

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Avenue, Suite 202
5 Mill Valley, CA 94941
6 Telephone: 415.388.0911
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff
9 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

NOV 26 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ALAMEDA

12 UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER,

14 Plaintiff,

15 vs.

16 THREE HANDS CORPORATION,
17 BURLINGTON COAT FACTORY
18 WAREHOUSE CORPORATION
19 and DOES 1-150,

20 Defendants.

Case No. RG13675901

**JUDGMENT PURSUANT TO
PROPOSITION 65 SETTLEMENT**

Action Filed: April 17, 2013

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1 In the above-entitled action, Plaintiff Peter Englander and Defendant Three Hands
2 Corporation, having agreed through their respective counsel that a judgment be entered
3 pursuant to the terms of the Consent To Judgment entered into by the parties in resolution of
4 this Proposition 65 action, and following the issuance of an order approving the Parties' Consent
5 to Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant
6 to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby
7 entered in accordance with the terms of the Consent To Judgment attached hereto as Exhibit A.
8 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under
9 Code of Civil Procedure § 664.6.
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11 **IT IS SO ORDERED.**

12
13 **NOV 26 2014**

GEORGE C. HERNANDEZ, JR.

14 Dated: _____

15 Hon. George Hernandez
16 Judge Of The Superior Court
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EXHIBIT A

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THE CHANLER GROUP
81 Throckmorton Avenue, Suite 202
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Telephone: 415.388.0911
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Attorneys for Plaintiff
PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

vs.

THREE HANDS CORPORATION,
BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION
and DOES 1-150,

Defendants.

Case No. RG13675901

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

**CONSENT TO JUDGMENT AS TO
DEFENDANT THREE HANDS
CORPORATION**

Action Filed: April 17, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Plaintiff”) and the defendant Three Hands Corporation (“Three Hands”), with Plaintiff and
5 Three Hands 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
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Three Hands**

11 Three Hands 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** Plaintiff alleges that Three Hands 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 **1.4.2** 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). TDCPP is hereinafter
23 referred to as the “Listed Chemicals.” Plaintiff alleges that the Listed Chemicals escape from foam
24 padding, leading to human exposures.

25 **1.5 Product Description**

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1 The categories of products that are covered by this Consent Judgment are identified on
2 Exhibit A (hereinafter "Products"). Polyurethane foam that is supplied, shaped or manufactured
3 for use as a component of another product, such as upholstered furniture, but which is not itself a
4 finished product, is specifically excluded from the definition of Products.

5 **1.6 Notices of Violation**

6 On January 4, 2013 and February 25, 2013, Plaintiff served Three Hands and certain
7 requisite public enforcement agencies with "60-Day Notices of Violation" ("Notices") that
8 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
9 failure to warn customers, consumers, and workers in California that the Products expose users to
10 one or more Listed Chemicals. To the best of the Parties' knowledge, no public enforcer has
11 commenced or is diligently prosecuting the allegations set forth in the Notices.

12 **1.7 Complaint**

13 On April 17, 2013, Plaintiff filed his Complaint and on May 8, 2013, Plaintiff filed a First
14 Amended Complaint in the Superior Court in and for the County of Alameda against Three
15 Hands, other defendants and Does 1 through 150, alleging violations of Proposition 65, based in
16 part on the alleged unwarned exposures to TDCPP contained in the Products.

17 **1.8 No Admission**

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

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1.9 Consent to Jurisdiction

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

2. DEFINITIONS

2.1 California Customers

“California Customer” shall mean any customer that Three Hands 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 TCEP in a solid substance.

2.3 Effective Date

“Effective Date” shall mean August 1, 2014.

2.4 Reformulated Products

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

2.5 Reformulation Standard

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

2.6 Retailer

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

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on August 1, 2014, Three Hands shall not manufacture or import, or cause to
4 be manufactured or imported, for sale to California Customers any Products that are not
5 Reformulated Products.

6 **3.2 Vendor Notification/Certification**

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

16 **3.3 Products No Longer in Three Hands' Control**

17 No later than 45 days after the Effective Date, Three Hands shall send a letter, electronic or
18 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
19 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notices
20 Three Hands received from Plaintiff ("Exemplar Products"); and (2) any California Customer
21 and/or Retailer that the Three Hands reasonably understands or believes had any inventory for
22 resale in California of Exemplar Products as of the relevant Notice's dates. The Notification Letter
23 shall advise the recipient that the Exemplar Product "contains TDCPP, a chemical known to the
24 State of California to cause cancer," and request that the recipient either: (a) label the Exemplar
25 Products remaining in inventory for sale in California, or to California Customers, pursuant to
26 Section 3.5; or (b) return, at Three Hands' sole expense, all units of the Exemplar Product held for
27 sale in California, or to California Customers, to Three Hands or a party Three Hands has
28 otherwise designated. The Notification Letter shall require a response from the recipient within 15

1 days confirming whether the Exemplar Product will be labeled or returned. Three Hands shall
2 maintain records of all correspondence or other communications generated pursuant to this
3 Section for two years after the Effective Date and shall promptly produce copies of such records
4 upon Plaintiff's written request.

5 **3.4 Current Inventory**

6 Three Hands has confirmed that it has already commenced placing a clear and reasonable
7 warning on Products or in association with the sale of products since May 1, 2014. Any Products
8 in, or manufactured and en route to, Three Hands' inventory as of or after May 1, 2014, that do not
9 qualify as Reformulated Products and that the Three Hands has reason to believe may be sold or
10 distributed for sale in California, shall contain a clear and reasonable warning as set forth in
11 Section 3.5 below unless Section 3.6 applies.

12 **3.5 Product Warnings**

13 **3.5.1 Product Labeling**

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

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

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

24 _____
25 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Three Hands
26 had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning language,
27 other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks to use an
28 alternate method of transmission of the warning, must obtain the Court's approval of its alternative warning 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 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 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.² Provided that the other
3 requirements set forth in this Section are addressed, including as to the required warning
4 statement and method of transmission as set forth above, Three Hands remains free not to utilize
5 the template 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
11 of 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, a flame
14 retardant chemical known to the State
of California to cause cancer.³

15 3.6 Alternatives to Interim Warnings

16 The obligations of Three Hands under Section 3.3 shall be relieved provided that Three
17 Hands certifies on or before the Effective Date that only Exemplar Products meeting the
18 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
19 California, after the Effective Date. The obligations of Three Hands under Section 3.4 shall be
20 relieved provided that Three Hands certifies on or before the Effective Date, that, after September
21 1, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California, or to
22 California Customers for sale in California, Products (i.e., Products beyond the Exemplar Product)

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24 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no
25 less than 12 point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to
26 the Product; (b) a yellow warning sign measuring 8.5" x 11", with no less than 32 point font, with the warning language
27 printed on each side, which shall be affixed directly to the Product; and (c) for Products sold at retail in a box or
28 packaging, a yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed directly to
the Product packaging.

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

1 meeting the Reformulation Standard. The certifications provided by this Section are material
2 terms and time is of the essence.

3 **4. MONETARY PAYMENTS**

4 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

14 4.1.1 Initial Civil Penalty. On or before September 1, 2014, Three Hands shall
15 make an initial civil penalty payment in the amount identified on Exhibit A.

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

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

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

3 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**
4 **Products Sold or Offered for Sale in California.**

5 As shown on an electing Three Hands' Exhibit A, a portion of the second civil penalty shall
6 be waived, to the extent that it has agreed that, as of May 1, 2014, and continuing into the future, it
7 has and shall only manufacture or import for distribution or sale to California Customers or cause
8 to be manufactured or imported for distribution or sale to California Customers, Reformulated
9 Products. An officer or other authorized representative of a Three Hands that has exercised this
10 election shall provide Plaintiff with a written certification confirming compliance with such
11 conditions, which certification must be received by Plaintiff's counsel on or before September 1,
12 2014.

13 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

14 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent
15 that Three Hands has agreed that, as of September 1, 2014, and continuing into the future, it shall
16 only manufacture or import for distribution or sale in California or cause to be manufactured or
17 imported for distribution or sale in California, Reformulated Products which also do not contain
18 either tris(2-chloroethyl) phosphate ("TCEP") or tris(2,3-dibromopropyl)phosphate ("TDBPP") in
19 a detectable amount of more than 25 parts per million ("ppm") (the equivalent of .0025%) in any
20 material, component, or constituent of a subject product, when analyzed by a NVLAP accredited
21 laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies
22 utilized by federal or state agencies to determine the presence, and measure the quantity, of
23 TDBPP in a solid substance. An officer or other authorized representative of Three Hands that has
24 exercised this election shall provide Plaintiff with a written certification confirming compliance
25 with such conditions, which certification must be received by Plaintiff's counsel on or before
26 September 1, 2014.

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

As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of Three Hands provides Plaintiff with written certification confirming that each individual or establishment in California to which it supplied the Exemplar Product after October 28, 2011, has elected to return or remove all remaining Exemplar Products held for sale in California. An officer or other authorized representative of a Settling Defendant that has exercised this election shall provide Plaintiff with a written certification confirming such information, which certification must be received by Plaintiff's counsel on or before September 1, 2014.

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

As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of Three Hands provides Plaintiff with written certification confirming that, as of the Effective Date, it has and will continue to distribute, offer for sale, or sell in California, or to California Customers, only Reformulated Products. An officer or other authorized representative of a Settling Defendant that has exercised this election shall provide Plaintiff with a written certification confirming such information, which certification must be received by Plaintiff's counsel on or before September 1, 2014.

4.2 Representations

Three Hands represents that the sales data and other information concerning its size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiff 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, Plaintiff discovers and presents to Three Hands, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Three Hands shall have 30 days to meet and confer regarding the Plaintiff's contention. Should this 30 day period pass without any such resolution between the

1 Plaintiff and Three Hands, Plaintiff shall be entitled to file a formal legal claim including, but not
2 limited to, a claim for damages for breach of contract.

3 Settling Defendant further represents that in implementing the requirements set forth in
4 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to
5 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 Three Hands that
11 levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one or
12 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 Three Hands
14 under Sections 3.1 or 3.6 above, Three Hands may elect to pay a stipulated penalty to relieve any
15 further potential liability under Proposition 65 or sanction under this Consent Judgment as to
16 Products sourced from the vendor in question.⁴ The stipulated penalty shall be \$1,500 if the
17 violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm,
18 this being applicable for any amount in excess of the Reformulation Standards but under 250
19 ppm.⁵ Plaintiff shall further be entitled to reimbursement of their associated expense in an amount
20 not to exceed \$5,000 regardless of the stipulated penalty level. Three Hands under this Section
21 must provide notice and appropriate supporting information relating to the purchase (e.g. vendor
22 name and contact information including representative, purchase order, certification (if any)
23 received from vendor for the exemplar or subcategory of products), test results, and a letter from a
24 company representative or counsel attesting to the information provided, to Plaintiff within 30

25 ⁴ This Section shall not be applicable where the vendor in question had previously been found by Three Hands
26 to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one
27 occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by Three Hands' vendor at a
28 level between 100 and 249 ppm shall not be available after July 1, 2015.

⁵ 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 calendar days of receiving test results from Plaintiff's counsel. Any violation levels at or above 250
2 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

3 **4.4 Reimbursement of Fees and Costs**

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

21 **4.5 Payment Procedures**

22 4.5.1 Issuance of Payments.

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

25 The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
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 of
3 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

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
17 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
18 Section 4.5.1(a) above, as proof of payment to OEHHA.

19 4.5.3 Tax Documentation. Three Hands shall issue a separate 1099 form for each
20 payment required by this Section to: (a) Peter Englander, whose address and tax identification
21 number shall be furnished upon request after this Consent Judgment has been fully executed by
22 the Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health
23 Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O.
24 Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address
25 set forth in Section 4.5.1(a) above.

26 **5. CLAIMS COVERED AND RELEASED**

27 **5.1 Plaintiff's Release of Proposition 65 Claims**

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

1 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
2 Chemicals in the Products, as set forth in the Notices. *Burlington Coat Factory Warehouse ("BCFW")*
3 *shall be considered a Releasee under this agreement but only to the extent of BCFW's sale of any padded,*
4 *upholstered furniture product sold to BCFW by Three Hands.* Compliance with the terms of this
5 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the
6 Listed Chemicals from the Products, as set forth in the Notices. The Parties further understand and
7 agree that this Section 5.1 release shall not extend upstream to any entities, other than Three
8 Hands, that manufactured the Products or any component parts thereof, or any distributors or
9 suppliers who sold the Products or any component parts thereof to Three Hands.

10 5.2 Plaintiff's Individual Releases of Claims

11 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides
12 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
13 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
14 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
15 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP in
16 the Products or Additional Products (as defined in Section 11.1 and delineated on Exhibit A)
17 manufactured, imported, distributed, or sold by Three Hands prior to the Effective Date.⁶ The
18 Parties further understand and agree that this Section 5.2 release shall not extend upstream to any
19 entities that manufactured the Products or Additional Products, or any component parts thereof,
20 or any distributors or suppliers who sold the Products or Additional Products, or any component
21 parts thereof to Three Hands. Nothing in this Section affects Plaintiff's rights to commence or
22 prosecute an action under Proposition 65 against a Releasee that does not involve Three Hands'
23 Products or Additional Products.

24 5.3 Three Hands' Release of Plaintiff

25 Three Hands, on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and assignees, hereby waives any and all claims against Plaintiff and his attorneys and

27 ⁶ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

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

5 **6. COURT APPROVAL**

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

21 **7. GOVERNING LAW**

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

1 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Three Hands
2 from any obligation to comply with any pertinent state or federal law or regulation.

3 **8. NOTICES**

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

8 To Three Hands:

To Plaintiff:

9 At the address shown on Exhibit A

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

10
11
12 Any Party, from time to time, may specify in writing to the other Party a change of address to
13 which all notices and other communications shall be sent.

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

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

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

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

21 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

22 11.1 Plaintiff and Three Hands agree to support the entry of this agreement as a Consent
23 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
24 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
25 motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft
26 and file. If any third party objection to the noticed motion is filed, Plaintiff and Three Hands shall
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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:

Date: August __, 2014

Date: August __, 2014

Plaintiff Peter Englander

Shant Anan, President
Three Hands Corporation

EXHIBIT A

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THREE HANDS CORPORATION

Noticed Chemical(s): TDCPP

Noticed Product: padded, upholstered furniture, including ottomans

Exemplar Product: Keys Ottoman

Additional Product: none

Penalty 1 (Section 4.1.1) (due September 1, 2014): \$12,500

Penalty 2 (Section 4.1.2) (due October 1, 2014): \$30,000

Penalty 3 (Section 4.1.3) (due November 1, 2014): \$24,000

Section 4.1.4(i) penalty waiver: \$18,000

Section 4.1.4(ii) penalty waiver: \$12,000

Section 4.1.4(iii) penalty waiver: \$12,000

Section 4.1.4(iv) penalty waiver: \$12,000

Additional Releasees: Burlington Coat Factory Warehouse Corporation

Section 4.4 fee and costs reimbursement (due September 1, 2014): \$37,000

Supplemental fee for additional Releasees: (due September 1, 2014): \$5,000

Person(s) to receive Notices pursuant to Section 8:

Seepan V. Parseghian
Snell & Wilmer LLP
Two California Plaza
350 S. Grand Avenue, Suite 2600
Los Angeles, CA 90071

1 work together to file a reply and appear at any hearing before the Court. This provision is a
2 material component of the Consent Judgment and shall be treated as such in the event of a breach.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

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

11 AGREED TO:

12 Date: August __, 2014

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15 _____
16 Plaintiff Peter Englander

AGREED TO:

12 Date: August 6, 2014

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16 Shant Anan, President
17 Three Hands Corporation

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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

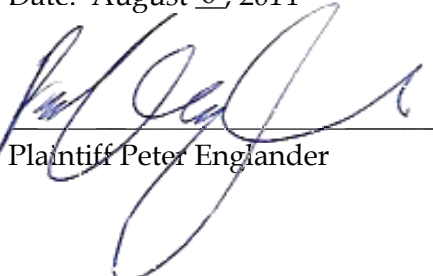
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: August 6, 2014

Date: August __, 2014

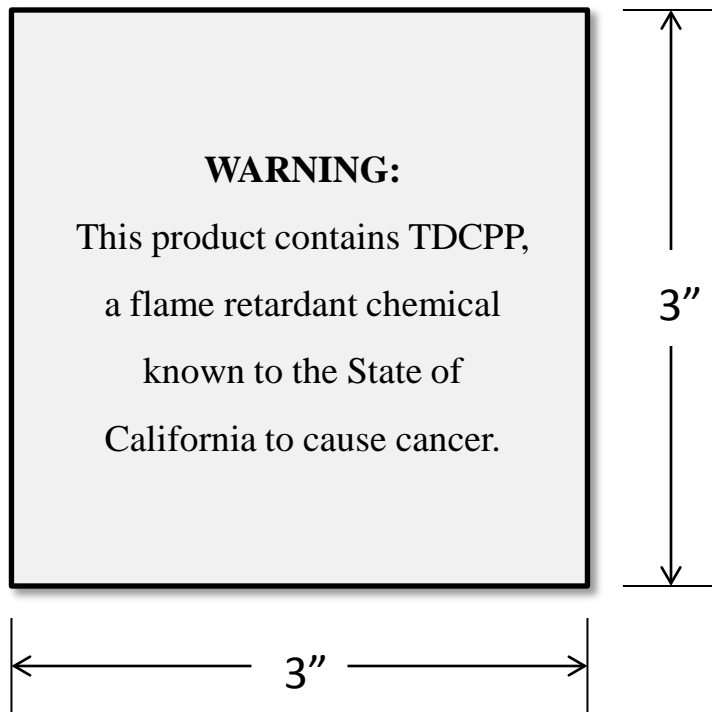


Plaintiff Peter Englander

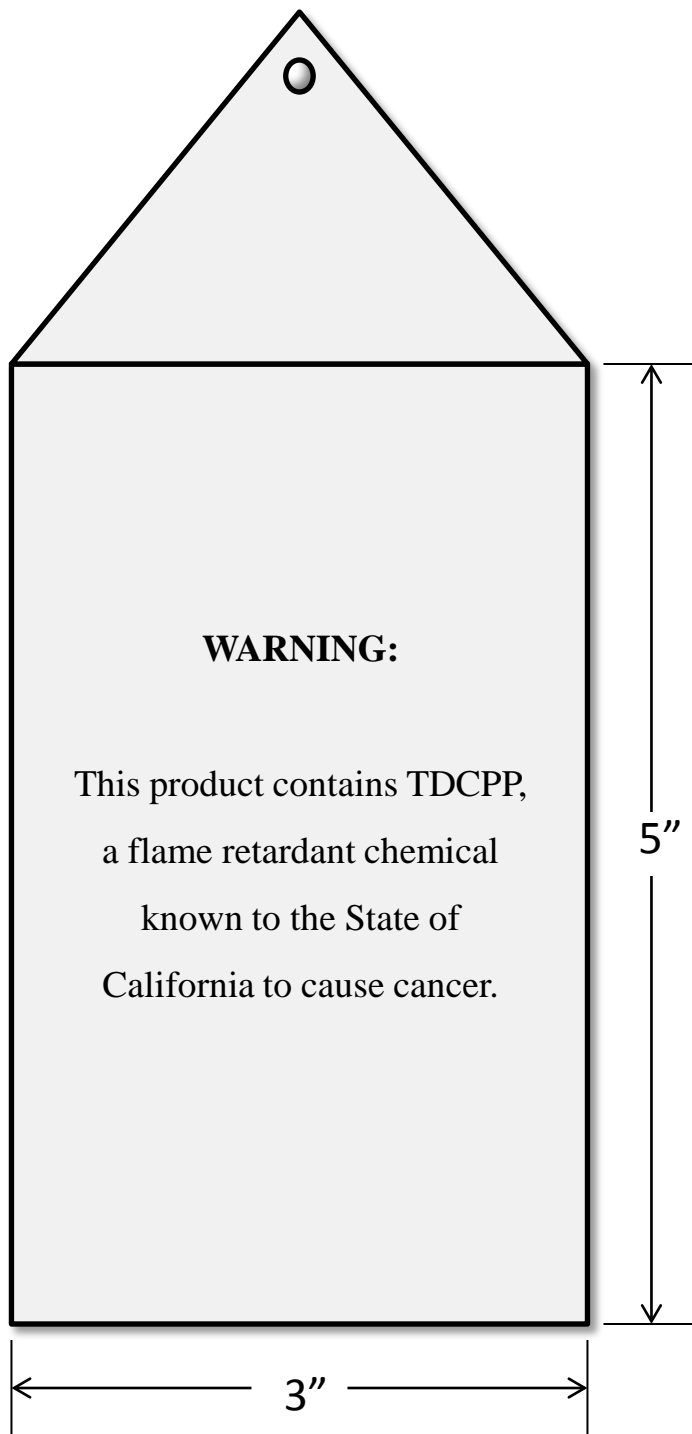
Shant Anan, President
Three Hands Corporation

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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

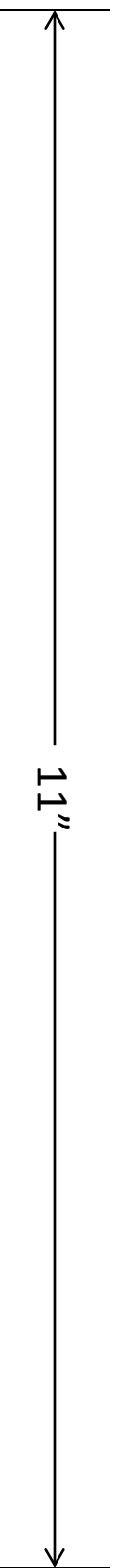


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. “WARNING:” text must be bold.

WARNING:

This product contains TDCCPP, 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.