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PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

MAR 2 8 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER Plaintiff, v. COSTCO WHOLESALE CORPORATION, *et al.* Defendants.	Case No. RG13672233 **[~~PROPOSED~~] JUDGMENT PURSUANT TO PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT AS TO DEFENDANT KINWAI USA INC.** Date: March 28, 2014 Time: 10:00 a.m. Dept.: 17 Judge: Hon. George C. Hernandez, Jr.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**, and as further modified by the Order approving the Proposition 65 settlement and Consent Judgment. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: MAR 2 8 2014

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT

Exhibit 1
(To Judgment)

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Attorneys for Plaintiff
PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER Plaintiff, v. COSTCO WHOLESALE CORPORATION; et al., Defendants.	Case No. RG 13-672233 Assigned for All Purposes to Judge George C. Hernandez, Jr., Department 17 **[PROPOSED] CONSENT JUDGMENT AS TO KINWAI USA INC.** **(Health & Safety Code § 25249.6 *et seq.*)** First *Amended* Complaint Filed: April 12, 2013

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Peter Englander ("Englander") and Kinwai USA Inc. ("Kinwai"), with Englander and Kinwai collectively referred to as the "Parties."

1.2 Peter Englander

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

1.3 Kinwai USA Inc.

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

1.4 General Allegations

1.4.1 Englander alleges that Kinwai manufactured, imported, sold and/or distributed for sale in California, products with foam cushioned components containing tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") without the requisite Proposition 65 health hazard warnings.

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

TDCPP shall hereinafter be referred to as the "Listed Chemical." Englander alleges that the Listed Chemical escapes from foam padding, leading to human exposures.

1.5 Product Description

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

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

1.6 **Notice of Violation**

On or about January 2, 2013, Englander served Kinwai and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided Kinwai with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and workers in California that the Products expose users to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.7 **Complaint**

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

1.8 **No Admission**

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

1.9 **Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Kinwai as to the allegations contained in the Notice and Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the

provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

2. DEFINITIONS

2.1 California Customers

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

2.2 Detectable

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

2.3 Effective Date

"Effective Date" shall mean October 15, 2013.

2.4 Private Label Covered Products

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

2.5 Reformulated Products

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

2.6 Reformulation Standard

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

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, Kinwai 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, Kinwai 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, Kinwai shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. Kinwai 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 Kinwai for at least two years after their receipt and shall be made available to Englander upon request.

3.3 **Products No Longer in Kinwai's Control**

No later than 45 days after the Effective Date, Kinwai 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) Kinwai received from Englander ("Exemplar Product"); and (2) any California Customer and/or Retailer that Kinwai 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 Products

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

3.4 **Current Inventory**

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

3.5 **Product Warnings**

3.5.1 **Product Labeling**

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

A warning provided pursuant to this Consent Judgment shall state:

[1] This shall not apply to Products which are Private Label Covered Products in Kinwai's inventory as of December 31, 2013.

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

Attached as Exhibit B are template warnings developed by Englander that are deemed to be clear and reasonable for purposes of this Consent Judgment.[3] Provided that the other requirements set forth in this Section are addressed, including as to the required warning statements and method of transmission as set forth above, Settling Defendants remain 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 during the checkout process. The following warning statement shall be used and shall: (a) appear adjacent to or immediately following the display, description, or price of the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer. The warning text shall be the same type size or larger than the Product description text:

WARNING: This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.[4]

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[2] The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Kinwai had begun to use it, prior to the Effective Date. If Kinwai 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 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."

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

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

3.6 **Alternatives to Interim Warnings**

The obligations of Kinwai under Section 3.3 shall be relieved provided Kinwai 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 Kinwai under Section 3.4 shall be relieved provided Kinwai 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, Kinwai 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"), and 25% of the penalty remitted to "The Chanler Group in Trust for Peter Englander." 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. Kinwai 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, Kinwai shall make an initial civil penalty payment in the amount identified on Kinwai's Exhibit A.

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

4.1.3 Third Civil Penalty. On or before November 30, 2014, Kinwai shall make a third civil penalty payment in the amount identified on Kinwai's Exhibit A. The amount of the

third penalty may be reduced according to any penalty waiver Kinwai is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

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

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

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

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

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

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

As shown on Kinwai's Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of Kinwai provides Englander with written certification, by December 15, 2013, confirming that each individual or establishment in California to which it supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products held for sale in California.[5]

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

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

4.2 **Representations**

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

[5] For purposes of this Section, the term Exemplar Products shall further include Products for which Englander has, prior to August 31, 2013, provided Kinwai 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.

Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

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

4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.

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

[6] This Section shall not be applicable where the vendor in question had previously been found by Kinwai to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by Kinwai'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.

results from Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

4.4 **Reimbursement of Fees and Costs**

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

4.5 **Payment Procedures**

4.5.1 Issuance of Payments.

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

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

(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. Kinwai 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.

5. CLAIMS COVERED AND RELEASED

5.1 Englander's Release of Proposition 65 Claims

Englander, acting on his own behalf and in the public interest, releases Kinwai, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Kinwai directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for

violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed Chemical in the Products, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Kinwai, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Kinwai, except that entities upstream of Kinwai that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer in question.

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

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

[8] The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

5.3 **Kinwai's Release of Englander**

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

6. COURT APPROVAL

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered

inapplicable by reason of law generally as to the Products, then Kinwai may provide written notice to Englander of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Kinwai from any obligation to comply with any pertinent state or federal law or regulation.

8. NOTICES

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

To Kinwai:	To Englander:
At the address shown on each Exhibit A	Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

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

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

11.1 In addition to the Products, where Kinwai has identified on Exhibit A additional products that contain the Listed Chemical and that are sold or offered for sale by it in California, or to California Customers, ("Additional Products"), then by no later than October 15, 2013, Kinwai

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

11.2 Englander and Kinwai agree to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion

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

12. MODIFICATION

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

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:	AGREED TO:
_____	By: _____
Plaintiff: Peter Englander	Name:
	It's:
Date: November 8, 2013	Date: October __, 2013

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

12. MODIFICATION

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

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:	AGREED TO:
_____	By: _____
Plaintiff: Peter Englander	Name: Joey Wu It's: Manager
Date: October __, 2013	Date: October __, 2013 November 4, 2013

EXHIBIT A

I. Name of Settling Defendant: KINWAI USA 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 $55,000, as follows:

$10,000 initial payment due on or before the Effective Date;

$28,000 second payment due on or before January 15, 2014, of which $18,000 may be waived pursuant to Section 4.1.4(i) and $10,000 may be waived pursuant to Section 4.1.4(iii); and

$17,000 third payment due on or before November 30, 2014, of which $11,000 may be waived pursuant to Section 4.1.4(ii) and $6,000 may be waived pursuant to Section 4.1.4(iv).

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs attributable to Kinwai USA Inc.: $31,000.

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

Kevin C. Mayer
Name

Attorney
Title

Company/Firm Name

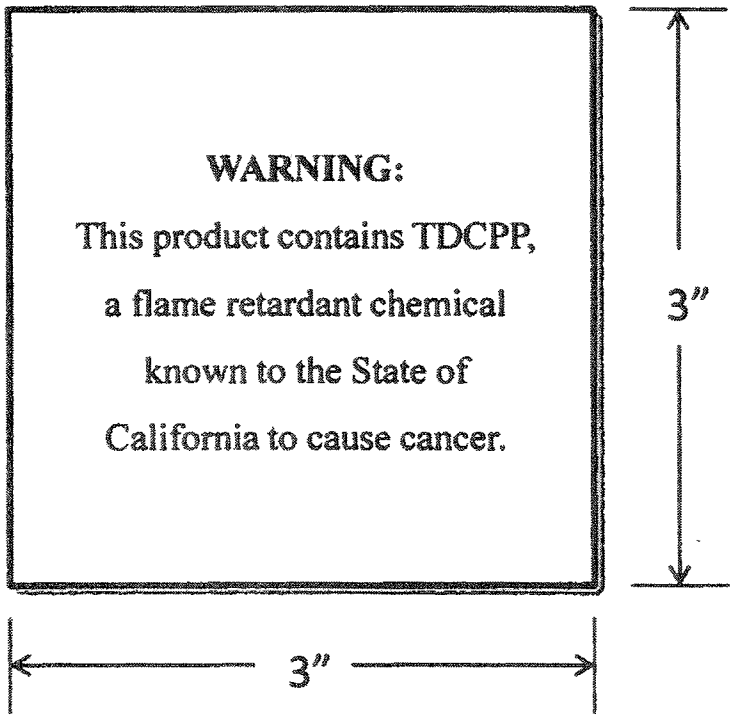
Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

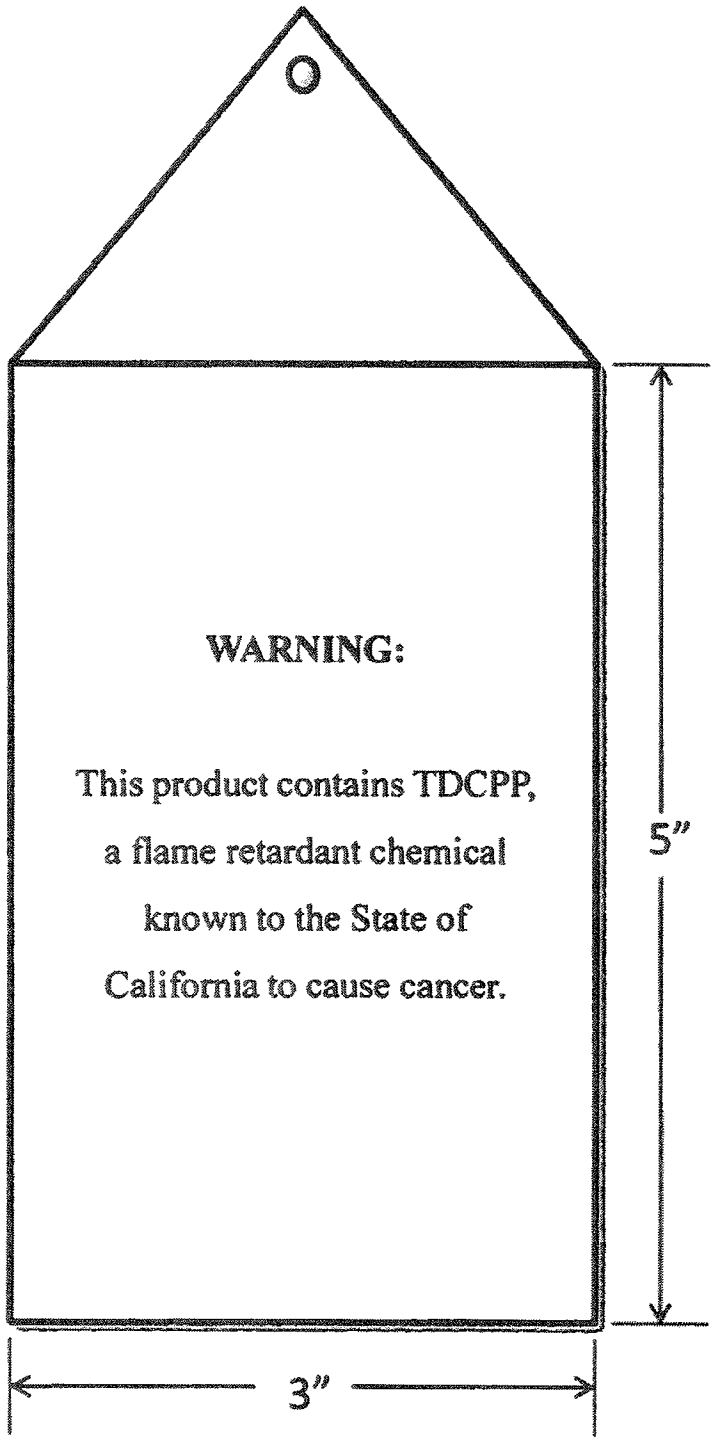
Los Angeles, CA 90071

EXHIBIT 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 chemical known to the State of California to cause cancer.

8.5"

11"

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