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8 Attorneys for Plaintiff
9 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

NOV 10 2014

CLERK OF THE SUPERIOR COURT
BY **YOLANDA ESTRADA** Deputy

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

**JUDGMENT AS TO FOREMOST
GROUPS, INC. PURSUANT TO
PROPOSITION 65 SETTLEMENT**

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

12
13 Dated: **NOV 10 2014**

14 **GEORGE C. HERNANDEZ, JR.**
15 Hon. George Hernandez
16 Judge Of The Superior Court
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EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 UNLIMITED JURISDICTION

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COMPANY, INC., P'KOLINO, LLC, THE TJX
COMPANIES, INC. and DOES 1-150,

22 Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS TO
DEFENDANT FOREMOST GROUPS,
INC.**

(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 defendants identified in Exhibit A (“Settling Defendants”), with Plaintiff and
5 the Settling Defendants collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Settling Defendants**

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

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that each Settling Defendant manufactured, imported, sold
16 and/or distributed for sale in California, products with foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”)
18 without the requisite Proposition 65 health hazard warnings.

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

23 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
25 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

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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 each 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 a Settling Defendant on Exhibit A as a Product.

9 **1.6 Notices of Violation**

10 Beginning in December 2012, Plaintiff served Settling Defendants and certain requisite
11 public enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the
12 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
13 customers, consumers, and workers in California that the Products expose users to one or more
14 Listed Chemicals.¹ To the best of the Parties' knowledge, no public enforcer has commenced or is
15 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 Defendants, 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 Defendants deny 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 ¹ Based on their further investigation, Plaintiff has also issued supplemental 60-day notices to some of the
28 Settling Defendants 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 a Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall
2 compliance with this Consent Judgment constitute or be construed as an admission by any Settling
3 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section
4 shall not diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and
5 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 Defendants 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 a 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.

1 2.5 **Reformulated Products**

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

4 2.6 **Reformulation Standard**

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

7 2.7 **Retailer**

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

10 3. **INJUNCTIVE RELIEF: REFORMULATION**

11 3.1 **Reformulation Commitment**

12 Commencing on March 31, 2014, Settling Defendants shall not manufacture or import, or
13 cause to be manufactured or imported, any Products that are not Reformulated Products.

14 3.2 **Vendor Notification/Certification**

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

24 3.3 **Products No Longer in a Settling Defendant’s Control**

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

27 ² As to the Settling Defendants who received supplemental Notices concerning DEHP, the term “Reformulated
28 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, a Settling Defendant's inventory as of or
18 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.³

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 ³ This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants'
28 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.⁴

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.⁵ 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, Settling Defendants remain free not to
11 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 90r (c) otherwise automatically appear to the consumer.
18 The warning text shall be the same type size or larger than the Product description text:

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20 ⁴ of the regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling
21 Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning
22 language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks
23 to use an alternative method of transmission of the warning, must obtain the Court's approval of its alternative warning
24 statement and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to
comment or object before the Court acts on the request. The Parties agree that the following hybrid warning language
shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent
Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth defects or other reproductive
harm."

25 ⁵ 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 that 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.

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

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3 **3.6 Alternatives to Interim Warnings**

4 The obligations of a 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 a Settling Defendant under Section
8 3.4 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013 that,
9 after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California,
10 or to California Customers for sale in California, Products (i.e., Products beyond the Exemplar
11 Product) meeting the Reformulation Standard. The certifications provided by this Section are
12 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, a Settling Defendant
16 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.⁷
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. A 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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26 ⁶ Footnote 4, *supra*, applies in this context as well.

27 ⁷ For Settling Defendants that received supplemental Notices alleging violations of Proposition 65 concerning
28 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, each Settling
2 Defendant shall make an initial civil penalty payment in the amount identified on the Settling
3 Defendant's Exhibit A.

4 4.1.2 Second Civil Penalty. On or before January 15, 2014, each Settling
5 Defendant shall make a second civil penalty payment in the amount identified on the Settling
6 Defendant's Exhibit A. The amount of the second penalty may be reduced according to any
7 penalty waiver the 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, each 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. Each Settling Defendant
13 may reduce the amount of the second and/or third civil penalty payments identified on the
14 Settling Defendant's Exhibit A by providing Plaintiff with certification of certain efforts
15 undertaken to reformulate their Products or limit the ongoing sale of non-reformulated Products
16 in California. The options to provide a written certification in lieu of making a portion of a 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 an electing Settling Defendant's Exhibit A, a portion of the second civil
22 penalty shall be waived, to the extent that it has agreed that, as of November 1, 2013, and
23 continuing into the future, it shall only manufacture or import for distribution or sale to California
24 Customers or cause to be manufactured or imported for distribution or sale to California
25 Customers, Reformulated Products. An officer or other authorized representative of a Settling
26 Defendant that has exercised this election shall provide Plaintiff with a written certification
27 confirming compliance with such conditions, which certification must be received by Plaintiff's
28 counsel on or before December 15, 2013.

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

As shown on an electing 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 that 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 a 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 a Settling Defendant's Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of a 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 elected to return all remaining Exemplar Products held for sale in California.⁸

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

As shown on a Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it has

⁸ 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 and will continue to distribute, offer for sale, or sell in California, or to California Customers, only
2 Reformulated Products.

3 **4.2 Representations**

4 Each Settling Defendant represents that the sales data and other information concerning its
5 size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided
6 to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs have relied to
7 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in
8 this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discover and present
9 to a Settling Defendant, evidence demonstrating that the preceding representation and warranty
10 was materially inaccurate, then a Settling Defendant shall have 30 days to meet and confer
11 regarding the Plaintiff's contention. Should this 30 day period pass without any such resolution
12 between the Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal
13 claim including, but not limited to, a claim for damages for breach of contract. Each Settling
14 Defendant further represents that in implementing the requirements set forth in Sections 3.1 and
15 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
16 reformulation of its Products and Additional Products on a nationwide basis and not employ
17 statements that will encourage a vendor to limit its compliance with the Reformulation Standard
18 to goods intended for sale to California Consumers.

19 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

20 If Plaintiff provides notice and appropriate supporting information to a Settling Defendant
21 that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one
22 or more Products labeled or otherwise marked in an identifiable manner as manufactured or
23 imported after a deadline for meeting the Reformulation Standard has arisen for a Settling
24 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated
25 penalty to relieve any further potential liability under Proposition 65 or sanction under this
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1 Consent Judgment as to Products sourced from the vendor in question.⁹ The stipulated penalty
2 shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between
3 100 ppm and 249 ppm, this being applicable for any amount in excess of the Reformulation
4 Standards but under 250 ppm.¹⁰ Plaintiff shall further be entitled to reimbursement of their
5 associated expense in an amount not to exceed \$5,000 regardless of the stipulated penalty level. A
6 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 Defendants
18 expressed a desire to resolve the fee and cost issue. The Settling Defendants 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 ⁹ This Section shall not be applicable where the vendor in question had previously been found by the Settling
26 Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more
27 than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling
28 Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

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

1 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 a Settling Defendant's election in Section 11.
3 Each 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. Each 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:

13 The Chanler Group
14 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
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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. A 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 each 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.
20 *Coordinated defendant Target Corporation shall be considered a Releasee under this agreement but only to*
21 *the limited extent of its acquisition and sales of Foremost Group's Room Essentials Storage Ottoman and not*
22 *for any other sale of any other furniture or other product. 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 Settling*
26 *Defendants, that manufactured the Products or any component parts thereof, or any distributors*
27 *or suppliers who sold the Products or any component parts thereof to a Settling Defendant, except*
28 *that entities upstream of a 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.¹¹

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 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
10 delineated on a Settling Defendant's Exhibit A) manufactured, imported, distributed, or sold by
11 Settling Defendants prior to the Effective Date.¹² The Parties further understand and agree that
12 this Section 5.2 release shall not extend upstream to any entities that manufactured the Products or
13 Additional Products, or any component parts thereof, or any distributors or suppliers who sold the
14 Products or Additional Products, or any component parts thereof to Settling Defendants, except
15 that entities upstream of a 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 a Settling Defendant's Products or Additional Products.¹³

20 **5.3 Settling Defendants' Release of Plaintiff**

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

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

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

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

5 **6. COURT APPROVAL**

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

21 **7. GOVERNING LAW**

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

1 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve a 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 Defendants:

To Plaintiff:

9 At the address shown on Exhibit A

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

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

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

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

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

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

21 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

22 11.1 In addition to the Products, where a Settling Defendant has identified on Exhibit A
23 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 a Settling Defendant on Exhibit A as an Additional Product. Except
4 as agreed upon by Plaintiff, Settling Defendants shall not include a product, as an Additional
5 Product, that is the subject of an existing 60-day notice issued by Plaintiff or any other private
6 enforcer at the time of execution. After receipt of the required information, Plaintiff agrees to issue
7 a supplemental 60-day notice in compliance with all statutory and regulatory requirements for the
8 Additional Products. Plaintiff will, and in no event later than October 1, 2014, prepare and file an
9 amendment to this Consent Judgment to incorporate the Additional Products within the defined
10 term "Products" and serve a copy thereof and its supporting papers (including the basis for
11 supplemental stipulated penalties, if any) on the Office of the California Attorney General. Upon
12 the Court's approval thereof and finding that the supplemental stipulated penalty amount, if any,
13 is reasonable, the Additional Products shall become subject to Section 5.1 in addition to Section 5.2.
14 The Settling Defendant shall, at the time it elects to utilize this Section and tenders the additional
15 information or representations regarding the Additional Products to Plaintiff, tender to The
16 Chanler Group's trust account an amount not to exceed \$8,750 as stipulated penalties and
17 attorneys' fees and costs incurred by Plaintiff in issuing the new notice and engaging in other
18 reasonably related activities, which may be released from the trust as awarded by the Court upon
19 Plaintiff's application. Any fee award associated with the modification of the Consent Judgment
20 to include Additional Products shall not offset any associated supplemental penalty award, if any.
21 (Any tendered funds remaining in the trust thereafter shall be refunded to the Settling Defendant
22 within 15 days). Such payment shall be made to "in trust for The Chanler Group" and delivered
23 as per Section 4.5.1(a) above.

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

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

14
15
16 _____
17 Kirk Lee, CAO
18 Settling Defendant
19 Foremost Groups, Inc.

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

12 AGREED TO:

13 Date: September 27, 2013

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16 Kirk Lee, CAO
17 Settling Defendant
18 Foremost Groups, Inc.

EXHIBIT A

FOREMOST GROUPS, INC.

Product: padded, upholstered furniture including ottomans

Exemplar Product: Room Essentials Storage Ottoman

Additional Product: none

Penalty 1 (Section 4.1.1) (due October 15, 2013): \$21,000

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 Releases: Target Corporation (released for Room Essentials Storage Ottoman only)

Section 4.4 fee and costs reimbursement (due October 15, 2013): \$42,000

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

Person(s) to receive Notices pursuant to Section 8

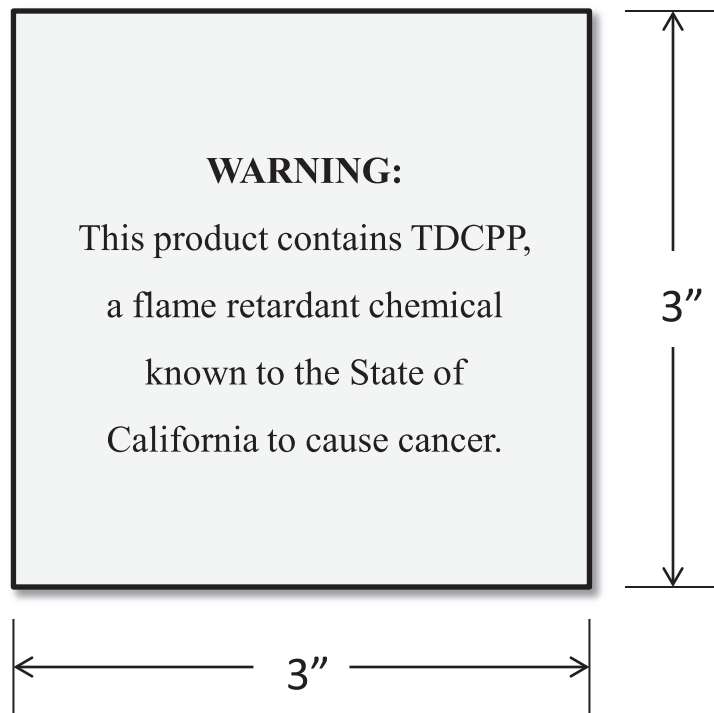
Tim Anderson
Foremost Groups, Inc.
8N132 Peppertree Lane
Elgin, IL 60124

Kirk Lee
Foremost Groups Inc.
906 Murray Road
East Hanover, NJ 07936

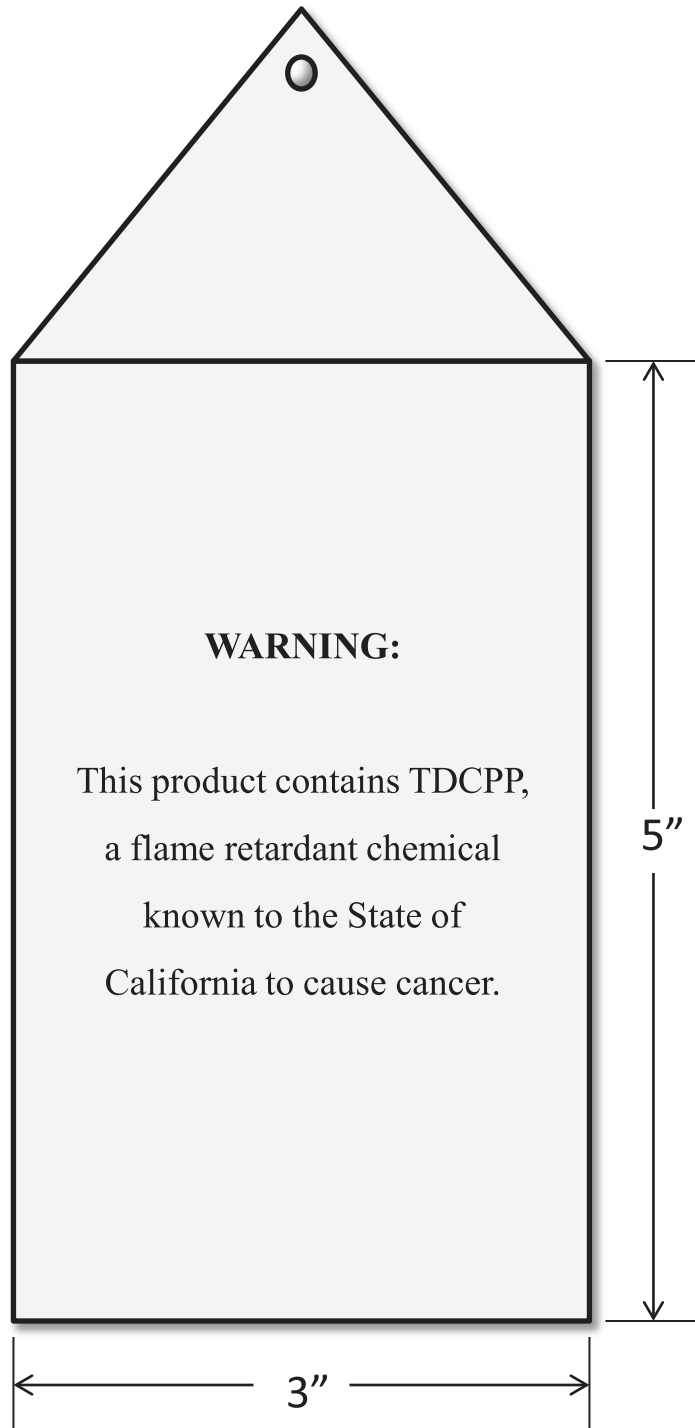
Bonnie Cohen, Esq.
Law Offices Of Bonnie R. Cohen
3096 Washington St.
San Francisco, CA 94115

EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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

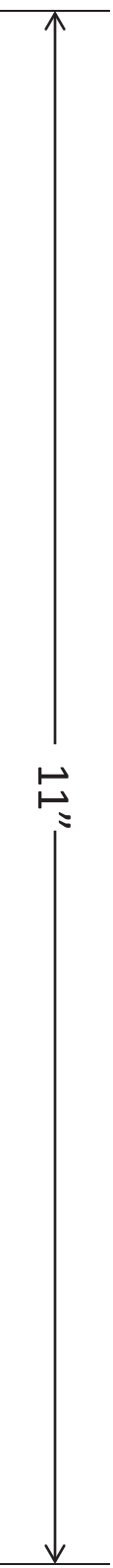


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. “WARNING:” text must be bold.

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to
cause cancer.



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