Graco's inventory as of or after December
11 31, 2013, that do not qualify as Reformulated Products and that Graco has reason to believe may be
12 sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth in
13 Section 3.5 below unless Section 3.6 applies.

14 3.5 Product Warnings

15 3.5.1 Product Labeling

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

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

23 **WARNING:** This product contains TDCPP, a flame
24 retardant chemical known to the State
of California to cause cancer.

25 And, for Phthalate/lead Products:
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1 **WARNING:** This product contains DEHP and
2 Lead, chemicals known to the State of
 California to cause birth defects and
 other reproductive harm.¹

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

7 **3.5.2 Internet Website Warning**

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

14 **WARNING:** This product contains TDCPP, a flame
15 retardant chemical known to the State
 of California to cause cancer.

16 And, for Phthalate/lead Products:

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20 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
21 used if Graco had begun to use it, prior to the Effective Date. If Graco seeks to use alternative
22 warning language, other than the language specified above or the safe harbor warning specified in
23 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it must
24 obtain the Court's approval of its proposed alternative and provide all Parties and the Office of the
25 Attorney General with timely notice and the opportunity to comment or object before the Court acts
26 on the request. The Parties agree that the following warning language shall not be deemed to meet
27 the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent
28 Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth defects or
other reproductive harm."

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.

WARNING: This product contains DEHP and Lead, chemicals known to the State of California to cause birth defects and other reproductive harm.³

3.6 **Alternatives to Interim Warnings**

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

4. MONETARY PAYMENTS

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

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

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

4.1.2 **Second Civil Penalty.** On or before January 15, 2014, Graco shall make a second civil penalty payment in the amount identified on Graco’s Exhibit A. The amount of the

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

1 second penalty may be reduced according to any penalty waiver Graco is eligible for under Sections
2 4.1.4(i) and 4.1.4(iii), below.

3 4.1.3 Third Civil Penalty. On or before November 30, 2014, Graco shall make a
4 third civil penalty payment in the amount identified on Graco's Exhibit A. The amount of the third
5 penalty may be reduced according to any penalty waiver Graco is eligible for under Sections
6 4.1.4(ii) and 4.1.4(iv), below.

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

13 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
14 **Products Sold or Offered for Sale in California.**

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

22 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

23 As shown on Graco's Exhibit A, a portion of the third civil penalty shall be waived, to the
24 extent that it has agreed that, as of March 31, 2014, and continuing into the future, it shall only
25 manufacture or import for distribution or sale in California or cause to be manufactured or imported
26 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-
27 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million
28 ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product,

1 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
2 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
3 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
4 representative of Graco that has exercised this election shall provide Vinocur with a written
5 certification confirming compliance with such conditions, which certification must be received by
6 Vinocur's counsel on or before November 15, 2014.

7 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
8 **Exemplar Products from the California Market.**

9 As shown on Graco's Exhibit A, a portion of the second civil penalty shall be waived, if an
10 officer or other authorized representative of Graco provides Vinocur with written certification, by
11 December 15, 2013, confirming that each individual or establishment in California to which it
12 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar
13 Products held for sale in California.⁴

14 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
15 **California of Unreformulated Inventory.**

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

21 **4.2 Representations**

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

3 If, within nine months of the Effective Date, Vinocur discovers and presents to Graco.
4 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
5 then Graco shall have 30 days to meet and confer regarding the Vinocur's contention. Should this
6 30 day period pass without any such resolution between the Vinocur and Graco, Vinocur shall be
7 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of
8 contract.

9 Graco further represents that in implementing the requirements set forth in Sections 3.1 and
10 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
11 reformulation of its Products and Additional Products on a nationwide basis and not employ
12 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
13 goods intended for sale to California Consumers.

14 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
15 **Standard.**

16 If Vinocur provides notice and appropriate supporting information to Graco that levels of
17 the Listed Chemicals in excess of the Reformulation Standard have been detected in one or more
18 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a
19 deadline for meeting the Reformulation Standard has arisen for Graco under Sections 3.1 or 3.6
20 above. Graco may elect to pay a stipulated penalty to relieve any further potential liability under
21 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
22 question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000
23 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
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26 ⁵ This Section shall not be applicable where the vendor in question had previously been
27 found by Graco to have provided unreliable certifications as to meeting the Reformulation Standard
28 in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a
second exceedance by Graco's vendor at a level between 100 and 249 ppm shall not be available
after July 1, 2015.

1 excess of the Reformulation Standards but under 250 ppm.⁶ Vinocur shall further be entitled to
2 reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the
3 stipulated penalty level. Graco under this Section must provide notice and appropriate supporting
4 information relating to the purchase (e.g. vendor name and contact information including
5 representative, purchase order, certification (if any) received from vendor for the exemplar or
6 subcategory of products), test results, and a letter from a company representative or counsel
7 attesting to the information provided, to Vinocur within 30 calendar days of receiving test results
8 from Vinocur's counsel. Any violation levels at or above 250 ppm shall be subject to the full
9 remedies provided pursuant to this Consent Judgment and at law.

10 4.4 Reimbursement of Fees and Costs

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

3 **4.5 Payment Procedures**

4 **4.5.1 Issuance of Payments.**

5 (a) All payments owed to Vinocur and his counsel, pursuant to Sections
6 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

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

15 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street
26 Sacramento, CA 95814

27 **4.5.2 Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
28 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. Graco 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

1 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
2 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.3.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Vinocur's Release of Proposition 65 Claims**

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

20 **5.2 Vinocur's Individual Releases of Claims**

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

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

9 **5.3 Graco's Release of Vinocur**

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

16 **6. COURT APPROVAL**

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

1 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
2 have been provided to OEHHA or held in trust for Vinocur or his counsel pursuant to Section 4,
3 above, shall be refunded to the associated Graco within 15 days.

4 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 To Graco:

20 At the address shown on Exhibit A

To Vinocur:

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

24 Any Party, from time to time, may specify in writing to the other Party a change of address to
25 which all notices and other communications shall be sent.
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1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

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

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1 The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated penalties and
2 attorneys' fees and costs incurred by Vinocur in issuing the new notice and engaging in other
3 reasonably related activities, which may be released from the trust as awarded by the Court upon
4 Vinocur's application. Any fee award associated with the modification of the Consent Judgment to
5 include Additional Products shall not offset any associated supplemental penalty award, if any (Any
6 tendered funds remaining in the trust thereafter shall be refunded to Graco within 15 days). Such
7 payment shall be made to "in trust for The Chanler Group" and delivered as per Section 4.5.1(a)
8 above.

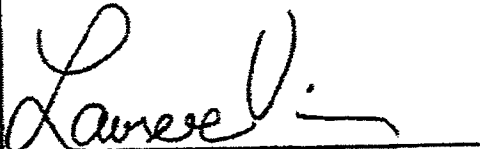
9 11.2 Vinocur and Graco agree to support the entry of this agreement as a Consent
10 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
11 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
12 is required to obtain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

16 **12. MODIFICATION**

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



Plaintiff: Laurence Vinocur

Date: October 11, 2013

AGREED TO:

Defendant:

Graco Children's Products Inc.

By: 

Name: Sean Beckstrom
It's: Vice President - Legal Affairs
Asst. Secretary

Date: ~~September~~ 3, 2013
October

EXHIBIT A

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I. Name of Settling Defendant: GRACO CHILDREN'S PRODUCTS INC.

II. Names of Releasees (optional/partial):

NEWELL RUBBERMAID INC.; COSTCO WHOLESALE CORPORATION; TARGET CORPORATION, AND AMAZON.COM. INC. as to the Products sold, imported, manufactured and/or distributed by GRACO CHILDREN'S PRODUCTS INC.

III. Types of Covered Products Applicable to Graco Children's Products:

- a) Vinyl/PVC Car Seat Protectors containing DEHP and Lead;
- b) Playards/Bassinets with foam padding containing TDCPP;
- c) Car Seats with foam padding containing TDCPP.

IV. Types of Additional Products Graco Children's Products Elects to Address (if any):

V. Graco Children's Products' Required Settlement Payments

A. Penalties of \$96,000, as follows:

\$30,000 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 \$55,000, as follows:

Fees and Costs attributable to Graco Children's Products Inc., Inc.: \$43,000.

Additional Fees and Costs attributable to action filed by Plaintiff before the Effective Date naming an unaffiliated third party that is released by the Settling Defendant's participation in the Consent Judgment: \$12,000

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

2 Kevin C. Mayer
Name

3
4 Attorney
Title

5
6 Company/Firm Name

7 Address: Crowell & Moring LLP

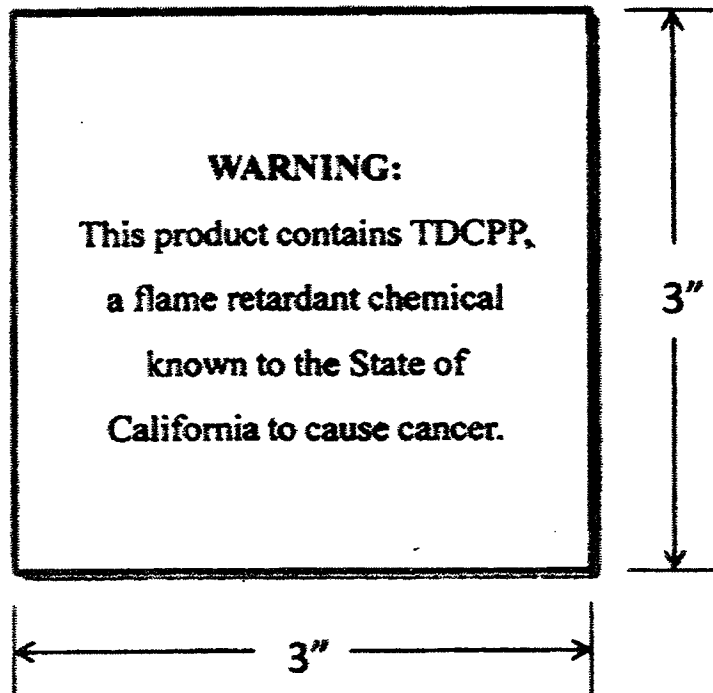
8 515 South Flower Street, 40th Floor

9 Los Angeles, CA 90071

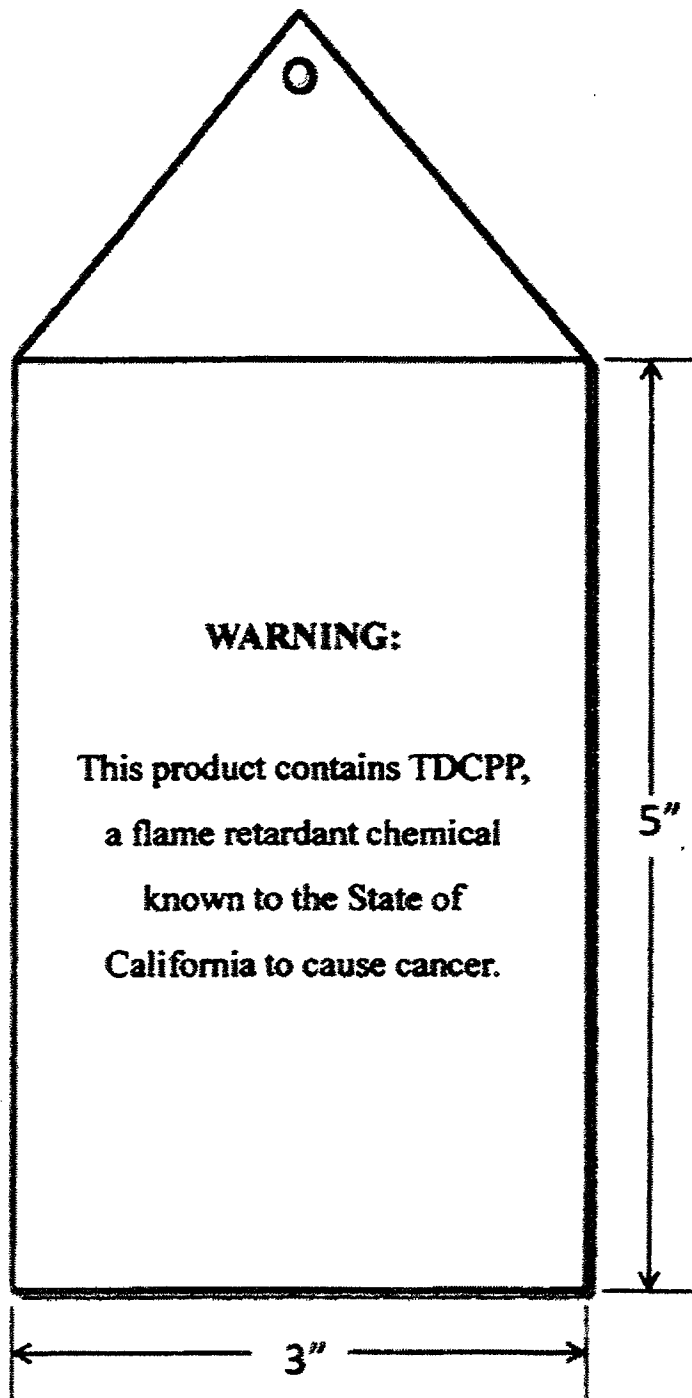
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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

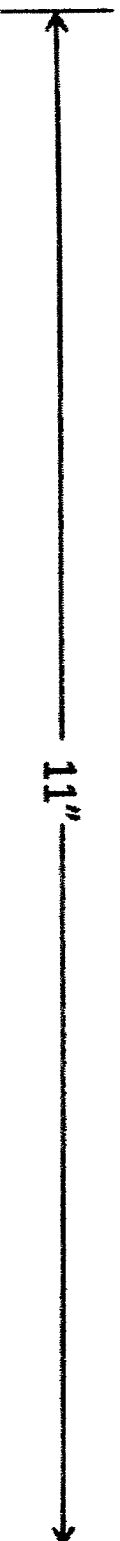


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

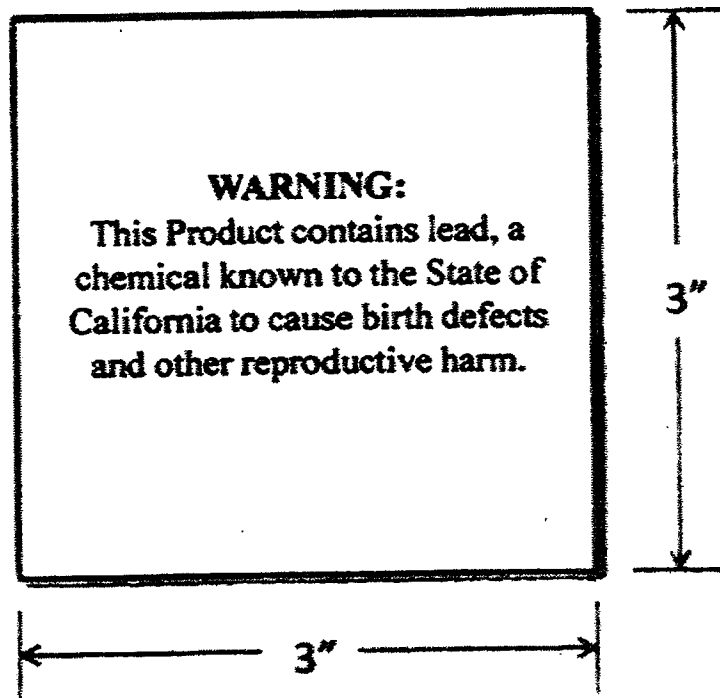
WARNING:

This product contains TDCPP, a flame retardant 8.5"

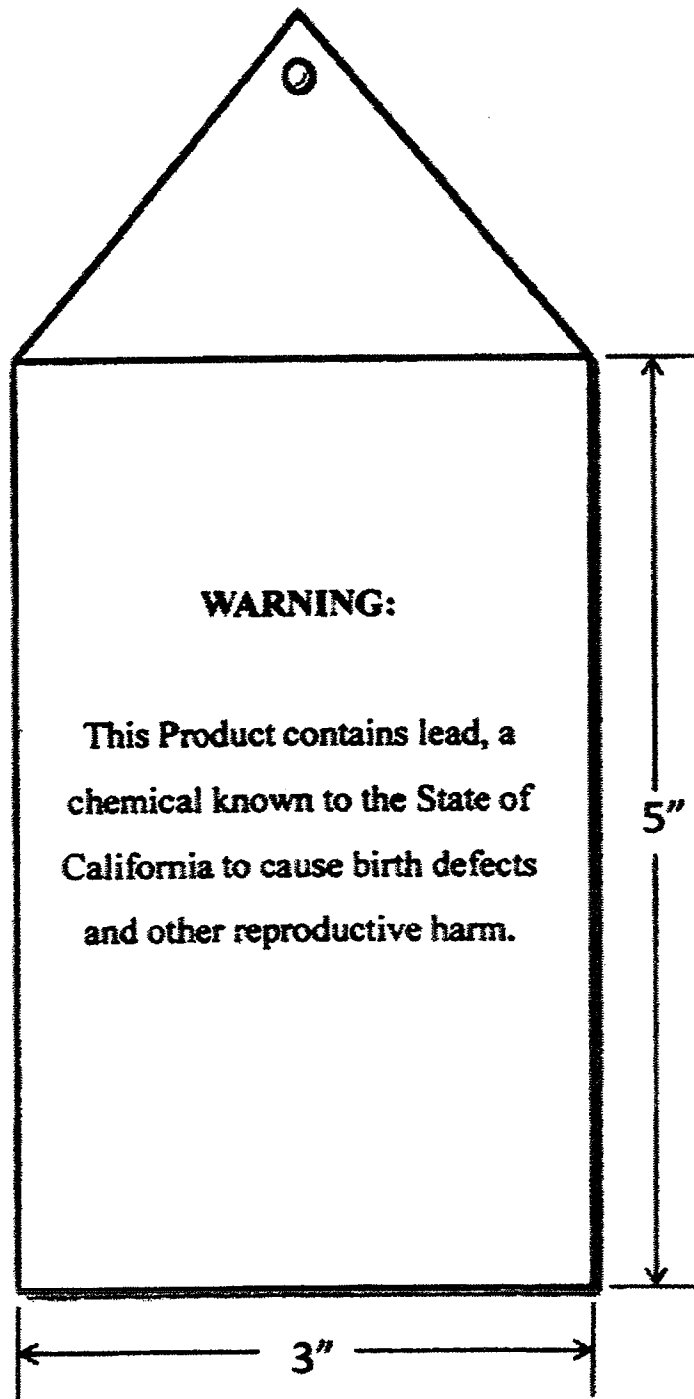
chemical known to the State of California to
cause cancer.



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



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:

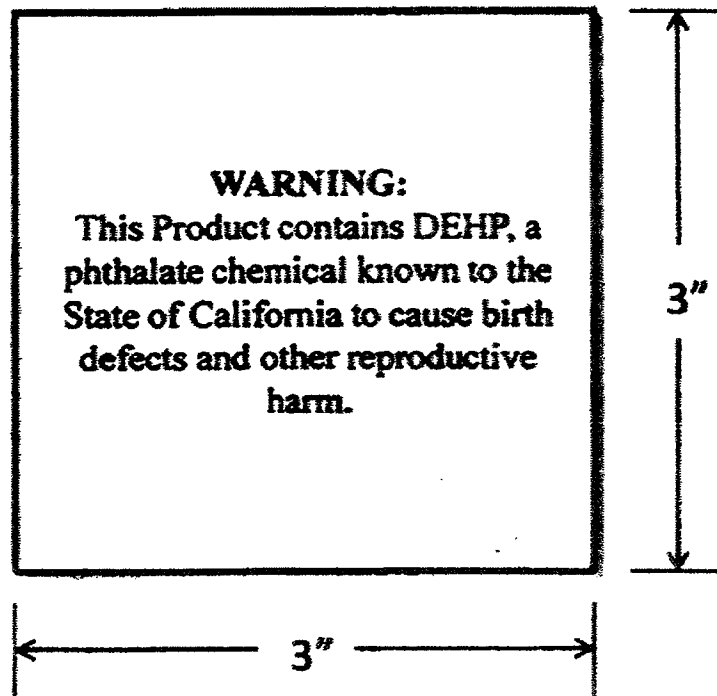
This Product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

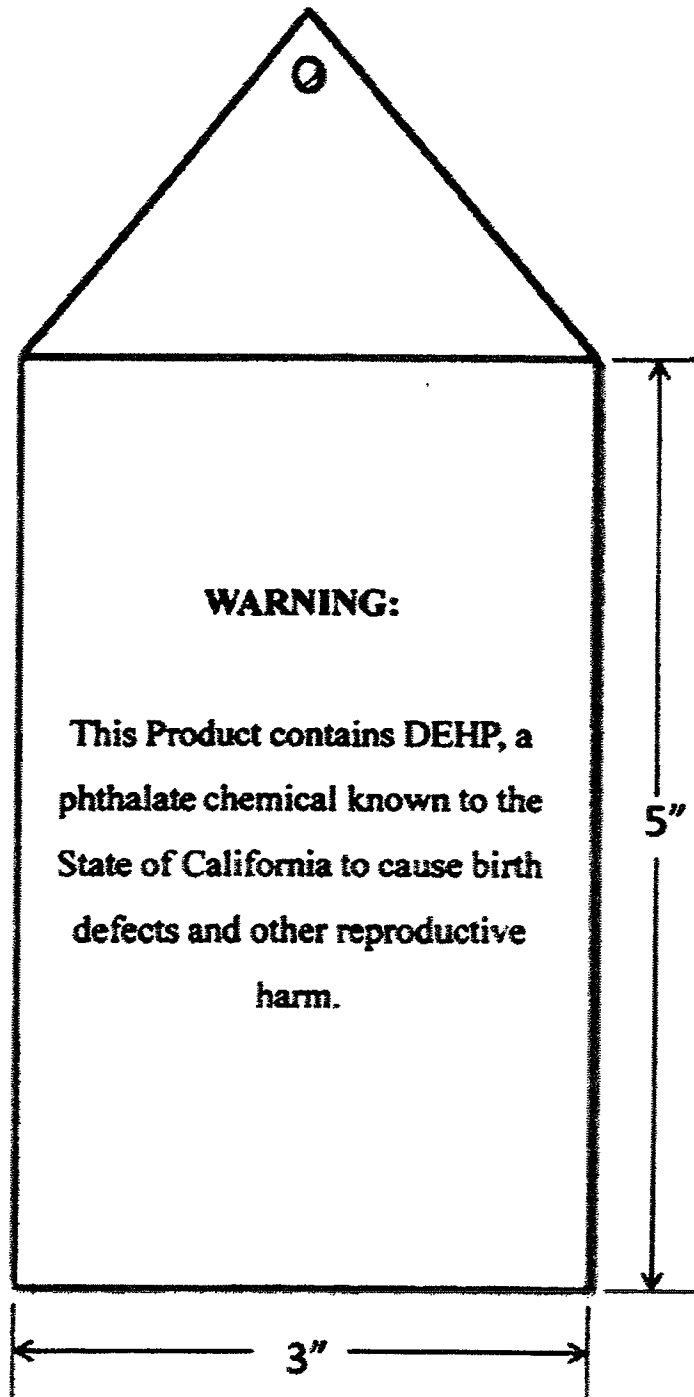
11"

INSTRUCTIONS:

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



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 DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

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

Exhibit 2
(To Judgment)

1 Clifford A. Chanler, State Bar No. 135534
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
7 PETER ENGLANDER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

12 PETER ENGLANDER
13 Plaintiff,
14 v.
15 COSTCO WHOLESALE
16 CORPORATION; et al.,
17 Defendants.

) Case No. RG 13-672233
)
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) [PROPOSED] CONSENT JUDGMENT AS
) TO LEGACY CLASSIC FURNITURE, INC.
)
) (Health & Safety Code § 25249.6 et seq.)
)
)
) First Amended Complaint Filed: April 12, 2013
)
)
)
)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and Legacy Classic Furniture, Inc. (“Legacy Classic”), with Englander and the
5 Legacy Classic collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

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

10 **1.3 Legacy Classic Furniture, Inc.**

11 Legacy Classic employs ten or more persons and is a person in the course of doing business
12 for 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** Englander alleges that Legacy Classic manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings.

19 **1.4.3** 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 TDCPP shall hereinafter be referred to as the “Listed Chemical.” Englander alleges that the
24 Listed Chemical escapes from foam padding, leading to human exposures.

25 **1.5 Product Description**

26 The categories of products that are covered by this Consent Judgment as to Legacy Classic
27 are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
28 manufactured for use as a component of another product, such as upholstered furniture, but which is

1 not itself a finished product, is specifically excluded from the definition of Products and shall not be
2 identified by Legacy Classic on Exhibit A as a Product.

3 **1.6 Notices of Violation**

4 Beginning in January 2013, Englander served Legacy Classic and certain requisite public
5 enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided Legacy Classic
6 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
7 consumers, and workers in California that the Products expose users to the Listed Chemical. To the
8 best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the
9 allegations set forth in the Notices.

10 **1.7 Complaint**

11 On April 12, 2013, Englander filed a First Amended Complaint in the Superior
12 Court in and for the County of Alameda against Legacy Classic, other defendants and Does 4
13 through 150, *Laurence Vinocur, John Moore and Peter Englander v. Costco Wholesale*
14 *Corporation, et al.*, Case No. RG 13-672233, alleging violations of Proposition 65, based in part on
15 the alleged unwarned exposures to TDCPP contained in the Products ("Complaint").

16 **1.8 No Admission**

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

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over the Legacy Classic as to the allegations contained in the Notices and Complaint,

1 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and
2 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of
3 Civil Procedure § 664.6.

4 **2. DEFINITIONS**

5 **2.1 California Customers**

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

9 **2.2 Detectable**

10 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
11 of .0025%) of any one chemical in any material, component, or constituent of a
12 subject product, when analyzed by a NVLAP 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 TDCPP and/or TCEP in a solid substance.

15 **2.3 Effective Date**

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

17 **2.4 Private Label Covered Products**

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

21 **2.5 Reformulated Products**

22 "Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP,
23 or TCEP.

24 **2.6 Reformulation Standard**

25 The "Reformulation Standard" shall mean containing no more than 25 ppm for each of
26 TDCPP and TCEP.

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2.7 Retailer

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

3. INJUNCTIVE RELIEF: REFORMULATION

3.1 Reformulation Commitment

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

3.2 Vendor Notification/Certification

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

3.3 Products No Longer in Legacy Classic’s Control

No later than 45 days after the Effective Date, Legacy Classic shall send a letter, electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice(s) Legacy Classic received from Englander (“Exemplar Product”); and (2) any California Customer and/or Retailer that Legacy Classic reasonably understands or believes had any inventory for resale in California of Exemplar Products as of the relevant Notice’s dates. The Notification Letter shall advise the recipient that the Exemplar Product(s) contains TDCPP, a chemical known to the State of California to cause cancer and request that the recipient either: (a) label the Exemplar

1 Products remaining in inventory for sale in California, or to California Customers, pursuant to
2 Section 3.5; (b) return, at the Legacy Classic's sole expense, all units of the Exemplar Product held
3 for sale in California, or to California Customers, to Legacy Classic or a party Legacy Classic has
4 otherwise designated; or (c) provide written certification that it has already sold, disposed of, or
5 otherwise destroyed all Exemplar Products in its possession, in accordance with all applicable laws.
6 The Notification Letter shall require a response from the recipient within 15 days confirming
7 whether the Exemplar Product will be labeled or returned. Legacy Classic shall maintain records of
8 all correspondence or other communications generated pursuant to this Section for two years after
9 the Effective Date and shall promptly produce copies of such records upon Englander's written
10 request.

11 **3.4 Current Inventory**

12 Any Products in, or manufactured and en route to, Legacy Classic's inventory as of or after
13 December 31, 2013, that do not qualify as Reformulated Products and that Legacy Classic has
14 reason to believe may be sold or distributed for sale in California, shall contain a clear and
15 reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.¹

16 **3.5 Product Warnings**

17 **3.5.1 Product Labeling**

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

24 A warning provided pursuant to this Consent Judgment shall state:
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28 ¹ This shall not apply to Products which are Private Label Covered Products in a Retailer
Settling Defendants' inventory as of December 31, 2013.

1 **WARNING:** This product contains TDCPP, a flame
2 retardant chemical known to the State
 of California to cause cancer.²

3 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
4 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
5 set forth in this Section are addressed, including as to the required warning statements and method
6 of transmission as set forth above, Settling Defendants remain free not to utilize the template
7 warnings.

8 **3.5.2 Internet Website Warning**

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

15 **WARNING:** This product contains TDCPP, a flame
16 retardant chemical known to the State
17 of California to cause cancer.⁴

18
19 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
20 used if Legacy Classic had begun to use it, prior to the Effective Date. If Legacy Classic seeks to
21 use alternative warning language, other than the language specified above or the safe harbor
22 warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the
23 warning, it must obtain the Court's approval of its proposed alternative and provide all Parties and
24 the Office of the Attorney General with timely notice and the opportunity to comment or object
25 before the Court acts on the request. The Parties agree that the following warning language shall
26 not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant
27 to this Consent Judgment: (a) "cancer or birth defects or other reproductive harm" and (b) "cancer,
28 birth defects or other reproductive harm."

24 ³ The characteristics of the template warnings are as follows: (a) a yellow hang tag
25 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
26 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
27 8.5" x 11", with no less that 32 point font, with the warning language printed on each side, which
28 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.

⁴ Footnote 2, *supra*, applies in this context as well.

1 **3.6 Alternatives to Interim Warnings**

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

11 **4. MONETARY PAYMENTS**

12 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

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

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

28

1 4.1.3 Third Civil Penalty. On or before November 30, 2014, Legacy Classic shall
2 make a third civil penalty payment in the amount identified on the Legacy Classic's Exhibit A. The
3 amount of the third penalty may be reduced according to any penalty waiver Legacy Classic is
4 eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

12 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**
13 **Products Sold or Offered for Sale in California.**

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

21 **4.1.4(ii) Partial Penalty Waiver for Extended Nationwide**
22 **Reformulation.**

23 As shown on Legacy Classic's Exhibit A, a portion of the third civil penalty shall be
24 waived, to the extent that it has agreed that, as of March 31, 2014, and continuing into the future, it
25 shall only manufacture or import for distribution or sale in California or cause to be manufactured
26 or imported for distribution or sale in California, Reformulated Products which also do not contain
27 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
28 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject

1 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
2 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
3 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
4 representative of Legacy Classic that has exercised this election shall provide Englander with a
5 written certification confirming compliance with such conditions, which certification must be
6 received by Englander's counsel on or before November 15, 2014.

7 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
8 **Exemplar Products from the California Market.**

9 As shown on Legacy Classic's Exhibit A, a portion of the second civil penalty shall be
10 waived, if an officer or other authorized representative of Legacy Classic provides Englander with
11 written certification, by December 15, 2013, confirming that each individual or establishment in
12 California to which it supplied the Exemplar Product after October 28, 2011, has already sold,
13 disposed of, or otherwise destroyed all Exemplar Products in its possession, in accordance with all
14 applicable laws.⁵

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

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

22 **4.2 Representations**

23 Legacy Classic represents that the sales data and other information concerning its size,
24 knowledge of the Listed Chemical, and prior reformulation and/or warning efforts, it provided to
25 Englander was truthful to its knowledge and a material factor upon which Englander has relied to
26

27 ⁵ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander has, prior to August 31, 2013, provided Legacy Classic with test results from a
NVLAP accredited laboratory showing the presence of the Listed Chemical at a level in excess of
250 ppm pursuant to EPA testing methodologies 3545 or 8270C.

1 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
2 Consent Judgment. If, within nine months of the Effective Date, Englander discovers and presents
3 to Legacy Classic, evidence demonstrating that the preceding representation and warranty was
4 materially inaccurate, then Legacy Classic shall have 30 days to meet and confer regarding
5 Englander's contention. Should this 30 day period pass without any such resolution between
6 Englander and Legacy Classic, Englander shall be entitled to file a formal legal claim including, but
7 not limited to, a claim for damages for breach of contract.

8 Legacy Classic further represents that in implementing the requirements set forth in Sections
9 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
10 reformulation of its Products and Additional Products on a nationwide basis and not employ
11 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
12 goods intended for sale to California Consumers.

13 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
14 **Standard.**

15 If Englander provides notice and appropriate supporting information to Legacy Classic that
16 levels of the Listed Chemical in excess of the Reformulation Standard have been detected in one or
17 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported
18 after a deadline for meeting the Reformulation Standard has arisen for Legacy Classic under
19 Sections 3.1 or 3.6 above, Legacy Classic may elect to pay a stipulated penalty to relieve any
20 further potential liability under Proposition 65 or sanction under this Consent Judgment as to
21 Products sourced from the vendor in question.⁶ The stipulated penalty shall be \$1,500 if the
22 violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249
23 ppm, this being applicable for any amount in excess of the Reformulation Standards but under 250
24 ppm.⁷ Englander shall further be entitled to reimbursement of their associated expense in an

25 _____
26 ⁶ This Section shall not be applicable where the vendor in question had previously been
27 found by Legacy Classic 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 Legacy Classic's vendor at a level between 100 and 249 ppm
shall not be available after July 1, 2015.

⁷ 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 amount not to exceed \$5,000 regardless of the stipulated penalty level. Legacy Classic, under this
2 Section, must provide notice and appropriate supporting information relating to the purchase (e.g.
3 vendor name and contact information including representative, purchase order, certification (if any)
4 received from vendor for the exemplar or subcategory of products), test results, and a letter from a
5 company representative or counsel attesting to the information provided, to Englander within 30
6 calendar days of receiving test results from Englander's counsel. Any violation levels at or above
7 250 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at
8 law.

9 **4.4 Reimbursement of Fees and Costs**

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

1 **4.5 Payment Procedures**

2 **4.5.1 Issuance of Payments.**

3 (b) All payments owed to Englander and his counsel, pursuant to
4 Sections 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

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

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 **4.5.2 Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
26 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
27 Section 4.5.1(a) above, as proof of payment to OEHHA.

28 **4.5.3 Tax Documentation.** Legacy Classic shall issue a separate 1099 form for
each payment required by this Section to: (a) Peter Englander, whose address and tax identification
number shall be furnished upon request after this Consent Judgment has been fully executed by the
Parties; and (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 (d) "The Chanler Group" (EIN: 94-3171522) to the address
set forth in Section 4.5.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

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

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

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

19 Englander, 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 Englander 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 Legacy Classic's Exhibit A) manufactured, imported, distributed, or sold by Legacy
26 Classic prior to the Effective Date.⁸ The Parties further understand and agree that this Section 5.2

27 _____
28 ⁸ The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

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

9 **5.3 Legacy Classic's Release of Englander**

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

16 **6. COURT APPROVAL**

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

1 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
2 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 4,
3 above, shall be refunded to the associated Settling Defendant within 15 days.

4 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 To Legacy Classic:

20 At the address shown on each Exhibit A

To Englander:

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

24 Any Party, from time to time, may specify in writing to the other Party a change of address to
25 which all notices and other communications shall be sent.
26
27
28

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

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

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

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 In addition to the Products, where Legacy Classic has identified on Exhibit A
10 additional products that contain the Listed Chemical and that are sold or offered for sale by it in
11 California, or to California Customers, ("Additional Products"), then by no later than October 15,
12 2013, Legacy Classic may provide Englander with additional information or representations
13 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit
14 therefore, pursuant to Health & Safety Code § 25249.7, that includes the Additional Products.
15 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
16 such as upholstered furniture, is specifically excluded from the definition of Additional Products
17 and shall not be identified by Legacy Classic on Exhibit A as an Additional Product. Except as
18 agreed upon by Englander, Legacy Classic shall not include a product, as an Additional Product,
19 that is the subject of an existing 60-day notice issued by Englander or any other private enforcer at
20 the time of execution. After receipt of the required information, Englander agrees to issue a
21 supplemental 60-day notice in compliance with all statutory and regulatory requirements for the
22 Additional Products. Englander will, and in no event later than October 1, 2014, prepare and file an
23 amendment to this Consent Judgment to incorporate the Additional Products within the defined
24 term "Products" and serve a copy thereof and its supporting papers (including the basis for
25 supplemental stipulated penalties, if any) on the Office of the California Attorney General; upon the
26 Court's approval and finding that the supplemental stipulated penalty amount, if any, is reasonable,
27 the Additional Products shall become subject to Section 5.1 in addition to Section 5.2. Legacy
28 Classic shall, at the time it elects to utilize this Section and tenders the additional information or

1 representations regarding the Additional Products to Englander, tender to The Chanler Group's trust
2 account an amount not to exceed \$8,750 as stipulated penalties and attorneys' fees and costs
3 incurred by Englander in issuing the new notice and engaging in other reasonably related activities,
4 which may be released from the trust as awarded by the Court upon Englander's application. Any
5 fee award associated with the modification of the Consent Judgment to include Additional Products
6 shall not offset any associated supplemental penalty award, if any. (Any tendered funds remaining
7 in the trust thereafter shall be refunded to Legacy Classic within 15 days). Such payment shall be
8 made to "in trust for The Chanler Group" and delivered as per Section 4.5.1(a) above.

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

17 **12. MODIFICATION**

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

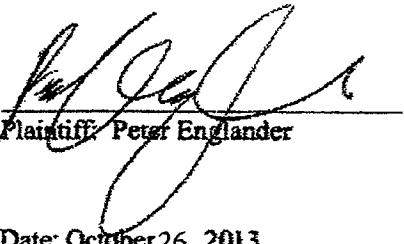
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13. AUTHORIZATION

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

AGREED TO:


Plaintiff: Peter Englander
Date: October 26, 2013

AGREED TO:

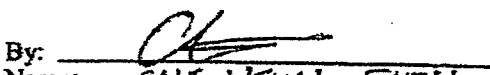
By: 
Name: CHENKUN SHIH
It's:
Date: October 25, 2013

EXHIBIT A

I. Name of Settling Defendant: LEGACY CLASSIC FURNITURE, INC.

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

III. Types of Covered Products Applicable to Settling Defendant:

Padded upholstered furniture including kid and teen chairs containing TDCPP

IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

V. Settling Defendant's Required Settlement Payments

A. Penalties of \$101,000, as follows:

\$35,000 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 Legacy Classic Furniture, Inc.: \$50,000.

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

Kevin C. Mayer

Name

Attorney

Title

Company/Firm Name

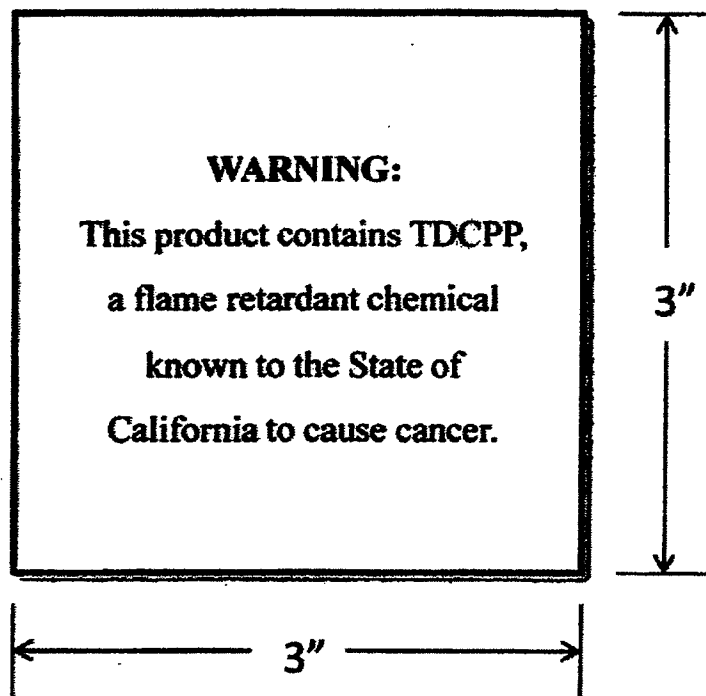
Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

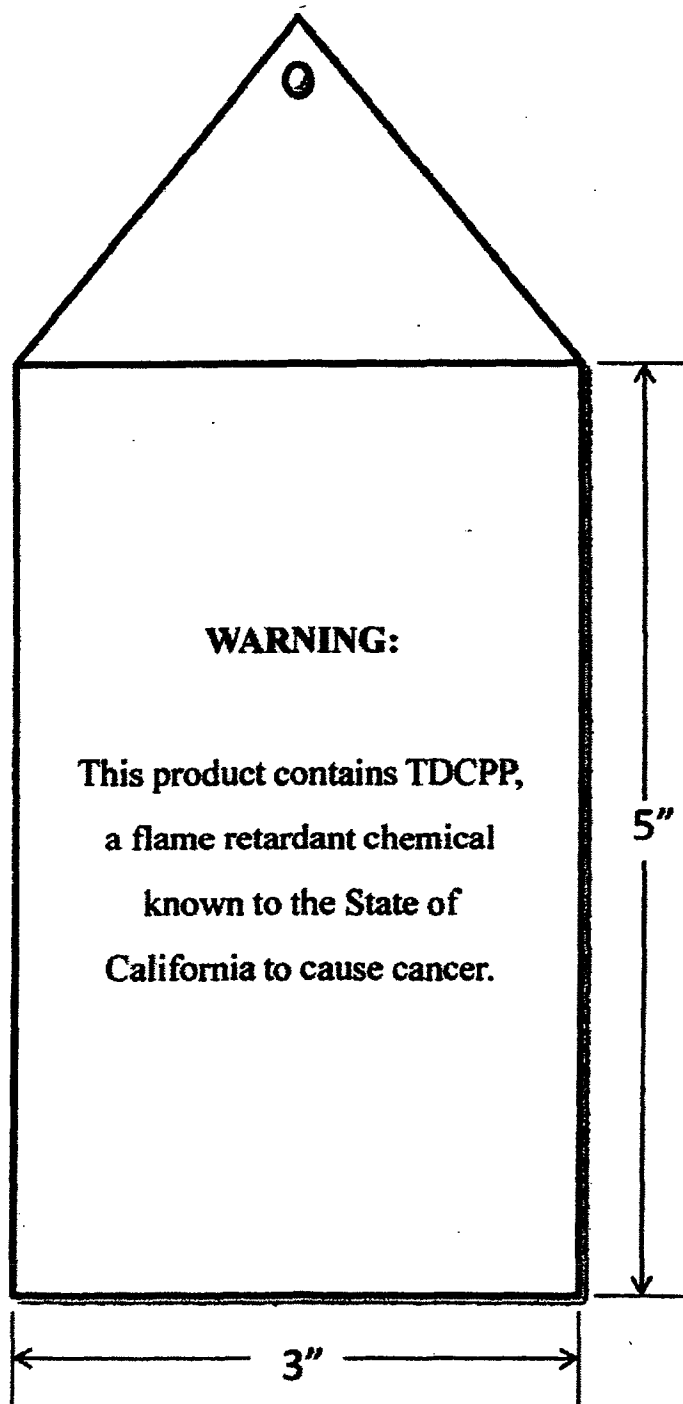
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



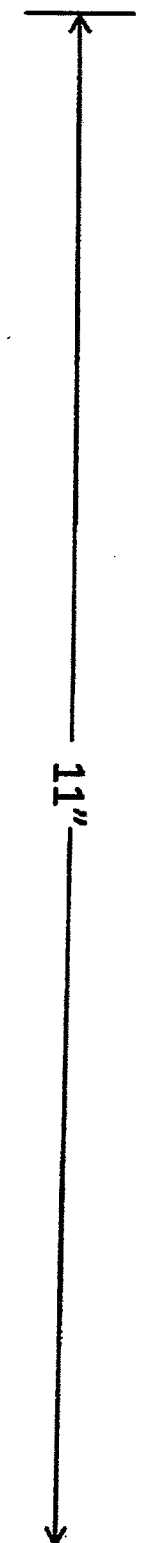
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

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.

Exhibit 3
(To Judgment)

1 Clifford A. Chanler, State Bar No. 135534
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
7 PETER ENGLANDER
8

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

12 PETER ENGLANDER) Case No. RG 13-672233
13)
Plaintiff,)
14 v.) Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17
15 COSTCO WHOLESALE CORPORATION;)
CRAFTMASTER FURNITURE, INC.;)
16 EMERALD HOME FURNISHINGS, LLC;) [PROPOSED] CONSENT JUDGMENT AS
FOUR HANDS, LLC; GRACO) TO CRAFTMASTER FURNITURE, INC.;
17 CHILDREN'S PRODUCTS, INC.;) EMERALD HOME FURNISHINGS, LLC;
HOMELEGANCE, INC.; KINWAI USA) FOUR HANDS, LLC; AND
18 INC.; LEGACY CLASSIC FURNITURE,) HOMELEGANCE, INC.
INC.; LINON HOME DECOR PRODUCTS,)
19 INC.; NEWELL RUBBERMAID INC.; PIER) (Health & Safety Code § 25249.6 et seq.)
1 IMPORTS, INC.; PIER 1 IMPORTS (U.S.),)
20 INC.; TUESDAY MORNING)
CORPORATION; and DOES 1-150,) First Amended Complaint Filed: April 12, 2013
21 inclusive, et al.)
22 Defendants.)
23)
24)
25)
26)
27)
28)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander ("Plaintiff")
4 and the defendants identified in the attached Exhibits ("Settling Defendants"), with Plaintiff and the
5 Settling Defendants collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 Plaintiff 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 Settling Defendants**

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

14 **1.4 General Allegations**

15 **1.4.1** Plaintiff alleges that each Settling Defendant manufactured, imported, sold
16 and/or distributed for sale in California, products with foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") and/or tris(2-chloroethyl) phosphate ("TCEP"),
18 without the 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).

27 TDCPP and TCEP are hereinafter collectively referred to as the "Listed Chemicals."
28 Plaintiff alleges that the Listed 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 each Settling
3 Defendant are identified on Exhibit A (hereinafter "Products"). Polyurethane foam that is supplied,
4 shaped or manufactured for use as a component of another product, such as upholstered furniture,
5 but which is not itself a finished product, is specifically excluded from the definition of Products
6 and shall not be identified by a Settling Defendant on Exhibit A as a Product.

7 **1.6 Notices of Violation**

8 Beginning in December 2012, Plaintiff served Settling Defendants and certain requisite
9 public enforcement agencies with "60-Day Notices of Violation" ("Notices") 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 one or more
12 Listed Chemicals.¹ To the best of the Parties' knowledge, no public enforcer has commenced or is
13 diligently prosecuting the allegations set forth in the Notices.

14 **1.7 Complaint**

15 On April 12, 2013, Plaintiff filed a First Amended Complaint in the Superior Court
16 in and for the County of Alameda against the Settling Defendants, other defendants and Does 4
17 through 150, *Laurence Vinocur, John Moore and Peter Englander v. Costco Wholesale*
18 *Corporation, et al.*, Case No. RG 13-672233, alleging violations of Proposition 65, based in part on
19 the alleged unwarned exposures to TDCPP contained in the Products ("Complaint"). Upon entry of
20 this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to include the
21 violations of Proposition 65 alleged by Plaintiff in subsequent 60-day notices to the Settling
22 Defendants specific to TCEP and/or DEHP.

23
24
25
26 ¹ Based on further investigation, Plaintiff has also issued supplemental 60-day notices to
27 some of the Settling Defendants alleging that the Products contain and expose Californians to di(2-
28 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. As to the Settling Defendants who received
Notices concerning DEHP, the term "Listed Chemical" shall also include DEHP.

1 **1.8 No Admission**

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

11 **1.9 Consent to Jurisdiction**

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

17 **2. DEFINITIONS**

18 **2.1 California Customers**

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

22 **2.2 Detectable**

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

28

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.³

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 that will be sold or offered for sale in California, or to
24 California Customers, instructing each such vendor to use reasonable efforts to provide only

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

³ As to the Settling Defendants who received supplemental Notices concerning DEHP, the
term “Reformulated Standards” further requires that the Phthalate Products contain no more than
1000 ppm each of DEHP, BBP, and DBP.

1 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
2 preceding sentence, a Settling Defendant shall not employ statements that will encourage a vendor
3 to delay compliance with the Reformulation Standard. The Settling Defendant shall subsequently
4 obtain written certifications, no later than April 1, 2014, from such vendors, and any newly engaged
5 vendors, that the Products manufactured by such vendors are in compliance with the Reformulation
6 Standard. Certifications shall be held by the Settling Defendant for at least two years after their
7 receipt and shall be made available to Plaintiff upon request.

8 **3.3 Products No Longer in a Settling Defendant's Control**

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

1 **3.4 Current Inventory**

2 Any Products in, or manufactured and en route to, a Settling Defendant's inventory as of or
3 after December 31, 2013, that do not qualify as Reformulated Products and that the Settling
4 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a
5 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.⁴

6 **3.5 Product Warnings**

7 **3.5.1 Product Labeling**

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

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

15 **WARNING:** This product contains TDCPP and/or
16 TCEP, flame retardant chemicals
17 known to the State of California to
 cause cancer.

18 Or, for Phthalate Products:

19 **WARNING:** This product contains DEHP, a
20 chemical known to the State of
21 California to cause birth defects and
22 other reproductive harm.⁵

23 ⁴ This shall not apply to Products which are Private Label Covered Products in a Retailer
24 Settling Defendants' inventory as of December 31, 2013.

25 ⁵ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
26 used if the Settling Defendant had begun to use it, prior to the Effective Date. A Settling Defendant
27 that seeks to use alternative warning language, other than the language specified above or the safe
28 harbor warning specified in 27 CCR § 25603.2, or that seeks to use an alternate method of
 transmission of the warning, must obtain the Court's approval of its proposed alternative and
 provide all Parties and the Office of the Attorney General with timely notice and the opportunity to
 comment or object before the Court acts on the request. The Parties agree that the following
 warning language shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and
 shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other
 reproductive harm" and (b) "cancer, birth defects or other reproductive harm."

1 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be
2 clear and reasonable for purposes of this Consent Judgment.⁶ Provided that the other requirements
3 set forth in this Section are addressed, including as to the required warning statements and method
4 of transmission as set forth above, Settling Defendants remain free not to utilize the template
5 warnings.

6 3.5.2 Internet Website Warning

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

13 **WARNING:** This product contains TDCPP and/or
14 TCEP, flame retardant chemicals
15 known to the State of California to
16 cause cancer.

17 Or, for Phthalate Products:

18 **WARNING:** This product contains DEHP, a
19 chemical known to the State of
20 California to cause birth defects and
21 other reproductive harm.⁷

22 3.6 Alternatives to Interim Warnings

23 The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the
24 Settling Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting
25 the Reformulation Standard will be offered for sale in California, or to California Customers for
26 sale in California, after December 31, 2013. The obligations of a Settling Defendant under Section

27 ⁶ The characteristics of the template warnings are as follows: (a) a yellow hang tag
28 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
of the hang tag, which shall be affixed directly to the Product; (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.

⁷ Footnote 5, *supra*, applies in this context as well.

1 3.4 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013 that,
2 after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in,
3 California, or to California Customers for sale in California, Products (i.e., Products beyond the
4 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
5 Section are material terms and time is of the essence.

6 **4. MONETARY PAYMENTS**

7 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

10 Each penalty payment will be allocated in accordance with California Health & Safety Code
11 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
12 Health Hazard Assessment ("OEHHA"), and 25% of the penalty remitted to "The Chanler Group
13 in Trust for Peter Englander." Each penalty payment shall be made within two business days of the
14 date it is due and be delivered to the addresses listed in Section 4.5 below. A Settling Defendant
15 shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and
16 owing under this Section that are not received within two business days of the due date.

17 4.1.1 Initial Civil Penalty. On or before the Effective Date, each Settling
18 Defendant shall make an initial civil penalty payment in the amount identified on the Settling
19 Defendant's Exhibit A.

20 4.1.2 Second Civil Penalty. On or before January 15, 2014, each Settling
21 Defendant shall make a second civil penalty payment in the amount identified on the Settling
22 Defendant's Exhibit A. The amount of the second penalty may be reduced according to any penalty
23 waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

24 4.1.3 Third Civil Penalty. On or before November 30, 2014, each Settling
25 Defendant shall make a third civil penalty payment in the amount identified on the Settling
26 Defendant's Exhibit A. The amount of the third penalty may be reduced according to any penalty
27 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

28

1 4.1.4 Reductions to Civil Penalty Payment Amounts. Each Settling Defendant
2 may reduce the amount of the second and/or third civil penalty payments identified on the Settling
3 Defendant's Exhibit A by providing Plaintiff with certification of certain efforts undertaken to
4 reformulate their Products or limit the ongoing sale of non-reformulated Products in California.
5 The options to provide a written certification in lieu of making a portion of a Settling Defendant's
6 civil penalty payment constitute material terms of this Consent Judgment, and with regard to such
7 terms, time is of the essence.

8 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
9 **Products Sold or Offered for Sale in California.**

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

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

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

1 Plaintiff with a written certification confirming compliance with such conditions, which
2 certification must be received by Plaintiff'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 a Settling Defendant's Exhibit A, a portion of the second civil penalty shall be
6 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff
7 with written certification, by December 15, 2013, confirming that each individual or establishment
8 in California to which it supplied the Exemplar Product after October 28, 2011, has elected to return
9 all remaining Exemplar Products held for sale in California.³

10 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
11 **California of Unreformulated Inventory.**

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

17 **4.2 Representations**

18 Each Settling Defendant represents that the sales data and other information concerning its
19 size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided to
20 Plaintiff was truthful to its knowledge and a material factor upon which Plaintiff has relied to
21 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
22 Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers and presents to
23 a Settling Defendant, evidence demonstrating that the preceding representation and warranty was
24 materially inaccurate, then a Settling Defendant shall have 30 days to meet and confer regarding the
25 Plaintiff's contention. Should this 30 day period pass without any such resolution between the
26

27 ³ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Plaintiff has, prior to August 31, 2013, provided the Settling Defendants 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 Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal claim including.
2 but not limited to, a claim for damages for breach of contract.

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

8 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
9 **Standard.**

10 If Plaintiff provides notice and appropriate supporting information to a Settling Defendant
11 that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one
12 or more Products labeled or otherwise marked in an identifiable manner as manufactured or
13 imported after a deadline for meeting the Reformulation Standard has arisen for a Settling
14 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated
15 penalty to relieve any further potential liability under Proposition 65 or sanction under this Consent
16 Judgment as to Products sourced from the vendor in question.⁹ The stipulated penalty shall be
17 \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm
18 and 249 ppm, this being applicable for any amount in excess of the Reformulation Standards but
19 under 250 ppm.¹⁰ Plaintiff shall further be entitled to reimbursement of their associated expense in
20 an amount not to exceed \$5,000 regardless of the stipulated penalty level. A Settling Defendant
21 under this Section must provide notice and appropriate supporting information relating to the
22 purchase (e.g. vendor name and contact information including representative, purchase order,
23 certification (if any) received from vendor for the exemplar or subcategory of products), test results,
24 and a letter from a company representative or counsel attesting to the information provided, to

25
26 ⁹ This Section shall not be applicable where the vendor in question had previously been
27 found by the Settling Defendant to have provided unreliable certifications as to meeting the
28 Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing,
a stipulated penalty for a second 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 Plaintiff within 30 calendar days of receiving test results from Plaintiff's counsel. Any violation
2 levels at or above 250 ppm shall be subject to the full remedies provided pursuant to this Consent
3 Judgment and at law.

4 **4.4 Reimbursement of Fees and Costs**

5 The Parties acknowledge that Plaintiff 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, the Settling Defendants
9 expressed a desire to resolve the fee and cost issue. The Settling Defendants then agreed to pay
10 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
11 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
12 mutual execution of this agreement, including the fees and costs incurred as a result of
13 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in
14 the public interest, and seeking court approval of the same. In addition, the negotiated fee and cost
15 figure expressly includes the anticipated significant amount of time plaintiff's counsel will incur to
16 monitor various provisions in this agreement over the next two years, with the exception of
17 additional fees that may be incurred pursuant to a Settling Defendant's election in Section 11. Each
18 Settling Defendant more specifically agreed, upon the Court's approval and entry of this Consent
19 Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on the Settling
20 Defendant's Exhibit A. Each Settling Defendant further agreed to tender and shall tender its full
21 required payment under this Section to a trust account at The Chanler Group (made payable "In
22 Trust for The Chanler Group") within two business days of the Effective Date. Such funds shall be
23 released from the trust account upon the Court's approval and entry of this Consent Judgment.

24 **4.5 Payment Procedures**

25 **4.5.1 Issuance of Payments.**

26 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
27 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

28 The Chanler Group
Attn: Proposition 65 Controller

2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

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. A Settling Defendant shall issue a separate 1099 form for each payment required by this Section to: (a) Peter Englander, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties; (b) Peter Englander, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties; (c) 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 (d) "The Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

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

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

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

19 Plaintiff, 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 Plaintiff 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 a Settling Defendant's Exhibit A) manufactured, imported, distributed, or sold by
26

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

1 Settling Defendants prior to the Effective Date.¹² The Parties further understand and agree that this
2 Section 5.2 release shall not extend upstream to any entities that manufactured the Products or
3 Additional Products, or any component parts thereof, or any distributors or suppliers who sold the
4 Products or Additional Products, or any component parts thereof to Settling Defendants, except that
5 entities upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered (or
6 Additional) Product shall be released as to the Private Labeled Covered (or Additional) Products
7 offered for sale in California by the Retailer in question. Nothing in this Section affects Plaintiff's
8 rights to commence or prosecute an action under Proposition 65 against a Releasee that does not
9 involve a Settling Defendant's Products or Additional Products.¹³

10 **5.3 Settling Defendants' Release of Plaintiff**

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

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
20 within one year after it has been fully executed by all Parties. If the Court does not approve the
21 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal
22 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall
23 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately
24 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the
25

26 ¹² The injunctive relief requirements of Section 3 shall apply to Additional Products as
27 otherwise 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 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,
2 then the case shall proceed in its normal course on the Court's trial calendar. In the event that this
3 Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any
4 monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section 4, above,
5 shall be refunded within 15 days of the appellate decision becoming final. If the Court does not
6 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
7 have been provided to OEHHA or held in trust for Plaintiff or his counsel pursuant to Section 4,
8 above, shall be refunded to the associated Settling Defendant within 15 days.

9 **7. GOVERNING LAW**

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

19 **8. NOTICES**

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

24 To Settling Defendants:

25 At the address shown on each Exhibit A

To Plaintiff:

26 Proposition 65 Coordinator
27 The Chanler Group
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

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

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

7 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(D)**

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

10 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

11 11.1 In addition to the Products, where a Settling Defendant has identified on Exhibit A
12 additional products that contain Listed Chemicals and that are sold or offered for sale by it in
13 California, or to California Customers, ("Additional Products"), then by no later than October 15,
14 2013, the Settling Defendant may provide Plaintiff with additional information or representations
15 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit
16 therefore, pursuant to Health & Safety Code § 25249.7, that includes the Additional Products.
17 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
18 such as upholstered furniture, is specifically excluded from the definition of Additional Products
19 and shall not be identified by a Settling Defendant on Exhibit A as an Additional Product. Except
20 as agreed upon by Plaintiff, Settling Defendants shall not include a product, as an Additional
21 Product, that is the subject of an existing 60-day notice issued by Plaintiff or any other private
22 enforcer at the time of execution. After receipt of the required information, Plaintiff agrees to issue
23 a supplemental 60-day notice in compliance with all statutory and regulatory requirements for the
24 Additional Products. Plaintiff will, and in no event later than October 1, 2014, prepare and file an
25 amendment to this Consent Judgment to incorporate the Additional Products within the defined
26 term "Products" and serve a copy thereof and its supporting papers (including the basis for
27 supplemental stipulated penalties, if any) on the Office of the California Attorney General; upon the
28 Court's approval and finding that the supplemental stipulated penalty amount, if any, is reasonable,

1 the Additional Products shall become subject to Section 5.1 in addition to Section 5.2. The
2 Settling Defendant shall, at the time it elects to utilize this Section and tenders the additional
3 information or representations regarding the Additional Products to Plaintiff, tender to The Chanler
4 Group's trust account an amount not to exceed \$8,750 as stipulated penalties and attorneys' fees
5 and costs incurred by Plaintiff in issuing the new notice and engaging in other reasonably related
6 activities, which may be released from the trust as awarded by the Court upon Plaintiff's
7 application. Any fee award associated with the modification of the Consent Judgment to include
8 Additional Products shall not offset any associated supplemental penalty award, if any. (Any
9 tendered funds remaining in the trust thereafter shall be refunded to the Settling Defendant within
10 15 days). Such payment shall be made to "in trust for The Chanler Group" and delivered as per
11 Section 4.5.1(a) above.

12 11.2 Plaintiff and Settling Defendant(s) agree to support the entry of this agreement as a
13 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
14 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
15 motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft
16 and file. If any third party objection to the noticed motion is filed, Plaintiff and each Settling
17 Defendant shall work together to file a reply and appear at any hearing before the Court. This
18 provision is a material component of the Consent Judgment and shall be treated as such in the event
19 of a breach.

20 **12. MODIFICATION**

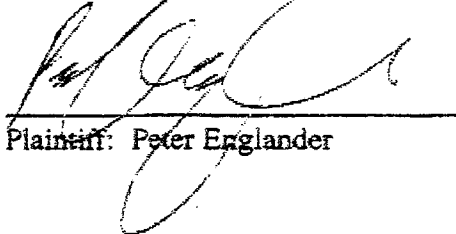
21 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
22 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
23 of any party and entry of a modified Consent Judgment by the Court.

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1 **13. AUTHORIZATION**

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

5
6 **AGREED TO:**

7 
8 _____

9 Plaintiff: Peter Englander

10 Date: October 31, 2013

AGREED TO:

By: _____
Name:
It's:

Date: October __, 2013

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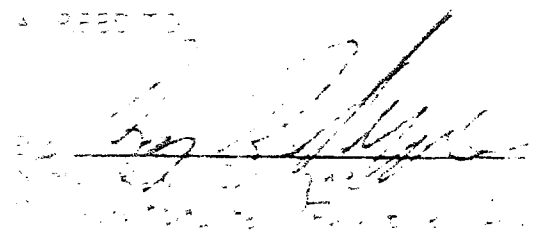
11 AUTHORIZATION

12 The undersigned hereby authorizes the use of the above judgment in connection with
13 the use of the Part 15 and has read and understands the rights of all of the parties involved in this
14 consent judgment.

15 AGREED TO

16 AGREED TO

17 _____
18 Plaintiff/Party Defendant

19 
20 _____
21 Defendant/Party Plaintiff

22 Date of Execution

23 Date of Execution

1 **13. AUTHORIZATION**

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

6 AGREED TO:

AGREED TO:

8 _____
9 Plaintiff Peter Englander

By: Hutch Chao
Name: Hutch Chao
It's: Homelegance, Inc.

10 Date: September __, 2013

Date: September 30, 2013

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1 **13. AUTHORIZATION**


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

5
6 **AGREED TO:**

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8 _____
9 Plaintiff Peter Englander

10 Date: September __, 2013

AGREED TO:

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By: 
Name: Jerome Leland
It's: EMERGENCY OPERATIONS OFFICER

Date: September __, 2013
OCTOBER 4, 2013

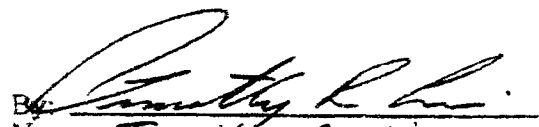
1 **13. AUTHORIZATION**

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

6 AGREED TO:

AGREED TO:

8 _____
9 Plaintiff Peter Englander

By: 

Name: *Timothy R. Liss*
It's: *Emerald Home Furnishings*
Director of Operations

10 Date: September __, 2013

11 Date: ~~September~~ 2013
October 7, 2013

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EXHIBIT A

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I. Name of Settling Defendant: CRAFTMASTER FURNITURE, INC.

II. Names of Releasees (optional/partial):

III. Types of Covered Products Applicable to Settling Defendant:

Padded upholstered furniture including ottomans containing TDCPP

IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

V. Settling Defendant's Required Settlement Payments

A. Penalties of \$78,000, as follows:

\$12,000 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 Craftmaster Furniture, Inc.: \$50,000.

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

Kevin C. Mayer
Name

Attorney
Title

Company/Firm Name

Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

Los Angeles, CA 90071

EXHIBIT A

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I. Name of Settling Defendant: HOMELEGANCE, INC.

II. Names of Releasees (optional/partial):

III. Types of Covered Products Applicable to Settling Defendant:

- a) Padded upholstered furniture including ottomans containing TDCPP and TCEP;
- b) Chairs with vinyl/PVC upholstery containing DEHP.

IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

V. Settling Defendant'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 Homelegance, Inc.: \$44,000.

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

Kevin C. Mayer

Name

Attorney

Title

Company/Firm Name

Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

Los Angeles, CA 90071

EXHIBIT A

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- I. Name of Settling Defendant: EMERALD HOME FURNISHINGS, LLC
- II. Names of Releasees (optional/partial):
WAYFAIR LLC as to the Products manufactured, imported, distributed and/or sold by
EMERALD HOME FURNISHINGS, LLC
- III. Types of Covered Products Applicable to Settling Defendant:
 - a) Upholstered chairs with foam padding containing TDCPP;
 - b) Chairs with vinyl/PVC upholstery containing DEHP.
- IV. Types of Additional Products the Settling Defendant Elects to Address (if any):
- V. Settling Defendant's Required Settlement Payments
 - A. Penalties of \$91,000, as follows:
 - \$25,000 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 \$46,000, as follows:
 - Fees and Costs attributable to Emerald Home Furnishings, LLC: \$38,000.
 - Additional Fees and Costs attributable to action filed by Plaintiff before the Effective Date naming an unaffiliated third party 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 Kevin C. Mayer
Name

3 Attorney
4 Title

5 Company/Firm Name

6 Address Crowell & Moring LLP

7 515 South Flower Street, 40th Floor

8 Los Angeles, CA 90071

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I. Name of Settling Defendant: FOUR HANDS, LLC

II. Names of Releasees (optional/partial):

III. Types of Covered Products Applicable to Settling Defendant:

Padded upholstered footstools containing TDCPP

IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

V. Settling Defendant'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 Four Hands, LLC.: \$40,000.

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

Kevin C. Mayer
Name

Attorney
Title

Company/Firm Name

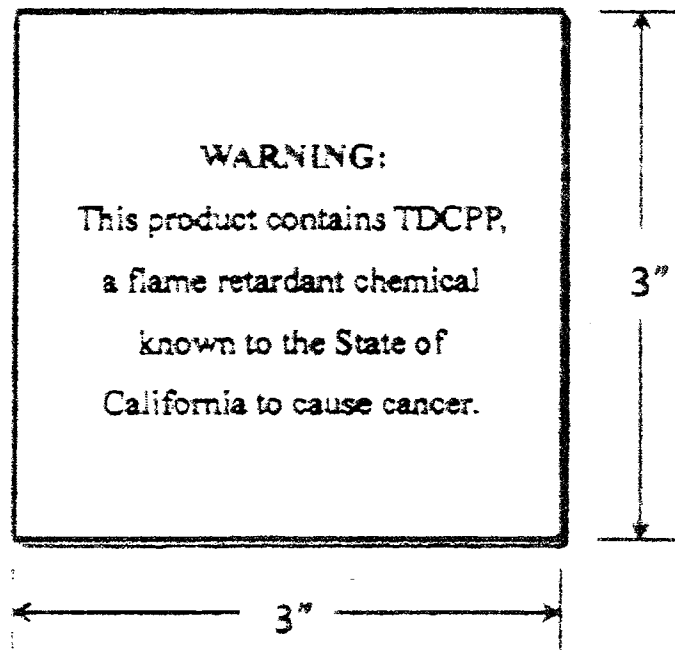
Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

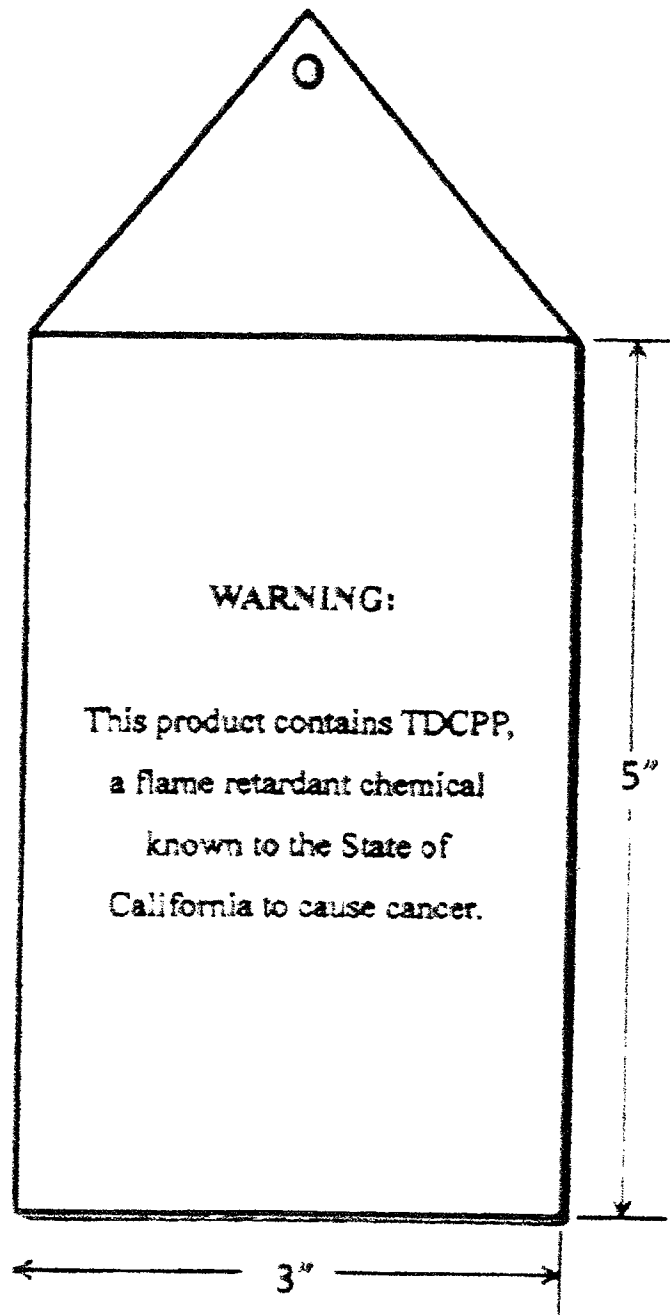
Los Angeles, CA 90071

EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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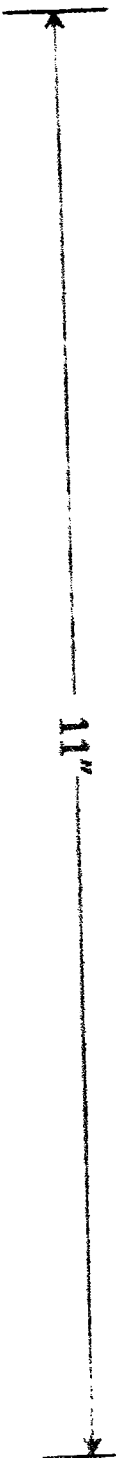
INSTRUCTIONS: Minimum 12 pt. font. "WARNING" text must be bold.



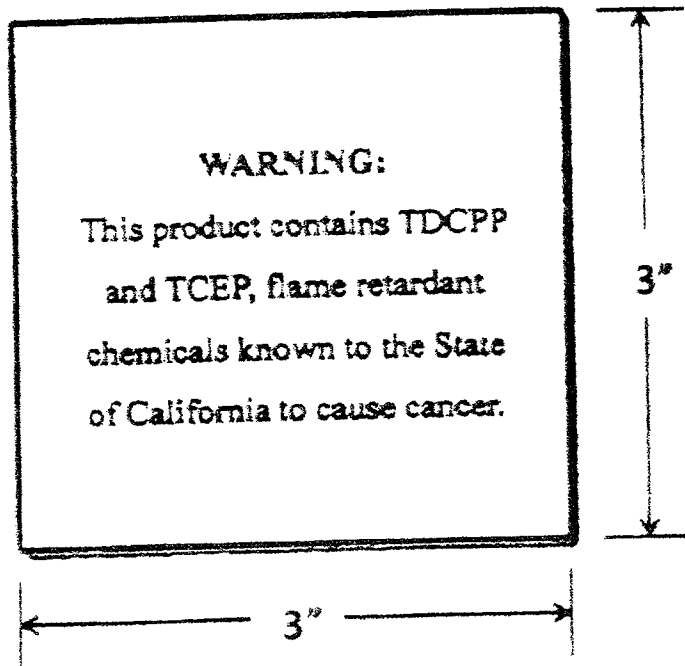
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

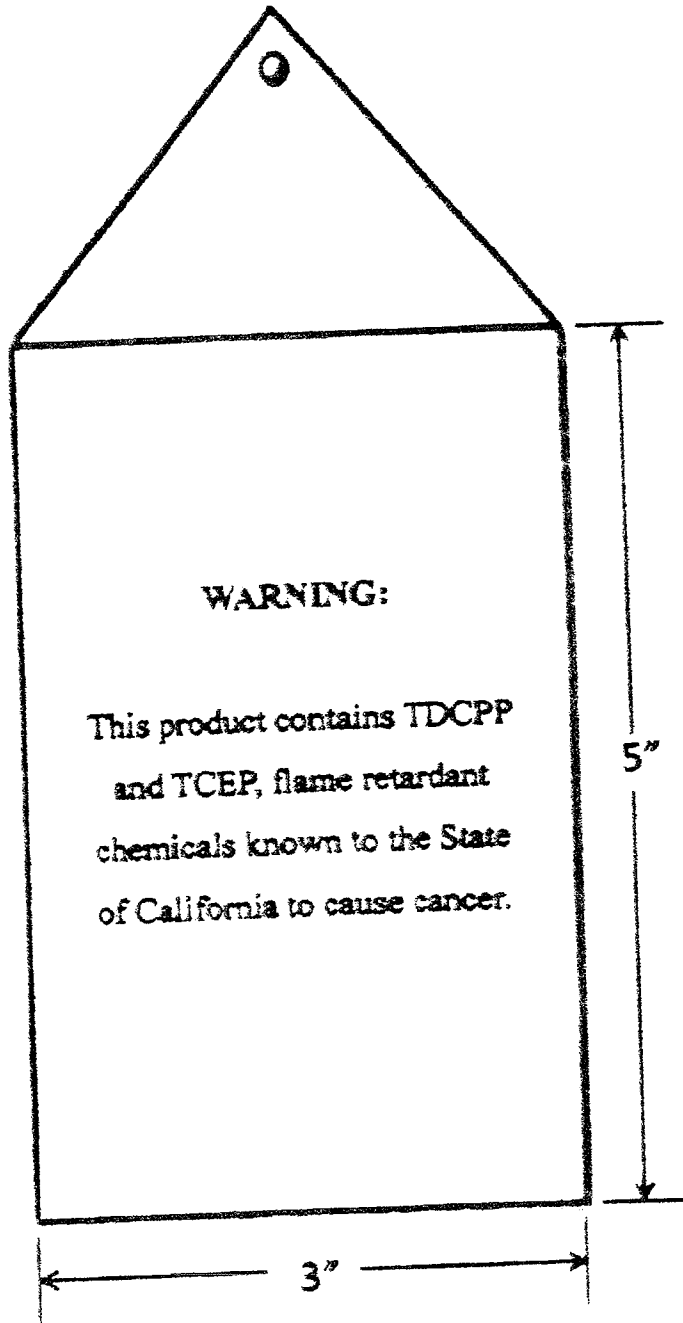
This product contains TDCCP, a flame retardant
chemical known to the State of California to
cause cancer.



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



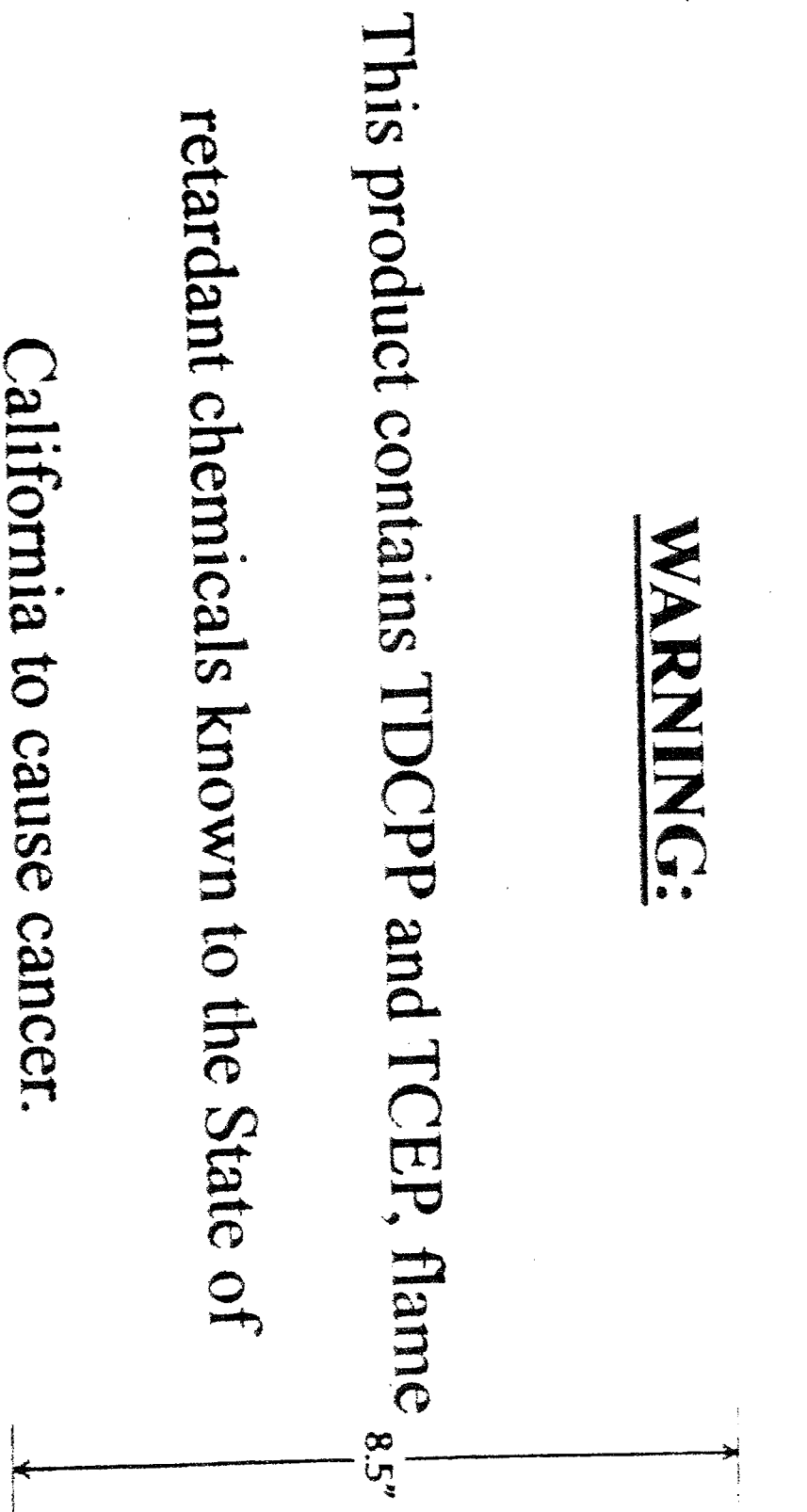
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



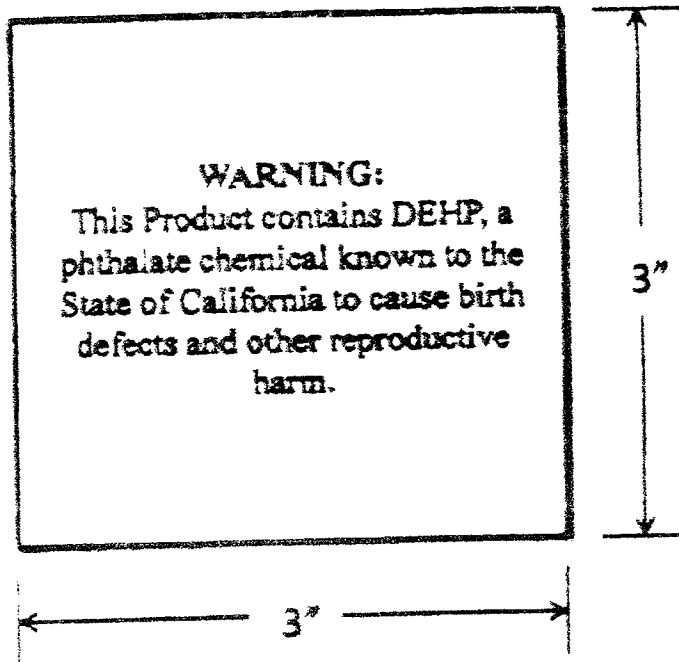
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

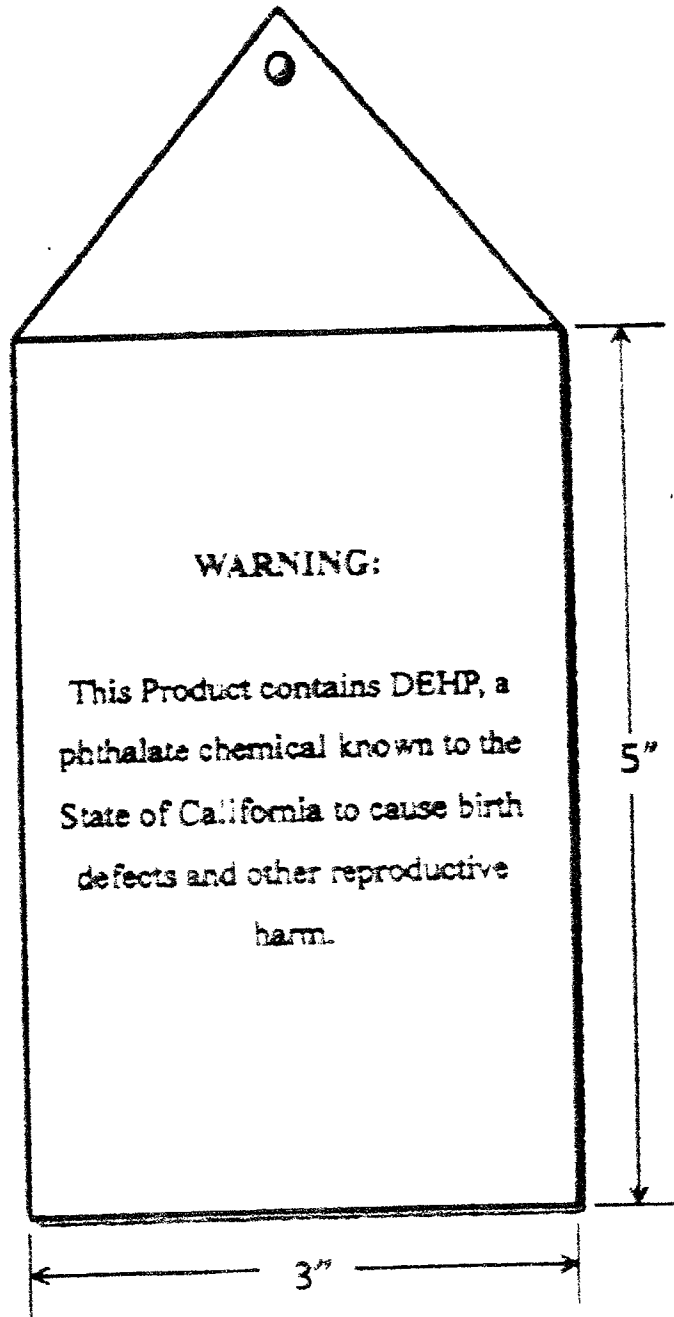
This product contains TDCCP and TCCEP, flame
retardant chemicals known to the State of
California to cause cancer.



INSTRUCTIONS: Minimum 12 pt. Font. "WARNING:" text must be bold and underlined.



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 DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

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

Exhibit 4
(To Judgment)

1 Clifford A. Chanler, State Bar No. 135534
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 JOHN MOORE

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
10

11 JOHN MOORE)
12 Plaintiff,)
13 v.)
14 COSTCO WHOLESALE CORPORATION;)
et al.,)
15 Defendants.)

Case No. RG 13672233

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

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT PIER 1 IMPORTS, INC.**

(Health & Safety Code § 25249.6 *et seq.*
First Amended Complaint Filed: April 12, 2013)

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[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT PIER 1 IMPORTS, INC.

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and the defendant Pier 1 Imports, Inc. (“Pier 1”) with Moore and Pier 1 collectively
5 referred to as the “Parties.”

6 **1.2 John Moore**

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

10 **1.3 Defendant**

11 Pier 1 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** Moore alleges that Pier 1 manufactured, imported, sold and/or distributed
16 for sale in California, padded upholstered furniture including ottomans and chair cushions
17 containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65
18 health hazard warnings.

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.
22 Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Moore
23 alleges that TDCPP escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The products that are covered by this Consent Judgment as to Pier 1 are identified on
26 Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or manufactured
27

1 for use as a component of a product, such as upholstered furniture, is specifically excluded from
2 the definition of Products and shall not be identified by Pier 1 on Exhibit A as a Product.

3 **1.6 Notice of Violation**

4 On January 2, 2013, Moore served Pier 1 and certain requisite public enforcement agencies
5 with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged
6 violations of Proposition 65 based on the alleged failure to warn customers, consumers, and
7 workers in California that the Products expose users to TDCPP.

8 To the best of the Parties' knowledge, no public enforcer has commenced or is diligently
9 prosecuting the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On April 12, 2013, Moore filed a First Amended Complaint in the Superior Court in and
12 for the County of Alameda against Pier 1, among others, and Does 1 through 150, *Peter*
13 *Englander, et al. v. Costco Wholesale Corporation, et al.*, Case No. RG 13672233, alleging
14 violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained
15 in the Products ("Complaint").

16 **1.8 No Admission**

17 Pier 1 denies the material factual and legal allegations contained in Moore's Notice and
18 Complaint and maintains that all products that they have manufactured, imported, distributed,
19 and/or sold in California, including the Products, have been and are in compliance with all laws.
20 Nothing in this Consent Judgment shall be construed as an admission by Pier 1 of any fact, finding,
21 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
22 constitute or be construed as an admission by Pier 1 of any fact, finding, conclusion, issue of law,
23 or violation of law. However, this section shall not diminish or otherwise affect Pier 1's
24 obligations, responsibilities, and duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Pier 1 as to the allegations contained in the Complaints, that venue is proper in

1 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
2 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

3 **2. DEFINITIONS**

4 **2.1 California Customers**

5 “California Customer” shall mean any customer that Pier 1 reasonably understands is
6 located in California, has a California warehouse or distribution center, maintains a retail outlet in
7 California, or has made internet sales into California on or after January 1, 2011.

8 **2.2 Detectable**

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

15 **2.3 Effective Date**

16 “Effective Date” shall mean December 13, 2013.

17 **2.4 Private Label Covered Products**

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

21 **2.5 Reformulated Products**

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

24 **2.6 Reformulation Standard**

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

(h)

1 **2.7 Retailer**

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

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 **3.1 Reformulation Commitment**

6 Commencing on May 31, 2014, Pier 1 shall not manufacture or import for distribution or
7 sale to California Customers, or cause to be manufactured or imported for distribution or sale to
8 California Customers, any Products that are not Reformulated Products.

9 **3.2 Vendor Notification/Certification**

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

20 **3.3 Products No Longer in Pier 1’s Control**

21 No later than 45 days after the Effective Date, Pier 1 shall send a letter, electronic or
22 otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after
23 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
24 received by Pier 1 from Moore (“Exemplar Product”); and (2) any California Customer and/or
25 Retailer that Pier 1 reasonably understands or believes had any inventory for resale in California of
26 Exemplar Product as of the relevant Notice’s dates. The Notification Letter shall advise the
27 recipient that the Exemplar Product “contains TDCPP, a chemical known to the State of California
28



1 to cause cancer,” and request that the recipient either: (a) label the Exemplar Products remaining
2 in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or (b)
3 return, at Pier 1’s sole expense, all units of the Exemplar Product held for sale in California, or to
4 California Customers, to Pier 1 or a party Pier 1 has otherwise designated. The Notification Letter
5 shall require a response from the recipient within 15 days confirming whether the Exemplar
6 Product will be labeled or returned. Pier 1 shall maintain records of all correspondence or other
7 communications generated pursuant to this Section for two years after the Effective Date and shall
8 promptly produce copies of such records upon Moore’s written request.¹

9 **3.4 Current Inventory**

10 Any Products in, or manufactured and en route to, Pier 1’s inventory as of or after
11 December 31, 2013, that do not qualify as Reformulated Products and that Pier 1 has reason to
12 believe may be sold or distributed for sale in California, shall contain a clear and reasonable
13 warning as set forth in Section 3.5 below unless Section 3.6 applies.²

14 **3.5 Product Warnings**

15 **3.5.1 Product Labeling**

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

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

23
24
25
26 ¹ Paragraph 3.3 does not apply to Pier 1.

27 ² This shall not apply to Products which are Private Label Covered Products in Pier 1s’
28 inventory as of December 31, 2013.



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

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

3.5.2 Internet Website Warning

A warning shall be given in conjunction with the sale of the Products to California, or California Customers, via the internet, which warning shall appear on one or more web pages displayed to a purchaser prior to the checkout process. The warning statement required by Section 3.5.1 shall be used and shall: (a) appear adjacent to or under the display, description, details, or price section of the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the customer. The warning text shall be the same type size or larger than the Product description text.

3.6 Alternatives to Interim Warnings

The obligations of Pier 1 under Section 3.4 shall be relieved provided Pier 1 certifies on or before December 15, 2013 that, after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California, or to California Customers for sale in California, Products (i.e., the Products beyond the Exemplar Product) meeting the Reformulation Standard. The certifications provided by this Section are material terms and time is of the essence.

³ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Pier 1 had begun to use it, prior to the Effective Date. If Pier 1 seeks to use alternative warning language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it must obtain the Court's approval of its proposed alternative and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to comment or object before the Court acts on the request. The Parties agree that, as to the Products listed in Exhibit A only, the following hybrid 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 **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, Pier 1 shall pay
4 the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
5 payment will be allocated in accordance with California Health & Safety Code
6 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
7 Health Hazard Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group
8 in Trust for Moore.” Each penalty payment shall be made within two business days of the date it
9 is due and be delivered to the addresses listed in Section 4.5 below. Pier 1 shall be liable for
10 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
11 Section that are not received within two business days of the due date.

12 4.1.1 Initial Civil Penalty. On or before the Effective Date, Pier 1 shall make an
13 initial civil penalty payment in the amount identified on Pier 1’s Exhibit A.

14 4.1.2 Second Civil Penalty. On or before January 15, 2014, Pier 1 shall make a
15 second civil penalty payment in the amount identified on Pier 1’s Exhibit A. The amount of the
16 second penalty may be reduced according to any penalty waiver Pier 1 is eligible for under
17 Sections 4.1.4(i) and 4.1.4(iii), below.

18 4.1.3 Third Civil Penalty. On or before November 30, 2014, Pier 1 shall make a
19 third civil penalty payment in the amount identified on Pier 1’s Exhibit A. The amount of the third
20 penalty may be reduced according to any penalty waiver Pier 1 is eligible for under Sections
21 4.1.4(ii) and 4.1.4(iv), below.

22 4.1.4 Reductions to Civil Penalty Payment Amounts. Pier 1 may reduce the
23 amount of the second and/or third civil penalty payments identified on Pier 1’s Exhibit A by
24 providing Moore with certification of certain efforts undertaken to reformulate their Products or
25 limit the ongoing sale of non-reformulated Products in California. The options to provide a written
26 certification in lieu of making a portion of Pier 1’s civil penalty payment constitute material terms
27 of this 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 As shown on Pier 1's Exhibit A, a portion of the second civil penalty shall be waived, to
4 the extent that it has agreed that, as of December 15, 2013, and continuing into the future, it shall
5 only manufacture or import for distribution or sale to California Customers or cause to be
6 manufactured or imported for distribution or sale to California Customers, Reformulated Products.
7 An officer or other authorized representative of Pier 1 that has exercised this election shall provide
8 Moore with a written certification confirming compliance with such conditions, which certification
9 must be received by Moore's counsel on or before December 15, 2013.

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

11 As shown on Pier 1's Exhibit A, a portion of the third civil penalty shall be waived, to the
12 extent that it has agreed that, as of March 31, 2014, and continuing into the future, it shall only
13 manufacture or import for distribution or sale in 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 a NVLAP accredited laboratory pursuant to EPA testing methodologies
18 3545 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 Pier 1 that has exercised this election shall provide Moore with a written
21 certification confirming compliance with such conditions, which certification must be received by
22 Moore'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 Pier 1's Exhibit A, a portion of the second civil penalty shall be waived, if an
26 officer or other authorized representative of Pier 1 provides Moore with written certification, by
27 January 31, 2014, confirming (i) that each individual or establishment in California to which it
28

1 supplied the Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to
2 return all Exemplar Products held for in California to which it supplied the Exemplar Product after
3 October 28, 2011, or (ii) that Pier 1 has either sold, disposed of, or destroyed all Exemplar
4 Products in its possession.⁴

5 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**
6 **California of Unreformulated Inventory.**

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

12 4.2 **Representations**

13 Pier 1 represents that the sales data and other information concerning its size, knowledge of
14 TDCPP, and prior reformulation and/or warning efforts, it provided to Moore was truthful to its
15 knowledge and a material factor upon which Moore has relied to determine the amount of civil
16 penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment.

17 If, within nine months of the Effective Date, Moore discovers and presents to Pier 1,
18 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
19 then Pier 1 shall have 30 days to meet and confer regarding Moore's contention. Should this 30
20 day period pass without any such resolution between Moore and Pier 1, Moore shall be entitled to
21 file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

22 Pier 1 further represents that in implementing the requirements set forth in Sections 3.1 and
23 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
24 reformulation of its Products and Additional Products on a nationwide basis and not employ

25 _____
26 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products
27 for which Plaintiff has, prior to August 31, 2013, provided Pier 1 with test results from a NVLAP
28 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 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
2 goods intended for sale to California Consumers.

3 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**

4 **Standard.**

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

22
23
24 ⁵ This Section shall not be applicable where the vendor in question had previously been
25 found by Pier 1 to have provided unreliable certifications as to meeting the Reformulation
26 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
27 penalty for a second exceedance by Pier 1's vendor at a level between 100 and 249 ppm shall not
28 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 **4.4 Reimbursement of Fees and Costs**

2 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 reimbursement issue to be resolved after the material terms of the agreement had been settled.
5 Shortly after the other settlement terms had been finalized, Pier 1 expressed a desire to resolve the
6 fee and cost issue. Pier 1 then agreed to pay Moore and his counsel under general contract
7 principles and the private attorney general doctrine codified at California Code of Civil Procedure
8 section 1021.5 for all work performed through the mutual execution of this agreement, including
9 the fees and costs incurred as a result of investigating, bringing this matter to Pier 1's attention,
10 negotiating a settlement in the public interest, and seeking court approval of the same. In addition,
11 the negotiated fee and cost figure expressly includes the anticipated significant amount of time
12 Moore's counsel will incur to monitor various provisions in this agreement over the next two
13 years, with the exception of additional fees that may be incurred pursuant to Pier 1's election in
14 Section 11. Pier 1 more specifically agreed, upon the Court's approval and entry of this Consent
15 Judgment, to pay Moore's counsel the amount of fees and costs indicated on Pier 1's Exhibit A.
16 Pier 1 further agreed to tender and shall tender its full required payment under this Section to a
17 trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within five
18 business days of the Effective Date. Such funds shall be released from the trust account upon the
19 Court's approval and entry of this Consent Judgment.

20 **4.5 Payment Procedures**

21 4.5.1 Issuance of Payments.

22 (a) All payments owed to Moore and his counsel, pursuant to Sections
23 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710



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

4 For United States Postal Service Delivery:

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

8 For Non-United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

12 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
14 in Section 4.3.1(a) above, as proof of payment to OEHHA.

15 4.5.3 Tax Documentation. Pier 1 shall issue a separate 1099 form for each
16 payment required by this Section to: (a) John Moore, whose address and tax identification
17 number shall be furnished upon request after this Consent Judgment has been fully
18 executed by the Parties; (b) OEHHA, who shall be identified as "California Office of
19 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be
20 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
21 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.3.1(a) above.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Moore's Release of Proposition 65 Claims**

24 Moore, acting on his own behalf and in the public interest, releases Pier 1, its parents,
25 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
26 attorneys, and each entity to whom Pier 1 directly or indirectly distribute or sell Products,
27
28

12

1 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
2 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
3 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
4 Chemicals in the Products, as set forth in the Notice. Compliance with the terms of this Consent
5 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
6 Chemicals from the Products, as set forth in the Notice. The Parties further understand and agree
7 that this Section 5.1 release shall not extend upstream to any entities, other than Pier 1, that
8 manufactured the Products or any component parts thereof, or any distributors or suppliers who
9 sold the Products or any component parts thereof to Pier 1, except that entities upstream of Pier 1
10 that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled
11 Covered Products offered for sale in California, or to California Customers, by the Retailer in
12 question.

13 **5.2 Moore's Individual Releases of Claims**

14 Moore, in his individual capacity only and *not* in his representative capacity, provides a
15 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
16 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
17 liabilities, and demands of Moore of any nature, character, or kind, whether known or unknown,
18 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
19 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
20 delineated on Pier 1's Exhibit A) manufactured, imported, distributed, or sold by Pier 1 prior to the
21 Effective Date.⁷ The Parties further understand and agree that this Section 5.2 release shall not
22 extend upstream to any entities that manufactured the Products or Additional Products, or any
23 component parts thereof, or any distributors or suppliers who sold the Products Additional
24 Products, or any component parts thereof to Pier 1, except that entities upstream of Pier 1 that is a
25

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

1 Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the Private
2 Labeled Covered (or Additional) Products offered for sale in California by the Retailer in question.
3 Nothing in this Section affects Moore's right to commence or prosecute an action under
4 Proposition 65 against a Releasee that does not involve Pier 1's Products or Additional Products.

5 **5.3 Pier 1's Release of Moore**

6 Pier 1, on behalf of itself, its past and current agents, representatives, attorneys, successors,
7 and assignees, hereby waives any and all claims against Moore and his attorneys and other
8 representatives, for any and all actions taken or statements made (or those that could have been
9 taken or made) by Moore and his attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
11 respect to the Products or Additional Products.

12 **6. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and
14 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
15 within one year after it has been fully executed by all Parties. If the Court does not approve the
16 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or
17 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case
18 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is
19 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to
20 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of
21 action to take, then the case shall proceed in its normal course on the Court's trial calendar. In the
22 event that this Consent Judgment is entered by the Court and subsequently overturned by any
23 appellate court, any monies that have been provided to OEHHA, Moore or his counsel pursuant to
24 Section 4, above, shall be refunded within 15 days of the appellate decision becoming final. If the
25 Court does not approve and enter the Consent Judgment within one year of the Effective Date, any
26 monies that have been provided to OEHHA or held in trust for Moore or his counsel pursuant to
27 Section 4, above, shall be refunded to Pier 1 within 15 days.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
4 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
5 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
6 rendered inapplicable by reason of law generally as to the Products, then Pier 1 may provide
7 written notice to Moore of any asserted change in the law, and shall have no further obligations
8 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
9 affected. Nothing in this Consent Judgment shall be interpreted to relieve Pier 1 from any
10 obligation to comply with any pertinent state or federal law or regulation.

11 **8. NOTICES**

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

16 To Pier 1:

17 At the address shown on Exhibit A

To Moore:

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

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

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

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



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

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

②

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

5 11.2 Moore and Pier 1 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
8 motion is required to obtain judicial approval of this Consent Judgment, which Moore shall draft
9 and file. If any third party objection to the noticed motion is filed, Moore and Pier 1 shall work
10 together to file a reply and appear at any hearing before the Court. This provision is a material
11 component of 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.

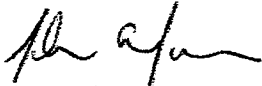
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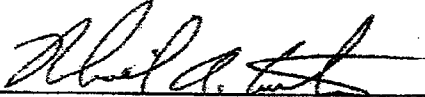
1 **13. AUTHORIZATION**

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

5
6 **AGREED TO:**

AGREED TO:
Settling Defendant:
Pier 1 Imports, Inc.

7
8 
9 _____
10 Plaintiff, John Moore

By: 
11 Name: Michael A. Carter
12 It's: SR VP and General Counsel, Secretary

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Date: December 12, 2013

Date: December 4, 2013



EXHIBIT A

I. Name of Settling Defendant: PIER 1 IMPORTS, INC.

II. Names of Releasees (optional/partial):

III. Products (including Exemplar Products) Covered by this Consent Judgment:

a) Chair cushions identified by SKU 2652577 and the Exemplar Product SKU 2510225.

b) Padded upholstered ottomans identified by SKUs 2523384, 2600542, 26500555 and the Exemplar Product SKU 2600570.

IV. Types of Additional Products Pier 1 Imports Elects to Address (if any): None

V. Pier 1 Imports' Required Settlement Payments

A. Penalties of \$90,000, as follows:

\$24,000 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(ii); 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 Pier 1 Imports, Inc.: \$44,000.

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

Kevin C. Mayer
Name

Attorney
Title

Pier 1 Imports (U.S.), Inc.
Company/Firm Name

Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

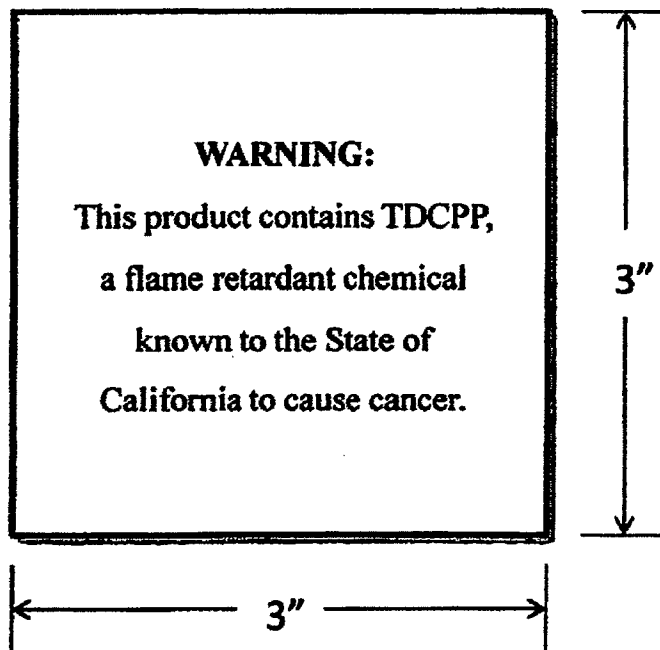
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)

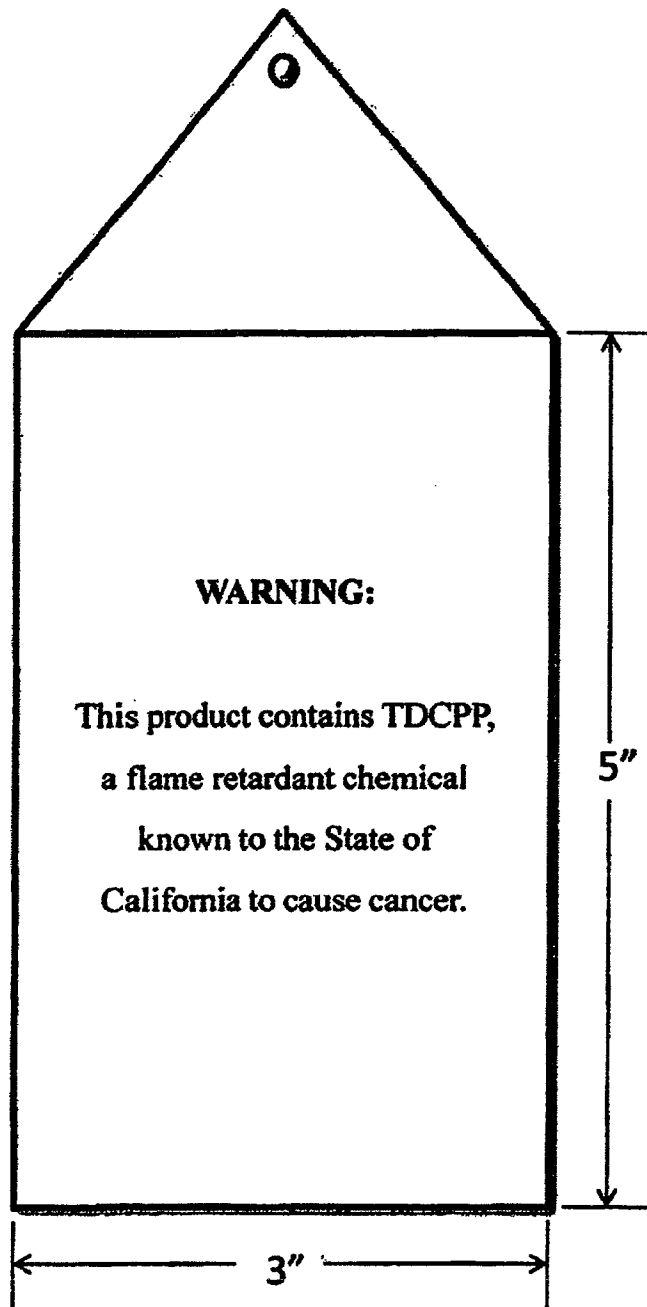
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INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.

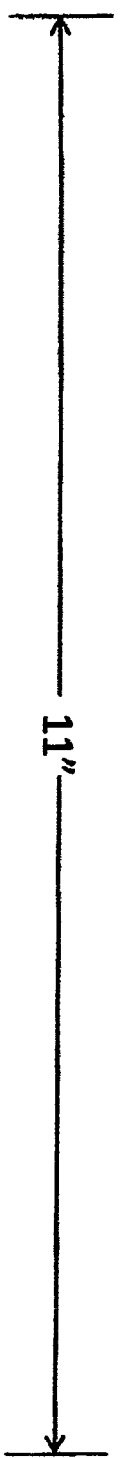
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INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

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.