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10 PETER ENGLANDER

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR - 7 2014

CLERK OF THE SUPERIOR COURT  
~~ROLANDA ESTRADA~~ Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 ACME FURNITURE INDUSTRY, INC.;

18 et al.

19 Defendant.

Case No. RG13673678

**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENTS AND CONSENT  
JUDGMENTS AS TO DEFENDANTS  
BASSETT FURNITURE INDUSTRIES  
INCORPORATED, IDEA NUOVA INC.  
AND BUTLER SPECIALTY COMPANY**

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, and 3**, 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 Gregory M. Sheffer, State Bar No. 173124  
3 THE CHANLER GROUP  
4 81 Throckmorton Avenue, Suite 202  
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8 Attorneys for Plaintiff  
9 PETER ENGLANDER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 UNLIMITED JURISDICTION

13 PETER ENGLANDER

14 Plaintiff,

15 vs.

16 ACME FURNITURE INDUSTRY, INC.,  
17 BASSETT FURNITURE INDUSTRIES,  
18 INCORPORATED, BEST CHAIRS  
19 INCORPORATED, BUTLER SPECIALTY  
20 COMPANY, COA, INC., FOREMOST  
21 GROUPS, INC., IDEA NUOVA INC., MINSON  
22 CORPORATION, NAJARIAN FURNITURE  
23 COMPANY, INC., P'KOLINO, LLC, THE TJX  
24 COMPANIES, INC. and DOES 1-150,

25 Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS TO  
DEFENDANT BASSETT FURNITURE  
INDUSTRIES, INCORPORATED**

(Health & Safety Code § 25249.6 *et seq.*)

Filed: March 29, 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 identified in Exhibit A (“Settling Defendant”), with Plaintiff and  
5 the Settling Defendant 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 Settling Defendant**

11 The 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 the 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

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1 TDCPP and TCEP are hereinafter collectively referred to as the "Listed Chemicals." Plaintiff  
2 alleges that the Listed Chemicals escape from foam padding, leading to human exposures.

3 **1.5 Product Description**

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

9 **1.6 Notices of Violation**

10 On January 10, 2013, and March 20, 2013, Plaintiff served Settling Defendant and certain  
11 requisite public enforcement agencies with "60-Day Notices of Violation" ("Notices") that  
12 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged  
13 failure to warn customers, consumers, and workers in California that the Products expose users to  
14 one or more Listed Chemicals.<sup>1</sup> To the best of the Parties' knowledge, no public enforcer has  
15 commenced or is diligently prosecuting the allegations set forth in the Notices.

16 **1.7 Complaint**

17 On April 10, 2013, Plaintiff filed a First Amended Complaint in the Superior Court in and  
18 for the County of Alameda against the Settling Defendant, other defendants and Does 1 through  
19 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to  
20 TDCPP contained in the Products.

21 **1.8 No Admission**

22 The Settling Defendant denies the material factual and legal allegations contained in  
23 Plaintiff's Notices and Complaints and maintain that all products that they have manufactured,  
24 imported, distributed, and/or sold in California, including the Products, have been and are in  
25 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission

26  
27 <sup>1</sup> Based on their further investigation, Plaintiff has also issued supplemental 60-day notices to some of the other defendants  
28 alleging that the Products contain and expose Californians to di(2-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.

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

6 **1.9 Consent to Jurisdiction**

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

12 **2. DEFINITIONS**

13 **2.1 California Customers**

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

17 **2.2 Detectable**

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

23 **2.3 Effective Date**

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

25 **2.4 Private Label Covered Products**

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

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**2.5 Reformulated Products**

“Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP or TCEP.<sup>2</sup>

**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, the Settling Defendant shall not manufacture or import, or cause to be manufactured or imported, any Products that are not Reformulated Products.

**3.2 Vendor Notification/Certification**

On or before the Effective Date, the Settling Defendant shall provide written notice to all of its then-current vendors of the Products, instructing each such vendor to use reasonable efforts to provide it with only Reformulated Products. In addressing the obligation set forth in the preceding sentence, the Settling Defendant shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. The Settling Defendant 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 the Settling Defendant for at least two years after their receipt and shall be made available to Plaintiff upon request.

**3.3 Products No Longer in The Settling Defendant’s Control**

No later than 45 days after the Effective Date, the Settling Defendant shall send a letter, electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer

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<sup>2</sup> As to the defendants who received supplemental Notices concerning DEHP, the term “Reformulated Products” further requires that the Products for which claims concerning DEHP were noticed (the “Phthalate Products”) contain no more than 1000 ppm each of DEHP, BBP, and DBP.



1 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar  
2 in the Notice(s) the Settling Defendant received from Plaintiff ("Exemplar Product"); and (2) any  
3 California Customer and/or Retailer that the Settling Defendant reasonably understands or  
4 believes had any inventory for resale in California of Exemplar Products as of the relevant Notice's  
5 dates. The Notification Letter shall advise the recipient that the Exemplar Product "contains  
6 TDCPP and/or TCEP, chemicals known to the State of California to cause cancer," and request  
7 that the recipient either: (a) label the Exemplar Products remaining in inventory for sale in  
8 California, or to California Customers, pursuant to Section 3.5; or (b) return, at the Settling  
9 Defendant's sole expense, all units of the Exemplar Product held for sale in California, or to  
10 California Customers, to the Settling Defendant or a party the Settling Defendant has otherwise  
11 designated. The Notification Letter shall require a response from the recipient within 15 days  
12 confirming whether the Exemplar Product will be labeled or returned. The Settling Defendant  
13 shall maintain records of all correspondence or other communications generated pursuant to this  
14 Section for two years after the Effective Date and shall promptly produce copies of such records  
15 upon Plaintiff's written request.

#### 16 3.4 Current Inventory

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

#### 21 3.5 Product Warnings

##### 22 3.5.1 Product Labeling

23 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,  
24 labeling, or directly on each Product. Each warning shall be prominently placed with such  
25 conspicuousness as compared with other words, statements, designs, or devices as to render it  
26 likely to be read and understood by an ordinary individual under customary conditions before

27 \_\_\_\_\_  
28 <sup>3</sup> This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants' inventory as of December 31, 2013.

1 purchase. Each warning shall be provided in a manner such that the consumer or user  
2 understands to which specific Product the warning applies, so as to minimize the risk of consumer  
3 confusion.

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

5 **WARNING:** This product contains TDCPP, a flame  
6 retardant chemical known to the State  
of California to cause cancer.<sup>4</sup>

7 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be  
8 clear and reasonable for purposes of this Consent Judgment.<sup>5</sup> Provided that the other  
9 requirements set forth in this Section are addressed, including as to the required warning  
10 statement and method of transmission as set forth above, the Settling Defendant remains free not  
11 to utilize the template warnings.

### 12 3.5.2 Internet Website Warning

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

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21 <sup>4</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 *et seq.* may also be used if the Settling Defendant  
22 had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning language, other than the  
23 language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks to use an alternate method of  
24 transmission of the warning, must obtain the Court's approval of its alternative and provide all Parties and the Office of the Attorney  
25 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."

26 <sup>5</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no less than 12  
27 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  
28 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.

**WARNING:** This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.<sup>6</sup>

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3       **3.6     Alternatives to Interim Warnings**

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

13       **4.     MONETARY PAYMENTS**

14           **4.1     Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

15       In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant  
16 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.<sup>7</sup>  
17 Each penalty payment will be allocated in accordance with California Health & Safety Code  
18 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental  
19 Health Hazard Assessment ("OEHHA") and 25% of the penalty remitted to "The Chanler Group  
20 in Trust for Englander." Each penalty payment shall be made within two business days of the date  
21 it is due and be delivered to the addresses listed in Section 4.5 below. The Settling Defendant shall  
22 be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing  
23 under this Section that are not received within two business days of the due date.  
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27       <sup>6</sup> Footnote 4, *supra*, applies in this context as well.

28       <sup>7</sup> For settling defendants that received supplemental Notices alleging violations of Proposition 65 concerning DEHP in Phthalate Products, the penalty amount shown on Exhibit A includes an additional component to address the resolution of those additional claims.

1           4.1.1 Initial Civil Penalty. On or before the Effective Date, the Settling Defendant  
2 shall make an initial civil penalty payment in the amount identified on the Settling Defendant's  
3 Exhibit A.

4           4.1.2 Second Civil Penalty. On or before January 15, 2014, the Settling Defendant  
5 shall make a second civil penalty payment in the amount identified on the Settling Defendant's  
6 Exhibit A. The amount of the second penalty may be reduced according to any penalty waiver the  
7 Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

8           4.1.3 Third Civil Penalty. On or before November 30, 2014, the Settling  
9 Defendant shall make a third civil penalty payment in the amount identified on the Settling  
10 Defendant's Exhibit A. The amount of the third penalty may be reduced according to any penalty  
11 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

19                   **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**  
20                   **Products Sold or Offered for Sale in California.**

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

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

As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, to the extent that it has agreed that, as of March 15, 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 the Settling Defendant that has exercised this election shall provide Plaintiff with a written certification confirming compliance with such conditions, which certification must be received by Plaintiff'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 the Settling Defendant's Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff 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 either elected to return all remaining Exemplar Products held for sale in California or has confirmed in writing that such individual or establishment no longer has any inventory of the Exemplar Product.<sup>8</sup>

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

As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff

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<sup>8</sup> For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs have, 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 with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it has  
2 and will continue to distribute, offer for sale, or sell in California, or to California Customers, only  
3 Reformulated Products.

#### 4 4.2 Representations

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

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

#### 20 4.3 Stipulated Penalties for Certain Violations of the Reformulation 21 Standard.

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

#### 13 4.4 Reimbursement of Fees and Costs

14 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute  
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
16 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
17 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant  
18 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay  
19 Plaintiff and his counsel under general contract principles and the private attorney general  
20 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed  
21 through the mutual execution of this agreement, including the fees and costs incurred as a result of  
22 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in  
23 the public interest, and seeking court approval of the same. In addition, the negotiated fee and  
24 cost figure expressly includes the anticipated significant amount of time plaintiffs' counsel will

25 <sup>9</sup> This Section shall not be applicable where the vendor in question had previously been found by the Settling Defendant to  
26 have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion.  
27 Notwithstanding the foregoing, a stipulated penalty for a second exceedance by the Settling Defendant's vendor at a level between 100  
28 and 249 ppm shall not be available after July 1, 2015.

<sup>10</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in the same manner as set  
forth in Sections 4.1 and 4.5, respectively.

1 incur to monitor various provisions in this agreement over the next two years, with the exception  
2 of additional fees that may be incurred pursuant to the Settling Defendant's election in Section 11.  
3 The Settling Defendant more specifically agreed, upon the Court's approval and entry of this  
4 Consent Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on the Settling  
5 Defendant's Exhibit A. The Settling Defendant further agreed to tender and shall tender its full  
6 required payment under this Section to a trust account at The Chanler Group (made payable "In  
7 Trust for The Chanler Group") within two business days of the Effective Date. Such funds shall be  
8 released from the trust account upon the Court's approval and entry of this Consent Judgment.

9 **4.5 Payment Procedures**

10 **4.5.1 Issuance of Payments.**

11 (a) All payments owed to Plaintiff and their counsel, pursuant to  
12 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

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

18 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics  
24 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
25 1001 I Street  
26 Sacramento, CA 95814  
27  
28



1                   4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA  
2 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in  
3 Section 4.5.1(a) above, as proof of payment to OEHHA.

4                   4.5.3 Tax Documentation. The Settling Defendant shall issue a separate 1099 form  
5 for each payment required by this Section to: (a) Peter Englander, whose address and tax  
6 identification number shall be furnished upon request after this Consent Judgment has been fully  
7 executed by the Parties; (b) OEHHA, who shall be identified as "California Office of  
8 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered  
9 directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-  
10 3171522) to the address set forth in Section 4.5.1(a) above.

11                   **5. CLAIMS COVERED AND RELEASED**

12                   **5.1 Plaintiff's Release of Proposition 65 Claims**

13                   Plaintiff, acting on his own behalf and in the public interest, releases the Settling  
14 Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors,  
15 officers, agents employees, attorneys, and each entity to whom the Settling Defendant directly or  
16 indirectly distribute or sell Products, including, but not limited, to downstream distributors,  
17 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively,  
18 "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on  
19 unwarned exposures to the Listed Chemicals in the Products, as set forth in the Notices. *As part of*  
20 *this settlement, consolidated defendant Buy, Buy Baby, Inc. is considered a Releasee but only to the extent of*  
21 *Buy Buy Baby's sale or other distribution of the Bassettbaby Premier chair and ottoman sold or supplied to*  
22 *Buy Buy Baby, Inc. by Bassett Furniture Industries, Inc.* Compliance with the terms of this Consent  
23 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed  
24 Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree  
25 that this Section 5.1 release shall not extend upstream to any entities, other than the Settling  
26 Defendant, that manufactured the Products or any component parts thereof, or any distributors or  
27 suppliers who sold the Products or any component parts thereof to the Settling Defendant, except  
28 that entities upstream of the Settling Defendant that is a Retailer of a Private Labeled Covered

1 Product shall be released as to the Private Labeled Covered Products offered for sale in California,  
2 or to California Customers, by the Retailer in question.<sup>11</sup>

3 **5.2 Plaintiff's Individual Releases of Claims**

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

20 **5.3 Settling Defendant's Release of Plaintiff**

21 The Settling Defendant, on behalf of itself, its past and current agents, representatives,  
22 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his  
23 attorneys and other representatives, for any and all actions taken or statements made (or those that  
24

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

26 <sup>12</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

27 <sup>13</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals" shall include DEHP, BBP and DBP  
28 with respect to those Settling Defendants that received supplemental Notices alleging violations of Proposition 65 as to exposures to  
DEHP.

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

4 **6. COURT APPROVAL**

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

20 **7. GOVERNING LAW**

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

1 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve the Settling  
2 Defendant 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 Settling Defendant:

To Plaintiff:

9 At the addresses 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 In addition to the Products, where the Settling Defendant has identified on Exhibit  
23 A additional products that contain Listed Chemicals and that are sold or offered for sale by it in  
24 California, or to California Customers, ("Additional Products"), then by no later than October 15,  
25 2013, the Settling Defendant may provide Plaintiff with additional information or representations  
26 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit  
27 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.  
28

1 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,  
2 such as upholstered furniture, is specifically excluded from the definition of Additional Products  
3 and shall not be identified by the Settling Defendant on Exhibit A as an Additional Product.

4 Except as agreed upon by Plaintiff, the Settling Defendant shall not include a product, as an  
5 Additional Product, that is the subject of an existing 60-day notice issued by Plaintiff or any other  
6 private enforcer at the time of execution. After receipt of the required information, Plaintiff agrees  
7 to issue a supplemental 60-day notice in compliance with all statutory and regulatory  
8 requirements for the Additional Products. Plaintiff will, and in no event later than October 1, 2014,  
9 prepare and file an amendment to this Consent Judgment to incorporate the Additional Products  
10 within the defined term "Products" and serve a copy thereof and supporting papers (including the  
11 basis for supplemental stipulated penalties, if any) on the Office of the California Attorney  
12 General. Upon the Court's approval thereof and finding that the supplemental stipulated penalty  
13 amount, if any, is reasonable, the Additional Products shall become subject to Section 5.1 in  
14 addition to Section 5.2. The Settling Defendant shall, at the time it elects to utilize this Section  
15 and tenders the additional information or representations regarding the Additional Products to  
16 Plaintiff, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated  
17 penalties and attorneys' fees and costs incurred by Plaintiff in issuing the new notice and engaging  
18 in other reasonably related activities, which may be released from the trust as awarded by the  
19 Court upon Plaintiff's application. Any fee award associated with the modification of the Consent  
20 Judgment to include Additional Products shall not offset any associated supplemental penalty  
21 award, if any. (Any tendered funds remaining in the trust thereafter shall be refunded to the  
22 Settling Defendant within 15 days). Such payment shall be made to "in trust for The Chanler  
23 Group" and delivered as per Section 4.5.1(a) above.

24 11.2 Plaintiff and the Settling Defendant agree to support the entry of this agreement as  
25 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
26 manner. The Parties acknowledge that, pursuant to California Health & Safety Code section  
27 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
28 Plaintiff shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and

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

4 **12. MODIFICATION**

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

8 **13. AUTHORIZATION**

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

12 AGREED TO:

AGREED TO:

13 Date: September \_\_, 2013

Date: September \_\_, 2013

14  
15  
16 \_\_\_\_\_  
Plaintiff Peter Englander

17 \_\_\_\_\_  
J. Michael Daniel, S.V.P., C.E.O.  
Settling Defendant  
Bassett Furniture Industries, Incorporated

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

4 **12. MODIFICATION**

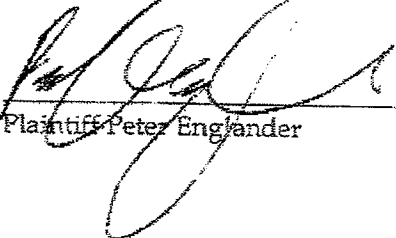
5 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
6 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
7 of any party and entry of a modified Consent Judgment by the Court.

8 **13. AUTHORIZATION**

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

12 **AGREED TO:**

13 Date: September 30, 2013,

14   
15 Plaintiff Peter Englander

12 **AGREED TO:**

13 Date: September 26, 2013

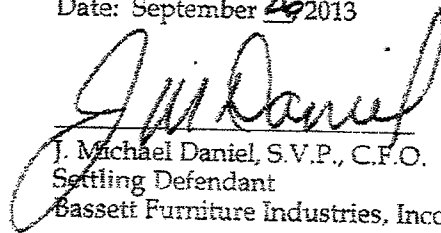
14   
15 J. Michael Daniel, S.V.P., C.F.O.  
16 Settling Defendant  
17 Bassett Furniture Industries, Incorporated

EXHIBIT A

SETTLING DEFENDANT

**BASSETT FURNITURE INDUSTRIES, INCORPORATED**

Product: padded, upholstered furniture, including ottomans

Exemplar Product: Bassettbaby Premier chair and ottoman

Additional Product: none

Penalty 1 (Section 4.1.1) (due October 15, 2013): \$27,000

Penalty 2 (Section 4.1.2) (due January 15, 2014): \$42,000

Penalty 3 (Section 4.1.3) (due November 30, 2014): \$24,000

Section 4.1.4(i) penalty waiver: \$25,000

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

Section 4.1.4(iii) penalty waiver: \$17,000

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

Additional Releasees: Buy Buy Baby, Inc. *(As part of this settlement, consolidated defendant Buy, Buy Baby, Inc. is considered a Releasee but only to the extent of Buy Buy Baby's sale or other distribution of the Bassettbaby Premier chair and ottoman sold or supplied to Buy Buy Baby, Inc. by Bassett Furniture Industries, Inc.)*

Section 4.4 fee and costs reimbursement (due October 15, 2013): \$49,000

Supplemental fee for additional Releasees: (due October 15, 2013): \$8,000

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

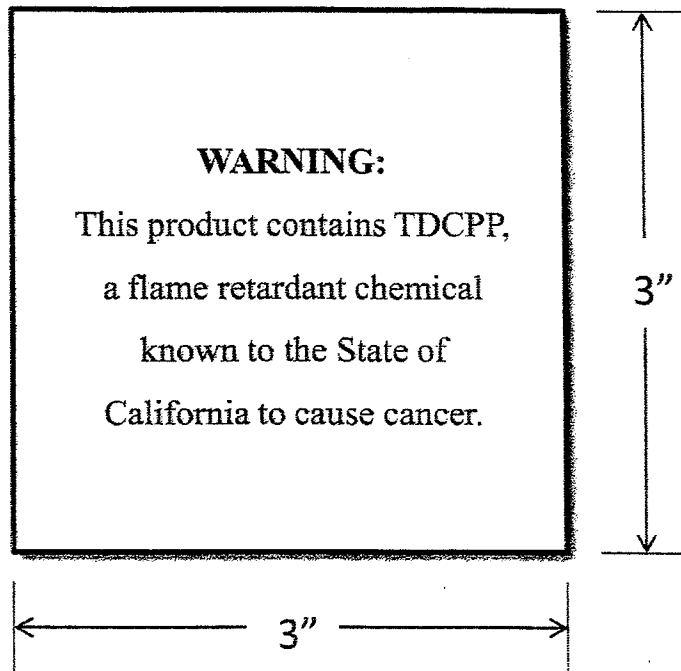
Jay R. Hervey, Esq.  
General Counsel, Vice President & Secretary  
Bassett Furniture Industries, Inc.  
P.O. Box 626  
Bassett, VA 24055

Holly Gaudreau, Esq.  
Kilpatrick Townsend and Stockton, LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, CA 94111

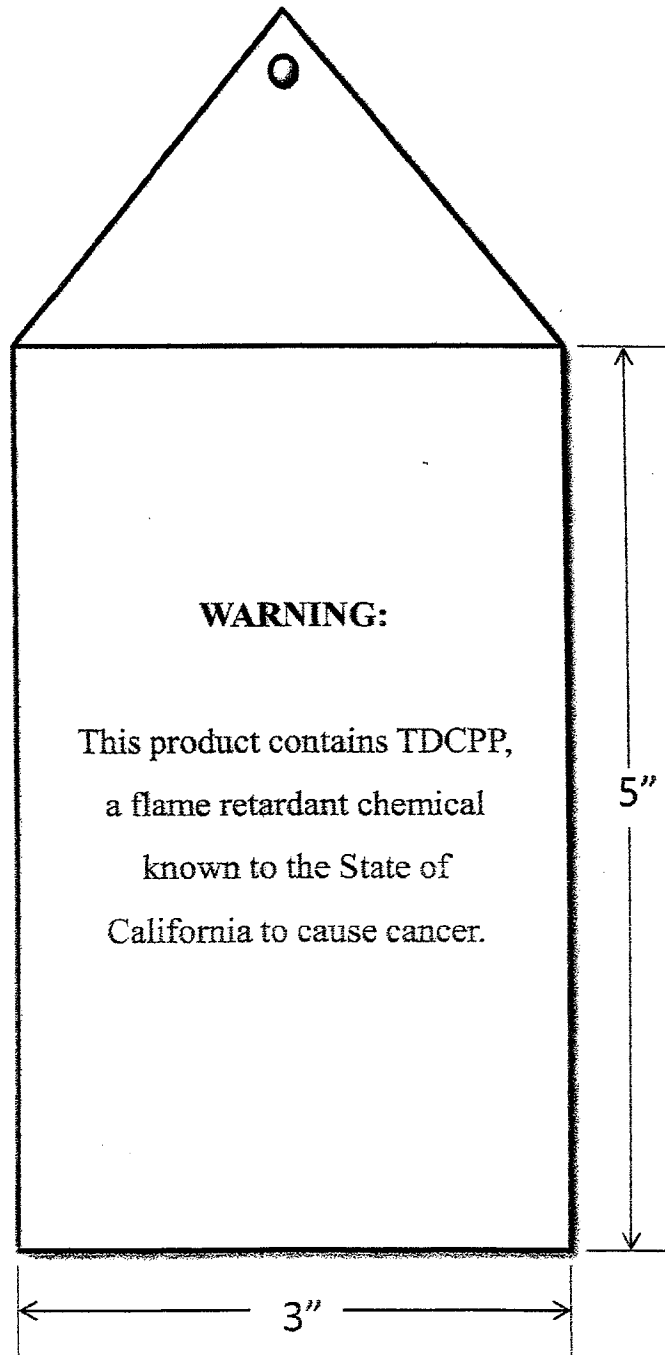


EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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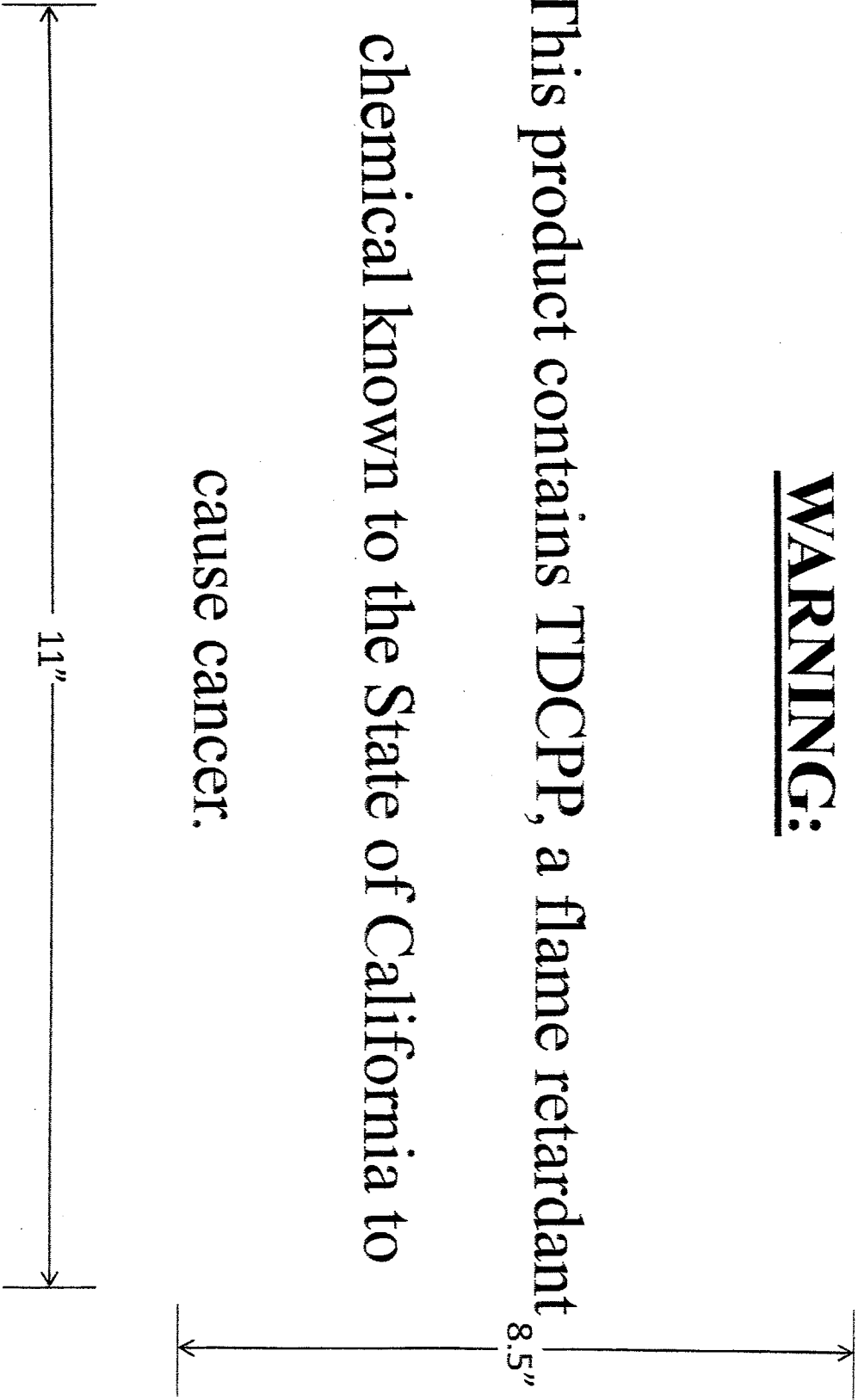
**INSTRUCTIONS:** Minimum 12 pt. font. "WARNING:" text must be bold.



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



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

**Exhibit 2**  
**(To Judgment)**

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

7 Attorneys for Plaintiff  
8 PETER ENGLANDER

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

12 PETER ENGLANDER

13 Plaintiff,

14 vs.

15 ACME FURNITURE INDUSTRY, INC.,  
16 BASSETT FURNITURE INDUSTRIES,  
17 INCORPORATED, BEST CHAIRS  
18 INCORPORATED, BUTLER SPECIALTY  
19 COMPANY, COA, INC., FOREMOST  
20 GROUPS, INC., IDEA NUOVA INC., MINSON  
21 CORPORATION, NAJARIAN FURNITURE  
22 COMPANY, INC., P'KOLINO, LLC, THE TJX  
23 COMPANIES, INC. and DOES 1-150,

24 Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS TO  
IDEA NUOVA, INC.**

(Health & Safety Code § 25249.6 *et seq.*)

Complaint Filed: March 29, 2013

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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Peter Englander ("Englander" or "Plaintiff") and Idea Nuova, Inc. ("IDN"), with Plaintiff and IDN collectively referred to as the "Parties."

1.2 Peter Englander

Plaintiff Peter 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 IDN

IDN 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 IDN manufactured, imported, sold and/or distributed for sale in California, furniture 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)

1.4.4 TDCPP is hereinafter 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 Products that are covered by this Consent Judgment as to IDN is identified on Exhibit A (hereinafter "Products"). Polyurethane foam that is supplied, shaped or manufactured for use as a

1 component of another product, such as upholstered furniture, but which is not itself a finished  
2 product, is specifically excluded from the definition of Products and shall not be identified on  
3 Exhibit A as a Product.

4       1.6     Notice of Violation

5       On January 10, 2013, Englander served IDN and certain requisite public enforcement  
6 agencies with a Proposition 65 60-Day Notice of Violation (“Notice”) that provided the recipients  
7 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,  
8 consumers, workers and other individuals that the Products exposed users in California to the  
9 Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced or is  
10 diligently prosecuting the allegations set forth in the Notice.

11       1.6     Complaint

12       On March 29, 2013, Englander filed a Complaint in the Superior Court in and for the County  
13 of Alameda, *Peter Englander v. Bassett Furniture Industries, Inc., et al.*, Case No. RG13673678, alleging  
14 violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained  
15 in the Products. On April 19, 2013, Englander filed a First Amended Complaint in the Superior  
16 Court in and for the County of Alameda, *Peter Englander v. Acme Furniture Industries, Inc., et al.*, Case  
17 No. RG13673678, alleging additional violations, against additional defendants, of Proposition 65,  
18 based in part on the alleged unwarned exposures to TDCPP. In October of 2013, Englander filed a  
19 Second Amended Complaint in the Superior Court in and for the County of Alameda, *Peter*  
20 *Englander v. Acme Furniture Industries, Inc., et al.*, Case No. RG13673678, alleging additional  
21 violations, against additional defendants, of Proposition 65, based in part on the alleged unwarned  
22 exposures to TDCPP, tris(2-chloroethyl) phosphate (“TCEP”) and di (2 ethylhexyl) phthalate  
23 (“DEHP”). The Complaint, First Amended Complaint and Second Amended Complaint shall  
24 hereinafter be collectively referred to as “Complaint”.

25       1.7     No Admission

26       IDN denies the material factual and legal allegations contained in Englander’s Notice and  
27 Complaint and maintain that all products that they have manufactured, imported, distributed,  
28 and/or sold in California, including the Products, have been and are in compliance with all laws.



1 Nothing in this Consent Judgment shall be construed as an admission by IDN of any fact, finding,  
2 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
3 constitute or be construed as an admission by IDN of any fact, finding, conclusion, issue of law, or  
4 violation of law. However, this section shall not diminish or otherwise affect IDN's obligations,  
5 responsibilities, and duties under this Consent Judgment.

6 **1.8 Consent to Jurisdiction**

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

11 **2. DEFINITIONS**

12 **2.1 California Customers**

13 "California Customer" shall mean any customer that IDN reasonably understands is located  
14 in California, has a California warehouse or distribution center, maintains a retail outlet in  
15 California or has made any internet sales into California after January 1, 2010.

16 **2.2 no Detectable**

17 "no Detectable" shall mean containing not more than 25 parts per million ("ppm") (the  
18 equivalent of .0025%) of any one chemical in any material, component or constituent part of a  
19 subject product, when analyzed by a laboratory certified by the State of California or accredited by  
20 the State of California, a federal agency, the National Environmental Laboratory Accreditation  
21 Program or similar nationally recognized accrediting organization to perform the chemical analysis  
22 in question pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies  
23 utilized by federal or state agencies to determine the presence, and measure the quantity, of  
24 TDCPP, TCEP and/or DEHP in a solid substance. The parties agree that 25 ppm is a reasonable  
25 detection limit. Englander may ask the Court to amend the definition of "detectable" in 2018 if  
26 Englander provides reasonable evidence that laboratory detection limits for either of the Listed  
27 Chemicals have been reduced to 10 ppm or less.  
28

1           2.3    Effective Date

2           “Effective Date” shall mean November 15, 2013.

3           2.4    Products

4           “Products” shall mean the products covered by this Consent Judgment, including Noticed  
5 Product and Exemplar Product, as identified on Exhibit A for IDN.

6           2.5    Exemplar Products

7           “Exemplar Products” shall mean the specific product covered by this Consent to Judgment  
8 as identified on Exhibit A for IDN.

9           2.6    Reformulated Products

10          “Reformulated Products” shall mean Products that contain no Detectable TDCPP.

11          2.7    Reformulation Standard

12          The “Reformulation Standard” shall mean each material, component or constituent part of a  
13 Product contains not more than 25 ppm of TDCPP.

14          2.8    Retailer

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

17          3.    INJUNCTIVE RELIEF: REFORMULATION

18          3.1    Reformulation Commitment

19          Commencing on February 1, 2014, IDN shall not distribute or sell, or manufacture or import  
20 for distribution or sale, or cause to be manufactured or imported for distribution or sale, any  
21 Products that are not Reformulated Products.

22          3.2    Vendor Notification/Certification

23          On or before the Effective Date, IDN shall provide written notice, to all of its then-current  
24 vendors of Products, instructing each such vendor to provide IDN with only Reformulated  
25 Products. In addressing the obligation set forth in the preceding sentence, IDN shall not employ or  
26 imply statements or other communication that will or reasonably likely may encourage a vendor to  
27  
28

1 delay compliance with the Reformulation Standard. For each vendor and for each Product, IDN  
2 shall demand and obtain written certification, no later than April 1, 2014, from such vendors of  
3 Products and any newly engaged vendors of Products, along with copies of test result reports from  
4 a laboratory accredited and/or certified by a United States federal agency, California State agency  
5 and/or nationally recognized accrediting organization, of the date that the Products manufactured  
6 by such vendors are in compliance with the Reformulation Standard. Certifications and test result  
7 reports shall be held by IDN for at least two years after their receipt and shall be made available to  
8 Englander upon request.

9           **3.3     Products No Longer in a Settling Defendant's Control**

10           No later than the Effective Date, IDN shall send a letter, electronic or otherwise  
11 ("Notification Letter") to: (1) each California Customer and/or Retailer to which it supplied, after  
12 October 28, 2011, any Exemplar Product and (2) any California Customer or Retailer that IDN  
13 reasonably understands or believes had any inventory of Exemplar Products available for sale in  
14 California as of the Notice's date. The Notification Letter shall advise the recipient that the  
15 Exemplar Product "contains TDCPP, a chemical known to the State of California to cause cancer,"  
16 and request that the recipient either: (a) label the Exemplar Products remaining in inventory for  
17 sale in California or to California Customers pursuant to Section 3.5; (b) return or destroy, at IDN's  
18 sole expense, all units of the Exemplar Product held for sale in or to California, or a California  
19 Customer, to IDN or a party IDN has otherwise designated; or (c) confirm in writing that the  
20 California Customer or Retailer no longer has any inventory of the Exemplar Product for sale in  
21 California. The Notification Letter shall require a response from the recipient within 15 days  
22 confirming whether the Exemplar Product will be labeled or returned or destroyed, or is no longer  
23 in stock. IDN shall maintain records of all correspondence or other communications generated  
24 pursuant to this Section for two years after the Effective Date and shall promptly produce copies of  
25 such records upon Englander's written request.

26           **3.4     Current Inventory**

1 As of the Effective Date, IDN shall not sell or otherwise distribute any Exemplar Product in  
2 California or to a California Customer unless such product is certified by the vendor to be a  
3 Reformulated Product or contains a clear and reasonable warning as set forth in Section 3.5 below.

4 3.5 **Product Warnings**

5 3.5.1 **Product Labeling**

6 Any warning provided under this Agreement shall be (1) affixed to any invoice or  
7 shipping document delivered with the Product, (2) affixed to the exterior packaging of such  
8 product and (3) affixed to the Product itself in immediate proximity to any marketing, ownership or  
9 pricing tags or labels or, if none, to a surface of the product that would be immediately visible to a  
10 Product purchaser or user upon inspection or use. Each warning shall be of such size, color and  
11 font and shall be prominently placed with such conspicuousness as compared with other words,  
12 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
13 individual under customary conditions before purchase. Each warning shall be provided in a  
14 manner such that the consumer or user understands to which specific Product the warning applies,  
15 so as to minimize the risk of consumer confusion.

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

17  
18 **WARNING:** This product contains TDCPP, a flame retardant chemical known to  
19 the State of California to cause cancer.<sup>1</sup>

20 The warning shall be attached as further described in attached Exhibit B which also contains  
21 illustrations of other warning characteristics constituting the minimum acceptable warning  
22 requirements of this Consent Judgment.<sup>2</sup>

23 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling  
24 Defendant had begun to use it to provide interim warnings prior to the execution of this Consent Judgment. A Settling  
25 Defendant that seeks to use alternative warning language, other than the language specified above or the safe harbor  
26 warning specified in 27 CCR § 25603.2, must obtain the Court's approval of its alternative warning statement and  
27 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."

28 <sup>2</sup> 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 than 32 point font, with the warning language printed on

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**3.5.2 Internet Website Warning**

To the extent a warning is required under Section 3, a warning shall be given in conjunction with any sale of the Products to California Customers via the internet, which warning shall appear on each product display page displayed to the purchaser prior to completion of the checkout process. The following warning statement shall be used and shall appear in 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.<sup>3</sup>

**3.6 Termination Of Warning Option**

IDN shall not use the warnings mandated by Section 3 of this Consent Judgment as a means of compliance with Proposition 65 for any sale of Products on or after February 1, 2014. All sales of Products in California or to a California Customer on and after February 1, 2014, shall be Reformulated Products.

**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, IDN 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 the remaining 25% of the penalty remitted to "The Chanler Group in Trust for Englander"

Each penalty payment shall be made on such date identified along with the penalty on Exhibit A for IDN and delivered to the addresses listed in Section 4.3 below. Any failure by IDN to deliver the required civil penalty payments to either OEHHA or The Chanler Group within two days of the required date shall result in imposition of a 10% simple interest assessment on the

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.

<sup>3</sup> The preceding footnote applies in this context as well.

1 undelivered payment(s) until delivery.

2 **4.1.1 Penalty Waiver for Accelerated Reformulation of Exemplar Products.**

3 As shown on IDN's Exhibit A, a portion of the Penalty 2 civil penalty shall be  
4 waived, to the extent that it has agreed that, as of November 29, 2013, and continuing into the  
5 future, it shall only distribute or sell to California Customers, manufacture or import for  
6 distribution or sale to California Customers or cause to be manufactured or imported for  
7 distribution or sale to California Customers Exemplar Products that are certified by the vendor to  
8 be Reformulated Products. An officer of IDN that has exercised this election shall provide Plaintiff  
9 with a written certification confirming compliance with such conditions, which certification must  
10 be received by Plaintiff's counsel on or before November 22, 2013. Time is of the essence and any  
11 such certification received by Plaintiff's counsel after November 22, 2013, regardless of the reason,  
12 shall be ineffective in securing this penalty waiver.

13 **4.1.2 Penalty Waiver for Accelerated Reformulation of All Products.**

14 As shown on IDN's Exhibit A, a portion of the Penalty 2 civil penalty shall be  
15 waived, to the extent that it has agreed that, as of November 29, 2013, and continuing into the  
16 future, it shall only distribute or sell to California Customers, manufacture or import for  
17 distribution or sale to California Customers or cause to be manufactured or imported for  
18 distribution or sale to California Customers Products that are certified by the vendor to be  
19 Reformulated Products. An officer of a Settling Defendant that has exercised this election shall  
20 provide Plaintiffs with a written certification confirming compliance with such conditions, which  
21 certification must be received by Plaintiffs' counsel on or before November 22, 2013. Time is of the  
22 essence and any such certification received by Plaintiff's counsel after November 22, 2013,  
23 regardless of the reason, shall be ineffective in securing this penalty waiver.

24 **4.1.3 Partial Penalty Waiver for Withdrawal of Unreformulated Exemplar  
25 Products from the California Market.**

26 As shown on IDN's Exhibit A, a portion of the Penalty 2 civil penalty shall be  
27 waived, if an officer of IDN provides Plaintiff with written certification, by November 22, 2013,  
28 confirming that each California Customer and/or Retailer to which it supplied the Exemplar

1 Product after October 28, 2011, has either confirmed, in writing, that it no longer has any inventory  
2 of the Exemplar Product or has agreed, pursuant to Section 3.3, to return all Exemplar Products.  
3 Time is of the essence and any such certification received by Plaintiff's counsel after November 22,  
4 2013, regardless of the reason, shall be ineffective in securing this penalty waiver.

5 **4.1.4 Stipulated Penalties for Minor Exceedances of the Reformulation Standard.**

6 If Plaintiff provides notice and appropriate supporting information to IDN that  
7 levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one or  
8 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported  
9 after a deadline for meeting the Reformulation Standard has arisen for IDN under Sections 3.1, 3.2,  
10 4.1.1 or 4.1.2 above, IDN may elect to pay a stipulated penalty to relieve any further potential  
11 liability under Proposition 65 or sanction under this Consent Judgment as to Products sourced from  
12 the vendor in question.<sup>4</sup> The stipulated penalty shall be comprised of any waived penalty amount  
13 for early reformulation plus \$1,500 if the exceedance level is below 100 ppm and \$3,000 if the  
14 exceedance level is between 100 ppm and 249 ppm.<sup>5</sup> Plaintiff shall further be entitled to  
15 reimbursement of his associated fee and cost expense in an amount not to exceed \$10,000 regardless  
16 of the stipulated penalty level. If IDN elects to utilize this Section, prior to securing any benefit  
17 from this Section, it must provide Plaintiff's counsel with information relating to the purchase of  
18 each identified product (e.g. vendor name and contact information including representative name,  
19 phone number and address, purchase order for any product in question, certification and test  
20 results (if any) received from vendor for any product in question) within 30 calendar days of  
21 receiving test results from Plaintiff's counsel.

22 **4.1.5 Additional Penalties For Unreasonably Incorrect Representations Of Sales**  
23 **Data**

24  
25 \_\_\_\_\_  
26 <sup>4</sup> This Section shall not be applicable where the vendor in question had previously been found by IDN to have provided  
27 unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion.  
28 Notwithstanding the foregoing, a stipulated penalty for a second exceedance by IDN's vendor at a level between 100 and  
29 249 ppm shall not be available after July 1, 2015.

<sup>5</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in the same manner as  
set forth in Sections 4.1 and 0 respectively.

1 IDN, and any other entity released by this Consent Judgment, understands that the  
2 sales data it provided to Englander was a material factor upon which Englander has relied to  
3 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this  
4 Consent Judgment. IDN represents, to the best of its knowledge, that the sales data provided by it  
5 to Englander is full and complete, and is a true and accurate reflection of any and all sales of the  
6 Products in California during the relevant period.

7 If, within nine months of the Effective Date, Englander discovers and presents to IDN  
8 evidence that prior to execution of this Consent Judgment the Product has been distributed by IDN  
9 in sales volumes materially different than those identified by it prior to execution of this Consent  
10 Judgment, then such Settling Defendant shall be liable for an additional penalty amount as well as  
11 reasonable additional attorney fees expended by Englander in the public interest. In the event  
12 Englander believes there is evidence that the Product has been distributed by any Settling  
13 Defendant in sales volumes materially different than those identified by that Settling Defendant,  
14 Englander shall provide IDN with a written demand for additional penalties and attorney fees  
15 under this Section. After service of such demand, IDN shall have 30 days to meet and confer  
16 regarding the demand and submit such payment to Englander in accordance with the method of  
17 payment of penalties identified in this Section 4. Should this 30 day period pass without any such  
18 resolution between the Parties and payment of such additional penalties and fees, Englander shall  
19 be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach  
20 of this contract, and the prevailing party shall be entitled to all reasonable attorney fees and costs  
21 relating to that action.

22 **4.2 Reimbursement of Fees and Costs**

23 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
25 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
26 settled. Shortly after the other settlement terms had been finalized, some Settling Defendants  
27 expressed a desire to resolve the fee and cost issue. IDN and Plaintiff then attempted to and did  
28 reach an accord on the compensation due Plaintiff under the principles of Code of Civil Procedure



1 Section 1021.5. IDN agrees to pay attorney's fees and costs incurred as a result of investigating,  
2 bringing this matter to IDN's attention, negotiating a settlement in the public interest, and seeking  
3 court approval in the amount shown on Exhibit A as to IDN. Though the attorney fees recovered  
4 pursuant to this agreement are discounted from the lodestar, the negotiated fee and cost figure also  
5 includes certain significant, anticipated time Plaintiff's counsel will incur to monitor various  
6 provisions in this agreement over the next two years. IDN further agrees that it shall not oppose  
7 Plaintiff's application to the court for approval of such fees.

8 All attorney fee and cost reimbursement payments shall be made as set forth in IDN's  
9 Exhibit A and delivered to the addresses listed in Section 4.3 below. Any failure by IDN to deliver  
10 the required attorney fee and cost reimbursement payment to The Chanler Group (made payable  
11 "In Trust for The Chanler Group") within two days of the required date shall result in imposition of  
12 a 10% simple interest assessment on the undelivered payment(s) until delivery. Such payments  
13 shall be deemed earned and released from the trust account upon approval of this settlement and  
14 entry of Judgment based upon this settlement.

15 4.3 **Payment Procedures**

16 4.3.1 **Issuance of Payments**

17 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections  
18 4.1 and 4.2 shall be delivered to the following payment address:

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

24 (b) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to Section  
25 4.1, shall be delivered directly to OEHHHA (Memo line "Prop 65 Penalties") at one of the  
26 following addresses, as appropriate:

27 For United States Postal Service Delivery:

28 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

4.3.2 **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 4.3.1(a) above, as proof of payment to OEHHA.

4.3.3 **Tax Documentation.** IDN 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) OEHHA, who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) "The Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.3.1(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 IDN, its parents, subsidiaries, directors, officers, attorneys, and each entity to whom IDN directly or indirectly distributed or sold 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 and Complaint. As part of this release, Englander expressly includes The TJX Companies, Inc. as a Releasee under this section but only to the extent of The TJX Companies, Inc.'s distribution or sale of the Exemplar Product identified for IDN on Exhibit A. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical from

1 the Products, as set forth in the Notice. The Parties further understand and agree that this Section  
2 5.1 release shall not extend upstream to any entities, other than IDN.

3           5.2     **Englander's Individual Releases of Claims**

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

16           5.3     **IDN's Release of Englander**

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

23     **6. COURT APPROVAL**

24           This Consent Judgment is not effective until it is approved and entered by the Court and  
25 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court  
26 within one year after it has been fully executed by all Parties. If the Court does not approve the  
27 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or  
28 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall

1 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately  
2 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the  
3 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,  
4 then the case shall proceed in its normal course on the Court's trial calendar. In the event that this  
5 Consent Judgment is entered by the Court and subsequently overturned by any appellate court,  
6 any monies that have been provided to OEHHA, Plaintiffs or their counsel pursuant to Section 4,  
7 above, shall be refunded within 15 days of the appellate decision becoming final. If the Court does  
8 not approve and enter the Consent Judgment within one year of the Effective Date, any monies that  
9 have been provided to OEHHA or held in trust for Plaintiffs or their counsel pursuant to Section 4,  
10 above, shall be refunded to IDN within 15 days.

11 **7. SEVERABILITY**

12 If, subsequent to the Court's approval and entry of this Consent Judgment, any of the  
13 provisions of this Consent Judgment are held by a court to be unenforceable, IDN shall not be  
14 relieved from the obligations of such provision until such time as IDN provides formal notice of  
15 such court holding to Plaintiff. If, subsequent to the Court's approval and entry of this Consent  
16 Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable,  
17 the validity of the enforceable provisions remaining shall not be adversely affected.

18 **8. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California.  
20 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by  
21 reason of law generally, or if any of the provisions of this Consent Judgment are rendered  
22 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered  
23 inapplicable by reason of law generally as to the Products, then IDN may make a formally noticed  
24 motion to this Court for relief from this Agreement or provisions of this Agreement, with the  
25 requisite written notice to Plaintiff, and shall have no further obligations pursuant to this Consent  
26 Judgment to the extent of any Court order so excusing or eliminating such obligation. Nothing in  
27 this Consent Judgment shall be interpreted to relieve IDN from any obligation to comply with any  
28 pertinent state or federal law or regulation.

1 **9. NOTICES**

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

6  
7 To IDN:

To Englander:

8  
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 **10. 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 **11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

21 **12. POST EXECUTION ACTIVITIES**

22 Englander and IDN agree to mutually employ their best efforts to support the entry of this  
23 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
24 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code section  
25 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
26 Englander shall draft and file, and IDN shall join. If any third party objection to the noticed motion  
27 is filed, Englander and IDN shall work together to file a joint reply and appear at any hearing  
28

1 before the Court. This provision is a material component of the Consent Judgment and shall be  
2 treated as such in the event of a breach.

3 **13. 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 **14. AUTHORIZATION**

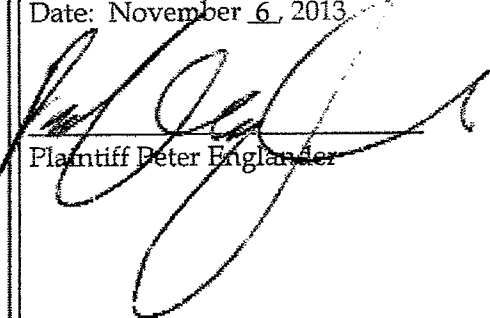
8 The undersigned are authorized to execute this Consent Judgment on behalf of their  
9 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
10 Consent Judgment.

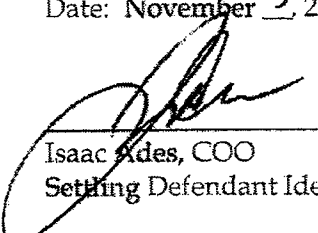
11 AGREED TO:

AGREED TO:

12 Date: November 6, 2013

Date: November 5, 2013

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16 Plaintiff Peter Englander

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20 Isaac Aides, COO  
21 Settling Defendant Idea Nuova, Inc.

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**EXHIBIT A**  
**SETTLING DEFENDANT**

**IDEA NUOVA INC.**

Noticed Product: padded, upholstered ottomans  
Exemplar Product: Storehouse Eyelet Ottoman  
Additional Product: none  
Penalty 1: \$19,000  
Penalty 2: \$39,000  
Section 4.1.1 penalty waiver: \$13,000  
Section 4.1.2 penalty waiver: \$13,000  
Section 4.1.3 penalty waiver: \$13,000  
Section 4.2 base fee and costs reimbursement: \$38,000  
Additional Releasee: The TJX Companies, Inc. (as to Storehouse Eyelet Ottoman only)  
Section 4.2 supplemental fee and costs reimbursement: \$8,000

**Timing of Penalty and Fee/Cost Reimbursement Payments:**

November 15, 2013 - \$14,250 paid to OEHHA per Section 4 (75% share of total Penalty 1)  
December 1, 2013 - \$4,750 paid to TCG per Section 4 (25% share of total Penalty 1)  
December 1, 2013 - \$10,000 paid to TCG per Section 4 (1 of 4 fee/cost reimbursement)  
January 1, 2014 - \$12,000 paid to TCG per Section 4 (2 of 4 fee/cost reimbursement)  
February 1, 2014 - \$12,000 paid to TCG per Section 4 (3 of 4 fee/cost reimbursement)  
March 1, 2014 - \$12,000 paid to TCG per Section 4 (4 of 4 fee/cost reimbursement)  
April 1, 2014 (*unless waived*) - \$29,250 paid to OEHHA per Section 4 (75% share of Penalty 2)  
April 1, 2014 (*unless waived*) - \$9,750 paid to TCG per Section 4 (25% share of Penalty 2)

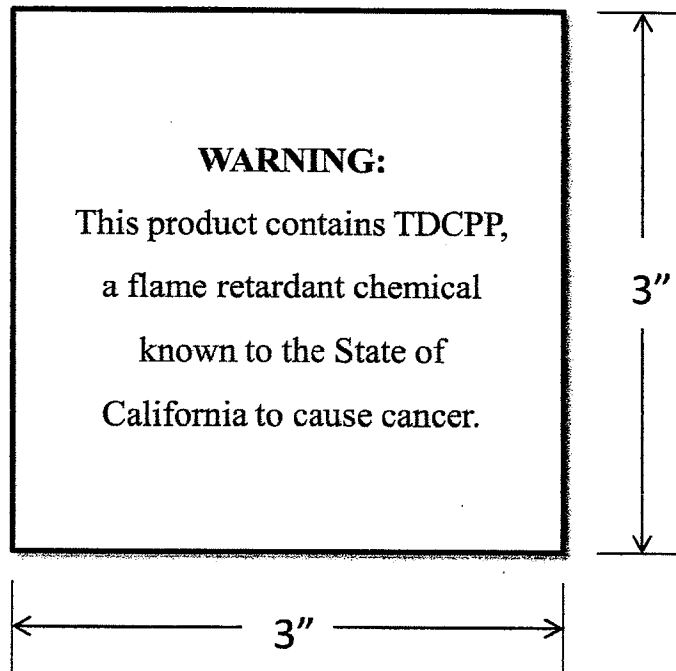
**Person(s) to receive Notices pursuant to Section 9**

Margaux E. Levy, Esq.  
General Counsel  
Idea Nuova, Inc.  
302 Fifth Avenue  
New York, New York 10001  
Tel: 212-643-0680; 718-855-0617  
Fax: 212-947-7977  
e-mail: [margaux@ideanuova.com](mailto:margaux@ideanuova.com)

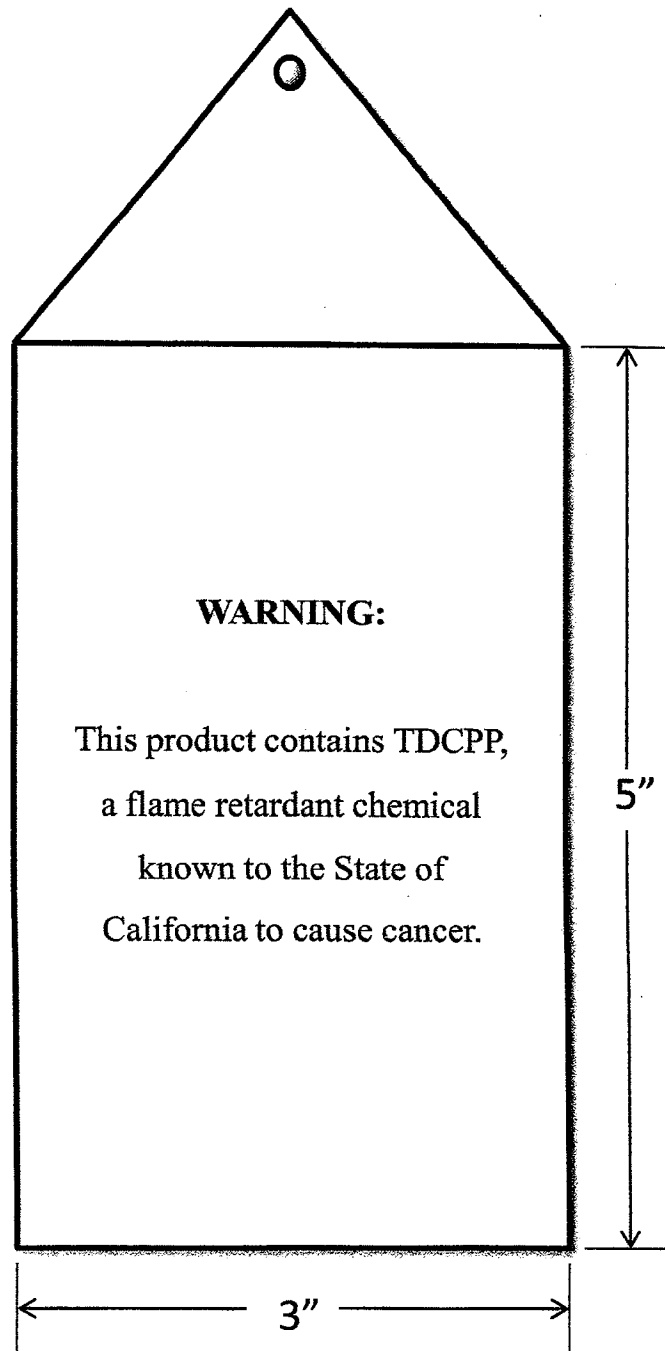
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**EXHIBIT B**  
**MINIMUM WARNING REQUIREMENTS**





**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.

**Exhibit 3**  
**(To Judgment)**

1 Clifford A. Chanler, State Bar No. 135534  
2 THE CHANLER GROUP  
3 81 Throckmorton Avenue, Suite 202  
4 Mill Valley, CA 94941  
5 Telephone: 415.388.0911

6 Attorneys for Plaintiff  
7 PETER ENGLANDER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11 PETER ENGLANDER

12 Plaintiff,

13 vs.

14 ACME FURNITURE INDUSTRY, INC.,  
15 BASSETT FURNITURE INDUSTRIES,  
16 INCORPORATED, BEST CHAIRS  
17 INCORPORATED, BUTLER SPECIALTY  
18 COMPANY, COA, INC., FOREMOST  
19 GROUPS, INC., IDEA NUOVA INC.,  
20 MINSON CORPORATION, NAJARIAN  
21 FURNITURE COMPANY, INC., P'KOLINO,  
22 LLC, THE TJX COMPANIES, INC. and DOES  
23 1-150,

24 Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS TO  
DEFENDANT BUTLER SPECIALTY  
COMPANY**

(Health & Safety Code § 25249.6 *et seq.*)

Filed: March 29, 2013

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CONSENT TO JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander  
4 ("Plaintiff") and defendant Butler Specialty Company identified in Exhibit A ("Settling  
5 Defendant" or "Butler"), with Plaintiff and the Settling Defendant collectively referred to as the  
6 "Parties."

7 **1.2 Plaintiff**

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

11 **1.3 Settling Defendant**

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

15 **1.4 General Allegations**

16 **1.4.1** Plaintiff alleges that Settling Defendant manufactured, imported, sold  
17 and/or distributed for sale in California, products with foam cushioned components containing  
18 tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") without the requisite Proposition 65 health  
19 hazard warnings.

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

24 TDCPP is hereinafter collectively referred to as the "Listed Chemical." Plaintiff alleges that the  
25 Listed Chemical escapes from foam padding, leading to human exposures.

26 **1.5 Product Description**

27 The products that are covered by this Consent Judgment as to Settling Defendant are  
28 identified on Exhibit A (hereinafter "Products"). Polyurethane foam that is supplied, shaped or

1 manufactured for use as a component of another product , such as upholstered furniture, but  
2 which is not itself a finished furniture product, is specifically excluded from the definition of  
3 Products.

4           **1.6 Notices of Violation**

5           On January 10, 2013, and March 18, 2013, Plaintiff served Settling Defendant and certain  
6 requisite public enforcement agencies with "60-Day Notices of Violation" ("Notices") that  
7 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged  
8 failure to warn customers, consumers, and workers in California that the Products expose users  
9 to one or more Listed Chemical. To the best of the Parties' knowledge, no public enforcer has  
10 commenced or is diligently prosecuting the allegations set forth in the Notices.

11           **1.7 Complaint**

12           On April 10, 2013, Plaintiff filed a First Amended Complaint in the Superior Court in  
13 and for the County of Alameda, Case No. RG13673678, against the Settling Defendant Butler,  
14 other defendants and Does 1 through 150, alleging violations of Proposition 65, based in part on  
15 the alleged unwarned exposures to TDCPP contained in the Products. In October of 2013,  
16 Plaintiff also filed a Second Amended Complaint in the Superior Court in and for the County of  
17 Alameda, Case No. RG13673678, augmenting and clarifying his allegations against certain  
18 defendants and Does 1 through 150. On June 12, 2013, Englander filed a Complaint in the  
19 Superior Court in and for the County of Alameda, Case No. RG13683321, against Defendant  
20 Naturwood Home Furnishings Incorporated ("Naturwood"), other defendants and Does 1  
21 through 150, alleging violations of Proposition 65, based in part on the alleged unwarned  
22 exposures to TDCPP contained in the Products.

23           **1.8 No Admission**

24           The Settling Defendant denies the material factual and legal allegations contained in  
25 Plaintiff's Notices and Complaints and maintain that all products that they have manufactured,  
26 imported, distributed, and/or sold in California, including the Products, have been and are in  
27 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission  
28 by Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall

1 compliance with this Consent Judgment constitute or be construed as an admission by Settling  
2 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this  
3 section shall not diminish or otherwise affect Settling Defendant's obligations, responsibilities,  
4 and duties under this Consent Judgment.

5       **1.9 Consent to Jurisdiction**

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

11 **2. DEFINITIONS**

12       **2.1 California Customers**

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

17       **2.2 Detectable**

18       "Detectable" shall mean containing more than 25 parts per million ("ppm") (the  
19 equivalent of .0025%) of any one chemical in any material, component, or constituent of a  
20 subject product, when analyzed by a laboratory certified by the State of California or accredited  
21 by the State of California, a federal agency, the National Environmental Laboratory  
22 Accreditation Program or similar nationally recognized accrediting organization to perform the  
23 chemical analysis in question pursuant to EPA testing methodologies 3545 and 8270C, or  
24 equivalent methodologies utilized by federal or state agencies to determine the presence, and  
25 measure the quantity, of TDCPP and/or TCEP in a solid substance.

26       **2.3 Effective Date**

27       "Effective Date" shall mean November 29, 2013.

28       ///



1           **2.4 Private Label Covered Products**

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

5           **2.5 Reformulated Products**

6           “Reformulated Products” shall mean Products that contain no Detectable amount of  
7 TDCPP.

8           **2.6 Reformulation Standard**

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

11           **2.7 Retailer**

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

14 **3. INJUNCTIVE RELIEF: REFORMULATION**

15           **3.1 Reformulation Commitment**

16           Commencing on March 31, 2014, with the exception of those Products identified in  
17 Paragraph 3.4, Settling Defendant shall not manufacture or import or sell , or cause to be  
18 manufactured, imported or sold , any Products that are not Reformulated Products.

19           Notwithstanding this section, if, in the course of compliance testing, test results  
20 demonstrate that a lot or order of furniture Products purchased or received by Butler contains  
21 sufficient concentrations of TDCPP or TDBPP to disqualify the product from being considered  
22 Reformulated Product under the relevant provisions of this agreement, then Butler must (1)  
23 promptly notify plaintiff in writing of this fact and provide plaintiff a copy of the test results,  
24 the product order(s) and the product shipping documents identifying the affected products, (2)  
25 affix a permanent Proposition 65 warning label, compliant with the warning language  
26 requirements of section 3.5.1, to each affected product and (3) only sell such affected product(s)  
27 to either entities or individuals that do not qualify as a California Customers or for which the  
28

1 Product is drop shipped to the ultimate customer outside of California and (4) promptly serve  
2 plaintiff with a copy of all documentation confirming Butler's sale of any such product(s).

3 **3.2 Vendor Notification/Certification**

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

13 **3.3 Products No Longer in a Settling Defendant's Control**

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

1 Section for two years after the Effective Date and shall promptly produce copies of such records  
2 upon Plaintiff's written request.

3 **3.4 Current Inventory**

4 Any Products ordered before the Effective Date and/or in, or manufactured and en  
5 route to, a Settling Defendant's inventory as of or after December 31, 2013, that do not qualify as  
6 Reformulated Products and that the Settling Defendant has reason to believe may be sold or  
7 distributed for sale in California, shall contain a clear and reasonable warning as set forth in  
8 Section 3.5 below unless Section 3.6 applies.<sup>1</sup>

9 **3.5 Product Warnings**

10 **3.5.1 Product Labeling**

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

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

19 **WARNING:** This product contains TDCPP, a flame retardant chemical  
20 known to the State of California to cause cancer.<sup>2</sup>

21 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to  
22 be clear and reasonable for purposes of this Consent Judgment.<sup>3</sup> Provided that the other  
23

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24 <sup>1</sup> This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants'  
inventory as of December 31, 2013.

25 <sup>2</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling  
26 Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning  
27 language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, must obtain  
the Court's approval of its alternative warning statement and provide all Parties and the Office of the Attorney General  
28 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 requirements set forth in this Section are addressed, including as to the required warning  
2 statement, if Settling Defendant elects not to utilize the template warnings remain free to  
3 provide a warning in any other manner meeting the requirements of 27 CCR § 25603.1.

#### 4 3.5.2 Internet Website Warning

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

12 **WARNING:** This product contains TDCPP, a flame retardant chemical  
13 known to the State of California to cause cancer.<sup>4</sup>

#### 14 3.6 Alternatives to Interim Warnings

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

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

<sup>4</sup> Footnote 4, *supra*, applies in this context as well.

1 **4. MONETARY PAYMENTS**

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

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

5 Each penalty 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

7 Environmental Health Hazard Assessment ("OEHHHA") and 25% of the penalty remitted to

8 "The Chanler Group in Trust for Englander." Each penalty payment shall be made within two  
9 business days of the date it is due and be delivered to the addresses listed in Section 4.5 below.

10 A Settling Defendant shall be liable for payment of interest, at a rate of 10% simple interest, for  
11 all amounts due and owing under this Section that are not received within two business days of  
12 the due date.

13 4.1.1 Initial Civil Penalty. On or before November 29, 2013, Settling Defendant  
14 shall make an initial civil penalty payment in the amount identified on the Settling Defendant's  
15 Exhibit A.

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

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

24 4.1.4 Reductions to Civil Penalty Payment Amounts. Settling Defendant may  
25 reduce the amount of the second and/or third civil penalty payments identified on the Settling  
26 Defendant's Exhibit A by providing Plaintiff with certification of certain efforts undertaken to  
27 reformulate its Products or limit the ongoing sale of non-reformulated Products in California.  
28 The options to provide a written certification in lieu of making a portion of Settling Defendant's

1 civil penalty payment constitute material terms of this Consent Judgment, and with regard to  
2 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 Settling Defendant's Exhibit A, a portion of the second civil  
6 penalty shall be waived, to the extent that it has agreed that, as of November 29, 2013, and  
7 with the exception of those Products identified in Paragraph 3.4, continuing into the future, it  
8 shall only manufacture or import for distribution or sale to California Customers or cause to be  
9 manufactured or imported for distribution or sale to California Customers, Reformulated  
10 Products. An officer or other authorized representative of Settling Defendant that has  
11 exercised this election shall provide Plaintiff with a written certification confirming compliance  
12 with such conditions, which certification must be received by Plaintiff's counsel on or before  
13 December 15, 2013.

14 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

15 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil  
16 penalty shall be waived, to the extent that it has agreed that, as of March 15, 2014, and  
17 continuing into the future, with the exception of those Products identified in Paragraph 3.4, it  
18 shall only manufacture or import for distribution or sale in California or cause to be  
19 manufactured or imported for distribution or sale in California, Reformulated Products that  
20 also do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of  
21 more than 25 parts per million ("ppm") (the equivalent of .0025%) in any foam material,  
22 component, or constituent of a subject Product, when analyzed by a laboratory certified by the  
23 State of California or accredited by the State of California, a federal agency, the National  
24 Environmental Laboratory Accreditation Program or similar nationally recognized accrediting  
25 organization to perform the chemical analysis in question pursuant to EPA testing  
26 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state  
27 agencies to determine the presence, and measure the quantity, of TDBPP in a solid substance.  
28 An officer or other authorized representative of Settling Defendant that has exercised this

1 election shall provide Plaintiff with a written certification confirming compliance with such  
2 conditions, which certification must be received by Plaintiff's counsel on or before November  
3 15, 2014.

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

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

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

14 As shown on Settling Defendant's Exhibit A, a portion of the third civil penalty shall be  
15 waived, if an officer or other authorized representative of Settling Defendant provides Plaintiff  
16 with written certification, on or before December 15, 2014, confirming that, as of July 1, 2014,  
17 with the exception of those Products identified in Paragraph 3.4, it has and will continue to  
18 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated  
19 Products.

20 **4.2 Representation**

21 Settling Defendant represents that the sales data and other information concerning its  
22 size, knowledge of Listed Chemical, and prior reformulation and/or warning efforts, it  
23 provided to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs  
24 have relied to determine the amount of civil penalties assessed pursuant to Health & Safety  
25 Code § 25249.7 in this Consent Judgment. If, within nine months of the Effective Date, Plaintiff  
26

27 <sup>5</sup> For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs  
28 have, prior to August 31, 2013, provided the Settling Defendants with test results from an appropriately 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 discover and present to a Settling Defendant, evidence demonstrating that the preceding  
2 representation and warranty was materially inaccurate, then Settling Defendant shall have 30  
3 days to meet and confer regarding the Plaintiff's contention. Should this 30 day period pass  
4 without any such resolution between the Plaintiff and the Settling Defendant, Plaintiff shall be  
5 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach  
6 of contract.

7 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**  
8 **Standard.**

9 If Plaintiff provides notice and appropriate supporting information to Butler that levels  
10 of a Listed Chemical in excess of the Reformulation Standard have been detected in one or more  
11 Products labeled or otherwise marked in an identifiable manner as manufactured or imported  
12 after a deadline for meeting the Reformulation Standard other than the products identified in  
13 Section 3.4 has arisen for Butler under Sections 3.1 or 3.6 above, Butler may elect to pay a  
14 stipulated penalty to relieve any further potential liability under Proposition 65 or sanction  
15 under this Consent Judgment as to Products sourced from the vendor in question.<sup>6</sup> The  
16 stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the  
17 violation level is between 100 ppm and 249 ppm, this being applicable for any amount in excess  
18 of the Reformulation Standards but under 250 ppm.<sup>7</sup> Plaintiff shall further be entitled to  
19 reimbursement of their associated expense in an amount not to exceed \$5,000 regardless of the  
20 stipulated penalty level. Under this Section, Butler must provide notice and appropriate  
21 supporting information relating to the purchase (e.g. vendor name and contact information  
22 including representative, purchase order, certification (if any) received from vendor for the  
23 exemplar or subcategory of products), test results, and a letter from a company representative  
24 or counsel attesting to the information provided, to Plaintiff within 30 calendar days of

25 \_\_\_\_\_  
26 <sup>6</sup> This Section shall not be applicable where the vendor in question had previously been found by the Settling  
27 Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more  
28 than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling  
29 Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

<sup>7</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in the same  
manner as set forth in Sections 4.1 and 4.5, respectively.



1 receiving test results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be  
2 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  
6 leaving this fee reimbursement issue to be resolved after the material terms of the agreement  
7 had been settled. Shortly after the other settlement terms had been finalized, the Settling  
8 Defendant expressed a desire to resolve the fee and cost issue. The Settling Defendant then  
9 agreed to pay Plaintiff and his counsel under general contract principles and the private  
10 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all  
11 work performed through the mutual execution of this agreement, including the fees and costs  
12 incurred as a result of investigating, bringing this matter to the Settling Defendant's attention,  
13 negotiating a settlement in the public interest, and seeking court approval of the same. In  
14 addition, the negotiated fee and cost figure expressly includes the anticipated significant  
15 amount of time plaintiffs' counsel will incur to monitor various provisions in this agreement  
16 over the next two years, with the exception of additional fees that may be incurred pursuant to  
17 Settling Defendant's election in Section 11. Settling Defendant more specifically agreed, upon  
18 the Court's approval and entry of this Consent Judgment, to pay Plaintiff's counsel the amount  
19 of fees and costs indicated on the Settling Defendant's Exhibit A. Settling Defendant further  
20 agreed to tender and shall tender its full required payment under this Section to a trust account  
21 at The Chanler Group (made payable "In Trust for The Chanler Group") by November 29, 2013.  
22 Such funds shall be released from the trust account upon the Court's approval and entry of this  
23 Consent Judgment.

24           **4.5 Payment Procedures**

25                   **4.5.1 Issuance of Payments.**

26                           (a) All payments owed to Plaintiff and their counsel, pursuant to  
27 Sections 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. 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) OEHHA, who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

## 5. CLAIMS COVERED AND RELEASED

### 5.1 Plaintiff's Release of Proposition 65 Claims

Plaintiff, acting on his own behalf and in the public interest, releases Butler, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents and each entity to whom the Settling Defendant directly or indirectly distributes or sells Products,

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  
4 Listed Chemical in the Products, as set forth in the Notices. *Coordinated defendant Naturwood*  
5 *shall also be considered a Releasee under this agreement to the extent, and only to the extent, of*  
6 *Naturwood's sales of any Product supplied to it by Butler. This agreement shall not release or otherwise*  
7 *relieve Naturwood of any legal liability or other obligation for Naturwood's sale of any padded furniture*  
8 *other than the Product supplied to Naturwood by Butler. Compliance with the terms of this*  
9 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the  
10 Listed Chemical from the Products, as set forth in the Notices. The Parties further understand  
11 and agree that this Section 5.1 release shall not extend upstream to any entities, other than  
12 Settling Defendant, that manufactured the Products or any component parts thereof, or any  
13 distributors or suppliers who sold the Products or any component parts thereof to Settling  
14 Defendant, except that entities upstream of Settling Defendant that is a Retailer of a Private  
15 Labeled Covered Product shall be released as to the Private Labeled Covered Products offered  
16 for sale in California, or to California Customers, by the Retailer in question.

17 **5.2 Plaintiff's Individual Releases of Claims**

18 Plaintiff, in his individual capacities only and *not* in his representative capacities,  
19 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
20 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
21 claims, liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or  
22 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to  
23 TDCPP and/or TDBPP in the Products (as delineated on a Settling Defendant's Exhibit A)  
24 manufactured, imported, distributed, or sold by Settling Defendants prior to the Effective Date.  
25 *Coordinated defendant Naturwood shall also receive the benefit of this individual release to the extent,*  
26 *and only to the extent, of Naturwood's sales of any Product supplied to it by Butler. This agreement shall*  
27 *not release or otherwise relieve Naturwood of any legal liability or other obligation for Naturwood's sale*  
28 *of any padded furniture other than the Product supplied to Naturwood by Butler. The Parties further*

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

9           **5.3 Settling Defendant's Release of Plaintiff**

10           Settling Defendant, on behalf of itself, its past and current agents, representatives,  
11 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his  
12 attorneys and other representatives, for any and all actions taken or statements made (or those  
13 that could have been taken or made) by Plaintiff and his attorneys and other representatives,  
14 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65  
15 against it in this matter with respect to the 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  
19 Court within one year after it has been fully executed by all Parties. If the Court does not  
20 approve the Consent Judgment, the Parties shall meet and confer as to whether to modify the  
21 language or appeal the ruling. If the Parties do not jointly agree on a course of action to take,  
22 then the case shall proceed in its normal course on the Court's trial calendar. If the Court's  
23 approval is ultimately overturned by an appellate court, the Parties shall meet and confer as to  
24 whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a  
25 course of action to take, then the case shall proceed in its normal course on the Court's trial  
26 calendar. In the event that this Consent Judgment is entered by the Court and subsequently  
27 overturned by any appellate court, any monies that have been provided to OEHHHA, Plaintiff or  
28 his counsel pursuant to Section 4, above, shall be refunded within 15 days of the appellate

1 decision becoming final. If the Court does not approve and enter the Consent Judgment within  
2 one year of the Effective Date, any monies that have been provided to OEHHA or held in trust  
3 for Plaintiff or his counsel pursuant to Section 4, above, shall be refunded to the associated  
4 Settling Defendant within 15 days.

5 **7. GOVERNING LAW**

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

16 **8. NOTICES**

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

21 To Settling Defendant:

22 Lee N. Smith, Esq.  
23 Weintraub Tobin  
24 400 Capitol Mall, Suite 1100  
25 Sacramento, CA 95814

To Plaintiff:

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

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

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

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

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

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

9 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

10 11.1 Plaintiff and Settling Defendant agree to support the entry of this agreement as a  
11 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
12 manner. The Parties acknowledge that, pursuant to California Health & Safety Code section  
13 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,  
14 which Plaintiff shall draft and file. If any third party objection to the noticed motion is filed,  
15 Plaintiff and Settling Defendant shall work together to file a reply and appear at any hearing  
16 before the Court. This provision is a material component of the Consent Judgment and shall be  
17 treated as such in the event of a breach.

18 11.2 Within 10 days after the approval of the Consent Judgment by the Court Plaintiff  
19 will file with the Court a dismissal with Prejudice of all of Plaintiff's claims in the action against  
20 Naturwood filed in the Superior Court for the County of Alameda, Case No. RG13683321, with  
21 Naturwood to bear its own costs.

22 **12. MODIFICATION**

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

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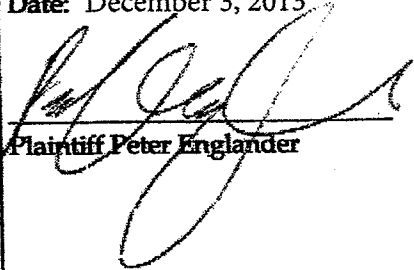
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1 **13. AUTHORIZATION**

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  
4 this Consent Judgment.


5  
6 **AGREED TO:**

7 **Date:** December 3, 2013

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9   
10 **Plaintiff Peter Englander**

**AGREED TO:**

**Date:** November <sup>26</sup>, 2013

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12 **David Bergman Chief Executive Officer**  
13 **Settling Defendant Butler Specialty**  
14 **Company**

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EXHIBIT A

**BUTLER SPECIALTY COMPANY**

Listed Chemical: TDCPP

Products:

2947228 VANITY STOOL	2902228 BNCH AO CC - FDX
1218227 VANITY SEAT	2903277 VNTY STL CC - FDX
902024 BNCHG CTL OTTOMAN	2953983 OTMNS BL CC - FDX
1218265 VANITY SEAT	2953984 STK OTMNS CC - FDX
2900025 STOOL	2953985 NSTG OTTMNS BL CC FDX
1214146 MIRROR OTTOMAN	2953986 NSTNG OTMNS CC FDX
0284011 SETTEE CC - (UOS) LTL	2956983 PRSNS CHR BL CC FDX
0965083 BENCH LTL	2956984 PRSNS CHR BL CC FDX
0965239 BENCH LTL	2956985 PRSNS CHR BL CC FDX
1155070 BENCH H CC LTL	2956986 PRSNS CHR BL CC FDX
1193260 OTTOMAN ME CC FDX	3013024 BNCH PLA CC FDX
1218104 STOOL CC - FDX	3034146 BENCH MAS CC FDX
1218221 STOOL CC - FDX	4063260 OTTOMAN MOD CC FDX
1236274 STRG BNCH BL CC FDX-OS	4064260 OTTOMAN MOD CC FDX
1236275 STRG BNCH BL CC FDX	4074260 OTTOMAN
1250024 STOOL PC CC FDX	4070260 BENCH MOD CC LTL
1253146 OTTOMAN CC-LTL	4079220 OTTOMAN NP MOD CC LTL
2135024 VANITYSTOOL CC FDX	6070025 BENCH CC - LTL
2135111 VANITY STOOL CC FDX	9012103H LTHR KG HB MP LTL
2254146 BENCH LTL	9061105H LTHR QN HB AMBER LTL
2882025 BENCH MW CC - FDX	9062105H LTHR KG HB AMBER LTL
2892025 STOOL MW CC - FDX	0902024 Ottoman

Penalty 1 (Section 4.1.1) (due December 6, 2013): \$13,500

Penalty 2 (Section 4.1.2) (due January 15, 2014): \$42,000

Penalty 3 (Section 4.1.3) (due November 30, 2014): \$24,000

Section 4.1.4(i) penalty waiver: \$25,000

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

Section 4.1.4(iii) penalty waiver: \$17,000

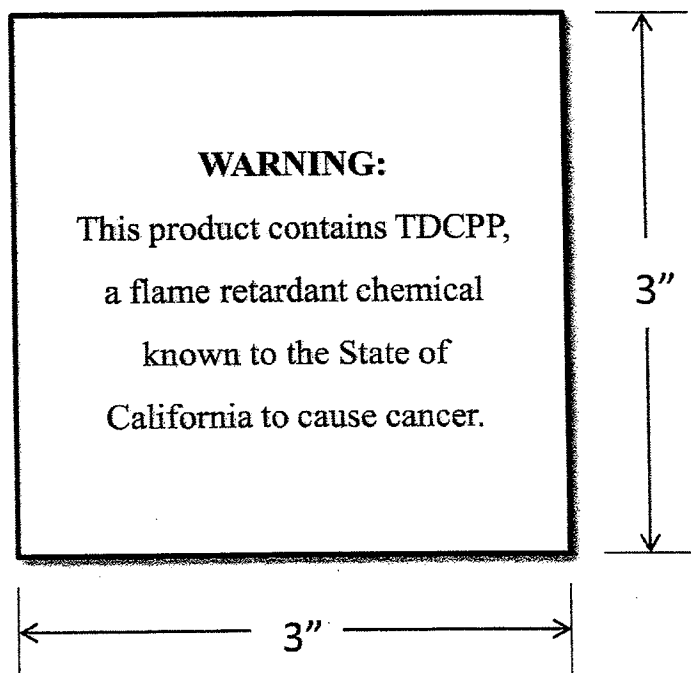
Section 4.1.4(iv) penalty waiver: \$12,000

Section 4.4 fee and costs reimbursement (due December 6, 2013): \$40,000

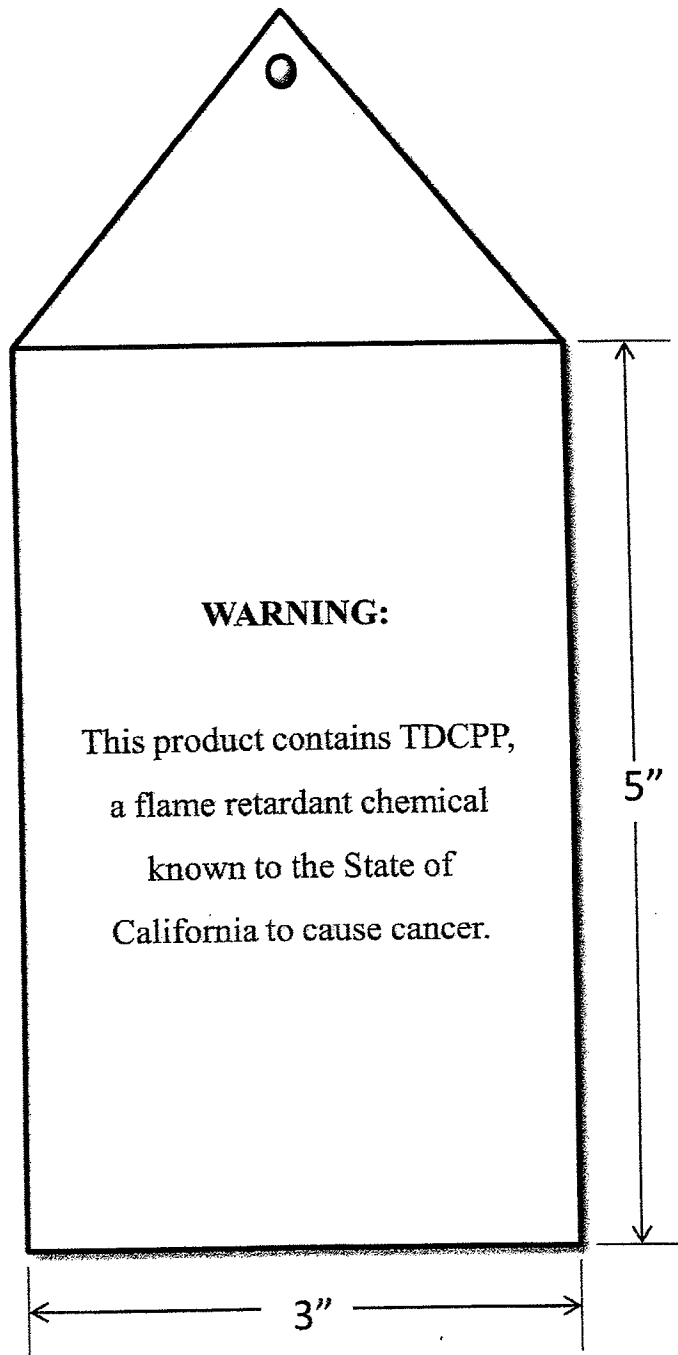


EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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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.

11"

**INSTRUCTIONS:**

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