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10 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

MAR - 7 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 PETER ENGLANDER,

17 Plaintiff,

18 v.

19 ASHLEY FURNITURE INDUSTRIES,
20 INC.; et al.

21 Defendant.

Case No. RG13672407

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENTS AND CONSENT
JUDGMENTS AS TO DEFENDANTS
AMERICAN LEATHER, INC., ROOM &
BOARD, INC., HUMAN TOUCH, LLC
AND INTERCON, INCORPORATED

Date: March 7, 2014

Time: 9:00 a.m.

Dept.: 17

Judge: Hon. George C. Hernandez, Jr.

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

7 **IT IS SO ORDERED.**

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

5 Attorneys for Plaintiff
6 PETER ENGLANDER

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

11 PETER ENGLANDER,
12 Plaintiff,
13 v.

14 ASHLEY FURNITURE INDUSTRIES,
INC.; *et al.*,
15 Defendants.
16

) Case No. RG13672407
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17

) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT AMERICAN LEATHER,**
) **INC.**

) **(Health & Safety Code § 25249.6 *et seq.***
) **60-Day Notice of Violation Served: January 28,**
) **2013)**

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1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Peter Englander**

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

10 **1.3 American Leather, Inc.**

11 American Leather 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 Englander alleges that American Leather 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”) without the requisite Proposition 65 health
18 hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal.
22 Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander
23 alleges that the TDCPP escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The categories of products that are covered by this Consent Judgment as to American
26 Leather are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied,
27 shaped or manufactured for use as a component of a product, such as upholstered furniture, is
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1 specifically excluded from the definition of Products and shall not be identified by American
2 Leather on Exhibit A as a Product.

3 **1.6 Notice of Violation**

4 On January 28, 2013, Englander served American Leather, others, and certain requisite
5 public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the
6 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
7 customers, consumers, and workers in California that the Products expose users to TDCPP.

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

10 **1.7 Complaint**

11 On July 9, 2013, Englander filed a Second Amended Complaint in the Superior Court in
12 and for the County of Alameda against Ashley Furniture Industries, Inc., among others, and Does I
13 through 150, *Peter Englander v. Ashley Furniture Industries, Inc., et al.*, Case No. RG13672407,
14 which names America Leather as a defendant and alleges violations of Proposition 65, based in
15 part on the alleged unwarned exposures to TDCPP contained in the Products ("Complaint").

16 **1.8 No Admission**

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

25 **1.9 Consent to Jurisdiction**

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

4 **2. DEFINITIONS**

5 **2.1 California Customers**

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

9 **2.2 Detectable**

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

15 **2.3 Effective Date**

16 “Effective Date” shall mean October 15, 2013.

17 **2.4 Reformulated Products**

18 “Reformulated Products” shall mean Products that contain no Detectable amount of
19 TDCPP and TCEP.

20 **2.5 Reformulation Standard**

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

23 **2.6 Retailer**

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

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on March 31, 2014, American Leather shall not manufacture or import for
4 distribution or sale to California Customers, or cause to be manufactured or imported for
5 distribution or sale to California Customers, any Products that are not Reformulated Products.

6 **3.2 Vendor Notification/Certification**

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

17 **3.3 Products No Longer in American Leather's Control**

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

8 3.4 Current Inventory

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

13 3.5 Product Warnings

14 3.5.1 Product Labeling

15 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
16 labeling, or directly on each Product. Each warning shall be prominently placed with such
17 conspicuousness as compared with other words, statements, designs, or devices as to render it
18 likely to be read and understood by an ordinary individual under customary conditions before
19 purchase. Each warning shall be provided in a manner such that the consumer or user understands
20 to which specific Product the warning applies, so as to minimize the risk of consumer confusion.
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27 ¹ This shall not apply to Products which are Private Label Covered Products in a Retailer
28 settling Defendant's inventory as of December 31, 2013.

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

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

6 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
7 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
8 set forth in this Section are addressed, including as to the required warning statement and method
9 of transmission as set forth above, American Leather remains free not to utilize the template
10 warnings.

10 3.5.2 Internet Website Warning

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

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

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

1 **WARNING:** This product contains TDCPP, a
2 flame retardant chemical known to
3 the State of California to cause
4 cancer.⁴

3 **3.6 Alternatives to Interim Warnings**

4 The obligations of American Leather under Section 3.3 shall be relieved provided
5 American Leather 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 American Leather under Section
8 3.4 shall be relieved provided American Leather 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,
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, American Leather shall
16 pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
17 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1)
18 and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
19 Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group in Trust for
20 Englander.” Each penalty payment shall be made within two business days of the date it is due
21 and be delivered to the addresses listed in Section 4.5 below. American Leather shall be liable for
22 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
23 Section that are not received within two business days of the due date.

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

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

4 4.1.2 Second Civil Penalty. On or before January 15, 2014, American leather
5 shall make a second civil penalty payment in the amount identified on American Leather's Exhibit
6 A. The amount of the second penalty may be reduced according to any penalty waiver American
7 Leather 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, American Leather
9 shall make a third civil penalty payment in the amount identified on American Leather's Exhibit
10 A. The amount of the third penalty may be reduced according to any penalty waiver American
11 Leather 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. American Leather may
13 reduce the amount of the second and/or third civil penalty payments identified on American
14 Leather Exhibit A by providing Englander 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 American Leather's
17 civil penalty payment constitute material terms of this Consent Judgment, and with regard to such
18 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 American Leather's Exhibit A, a portion of the second civil penalty shall be
22 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 American Leather that has exercised this
26 election shall provide Englander with a written certification confirming compliance with such
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1 conditions, which certification must be received by Englander's counsel on or before December
2 15, 2013.

3 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

4 As shown on American Leather's Exhibit A, a portion of the third civil penalty shall be
5 waived, to the extent that it has agreed that, as of March 31, 2014, and continuing into the future, it
6 shall only manufacture or import for distribution or sale in California or cause to be manufactured
7 or imported for distribution or sale in California, Reformulated Products which also do not contain
8 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
9 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject
10 product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545
11 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
12 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
13 representative of American Leather that has exercised this election shall provide Englander with a
14 written certification confirming compliance with such conditions, which certification must be
15 received by Englander's counsel on or before November 15, 2014.

16 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
17 **Exemplar Products from the California Market.**

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

23 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
24 **California of Unreformulated Inventory.**

25 As shown on American Leather's Exhibit A, a portion of the third civil penalty shall be
26 waived, if an officer or other authorized representative of American Leather provides Englander
27 with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it

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

3 4.2 Representations

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

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

19 4.3 Stipulated Penalties for Certain Violations of the Reformulation 20 Standard.

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

13 4.4 Reimbursement of Fees and Costs

14 The Parties acknowledge that Englander 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, American Leather expressed a
18 desire to resolve the fee and cost issue. American Leather then agreed to pay Englander and his
19 counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution
21 of this agreement, including the fees and costs incurred as a result of investigating, bringing this
22 matter to American Leather's attention, negotiating a settlement in the public interest, and seeking
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24 ⁵ This Section shall not be applicable where the vendor in question had previously been
25 found by American Leather to have provided unreliable certifications as to meeting the
26 Reformulation Standard in its Products on more than one occasion. Notwithstanding the
27 foregoing, a stipulated penalty for a second exceedance by American Leather's vendor at a level
28 between 100 and 249 ppm shall not be available after July 1, 2015.

⁶ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 court approval of the same. In addition, the negotiated fee and cost figure expressly includes the
2 anticipated significant amount of time Englander's counsel will incur to monitor various
3 provisions in this agreement over the next two years. American Leather more specifically agreed,
4 upon the Court's approval and entry of this Consent Judgment, to pay Englander's counsel the
5 amount of fees and costs indicated on American Leather's Exhibit A. American Leather further
6 agreed to tender and shall tender its full required payment under this Section to a trust account at
7 The Chanler Group (made payable "In Trust for The Chanler Group") within two business days of
8 the Effective Date. Such funds shall be released from the trust account upon the Court's approval
9 and entry of this Consent Judgment.

10 **4.5 Payment Procedures**

11 **4.5.1 Issuance of Payments.**

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

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

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

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-4010
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1 For Non-United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

7 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
8 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
9 in Section 4.5.1(a) above, as proof of payment to OEHHA.

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

17 **5. CLAIMS COVERED AND RELEASED**

18 **5.1 Englander's Release of Proposition 65 Claims**

19 Englander, acting on his own behalf and in the public interest, releases American Leather
20 and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
21 employees, attorneys, and all of their successors and assigns ("Defendant Releasees"), and each
22 entity to whom Defendant Releasees directly or indirectly distribute or sell Products, including, but
23 not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
24 members, and licensees (collectively, "Downstream Releasees"), from all claims for violations of
25 Proposition 65 through the Effective Date based on unwarned exposures to the TDCPP in the
26 Products, as set forth in the Notice. Compliance with the terms of this Consent Judgment
27 constitutes compliance with Proposition 65 with respect to exposures to the TDCPP from the
28 Products, as set forth in the Notice. The Parties further understand and agree that this Section 5.1
release shall not extend upstream to any entities, other than Defendant Releasees, that

1 manufactured the Products or any component parts thereof, or any distributors or suppliers who
2 sold the Products or any component parts thereof to Defendant Releasees.

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 TDBPP in the Products manufactured, imported, distributed, or sold by
10 Defendant Releasees prior to the Effective Date. The Parties further understand and agree that this
11 Section 5.2 release shall not extend upstream to any entities that manufactured the Products or or
12 any component parts thereof or any distributors or suppliers who sold the Products or any
13 component parts thereof to Defendant Releasees. Nothing in this Section affects Englander's right
14 to commence or prosecute an action under Proposition 65 against a Releasee that does not involve
15 Defendant Releasees Products.

16 5.3 American Leather's Release of Englander

17 American Leather, on behalf of itself and Defendant Releasees, hereby waives any and all
18 claims against Englander and his attorneys and other representatives, for any and all actions taken
19 or statements made (or those that could have been taken or made) by Englander and his attorneys
20 and other representatives, whether in the course of investigating claims or otherwise seeking to
21 enforce Proposition 65 against it in this matter with respect to the Products.

22 6. COURT APPROVAL

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

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

11 **7. GOVERNING LAW**

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

21 **8. NOTICES**

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

To Englander:

2
3 At the address shown on Exhibit A

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

4
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6 Any Party, from time to time, may specify in writing to the other Party a change of address to
7 which all notices and other communications shall be sent.

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

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

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

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 Englander and American Leather agree to support the entry of this agreement as a Consent
17 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
18 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
19 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall
20 draft and file. If any third party objection to the noticed motion is filed, Englander and American
21 Leather shall work together to file a reply and appear at any hearing before the Court. This
22 provision is a material component of the Consent Judgment and shall be treated as such in the
23 event of a breach.

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9 **AGREED TO:**

AGREED TO:

Settling Defendant:
American Leather, Inc.

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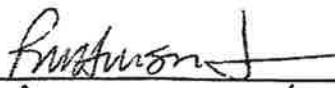
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Plaintiff, Peter Englander

By: 
Name: P. M. Henson, Jr.

Date: November 8, 2013

Date: October 15, 2013

1 EXHIBIT A

2 I. Name of Settling Defendant: AMERICAN LEATHER, INC.

3 II. Names of Releasees (optional/partial):

4 AL Legacy Partners, Inc.

5 American Leather Operations, LLC

6 American Leather Holdings, LLC

7 III. Types of Covered Products Applicable to American Leather:

8 Padded Upholstered Furniture, including Ottomans, containing TDCPP

9 IV. Types of Additional Products American Leather Elects to Address (if any):

10 V. American Leather Required Settlement Payments

11 A. Penalties of \$86,000, as follows:

12 \$20,000 initial payment due on or before the Effective Date;

13 \$42,000 second payment due on or before January 15, 2014, of which
14 \$23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be
waived pursuant to Section 4.1.4(iii); and

15 \$24,000 third payment due on or before November 30, 2014, of which
16 \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be
waived pursuant to Section 4.1.4(iv).

17 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
18 attributable to American Leather, Inc.: \$40,000.

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

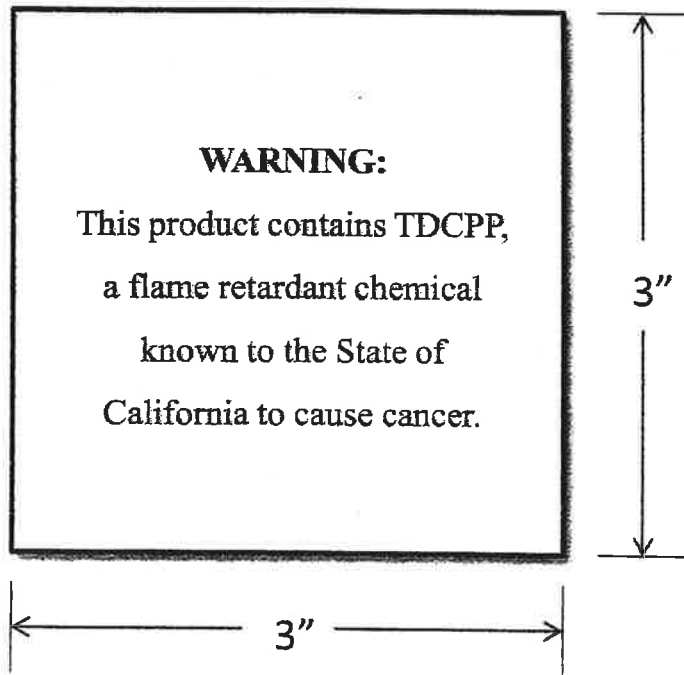
20 Mel Henson
21 CFO
22 American Leather, Inc.
4501 Mountain Creek Parkway
Dallas, TX 75236

23 With a copy to:

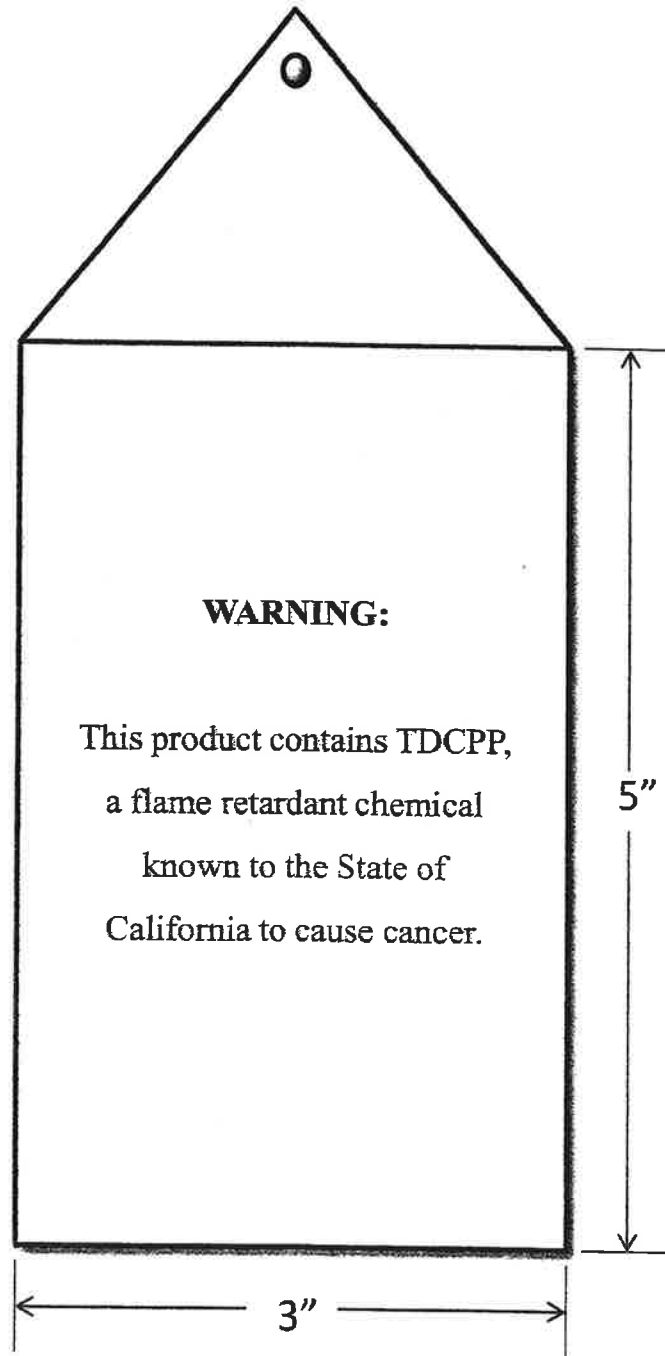
24 Jeffrey B. Margulies
25 Norton Rose Fulbright
555 South Flower Street, 41st Floor
26 Los Angeles, CA 90071

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



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

WARNING:

This product contains TDCCP, 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.

Exhibit 2
(To Judgment)

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

5 Attorneys for Plaintiff
6 PETER ENGLANDER

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

PETER ENGLANDER,
Plaintiff,
v.
ROOM & BOARD, INC.; *et al.*,
Defendants.

) Case No. RG13672407

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

) **[PROPOSED] CONSENT JUDGMENT AS
) TO DEFENDANT ROOM & BOARD, INC.**

) (Health & Safety Code § 25249.6 *et seq.*
) 60-Day Notice of Violation Served: January 28,
) 2013)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Peter Englander ("Englander") and
4 defendant Room & Board, Inc. ("Room & Board") with Englander and Room & Board
5 collectively referred to as the "Parties."

6 **1.2 Peter Englander**

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

10 **1.3 Room & Board, Inc.**

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

19 **1.4.2** Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the "clear and
21 reasonable warning" requirements of Proposition 65 one year later on October 28, 2012. Cal.
22 Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander
23 alleges that the TDCPP escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The categories of products that are covered by this Consent Judgment as to Room & Board
26 are identified on Exhibit A (hereinafter "Products"). Polyurethane foam that is supplied, shaped or
27 manufactured for use as a component of a product, such as upholstered furniture, is specifically

1 excluded from the definition of Products and shall not be identified by Room & Board on Exhibit
2 A as a Product.

3 **1.6 Notice of Violation**

4 On January 28, 2013, Englander served Room & Board, others, and certain requisite public
5 enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients
6 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
7 consumers, and workers in California that the Products expose users to TDCPP.

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

10 **1.7 Complaint**

11 On April 22, 2013, Englander filed a First Amended Complaint in the Superior Court in
12 and for the County of Alameda against Ashley Furniture Industries, Inc., among others, and Does 1
13 through 150, *Peter Englander v. Ashley Furniture Industries, Inc., et al.*, Case No. RG13672407,
14 which names Room & Board as a defendant and alleges violations of Proposition 65, based in part
15 on the alleged unwarned exposures to TDCPP contained in the Products ("Complaint").

16 **1.8 No Admission**

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

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Room & Board as to the allegations contained in the Complaint, that venue is
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1 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
3 Procedure § 664.6.

4 **2. DEFINITIONS**

5 **2.1 California Customers**

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

9 **2.2 Detectable**

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

16 **2.3 Effective Date**

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

18 **2.4 Private Label Covered Products**

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

22 **2.5 Reformulated Products**

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

25 **2.6 Reformulation Standard**

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

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1 **2.7 Retailer**

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

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 **3.1 Reformulation Commitment**

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

9 **3.2 Vendor Notification/Certification**

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

20 **3.3 Products No Longer in Room & Board’s Control**

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

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

10 **3.4 Current Inventory**

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

15 **3.5 Product Warnings**

16 **3.5.1 Product Labeling**

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

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27 ¹ This shall not apply to Products which are Private Label Covered Products in a Retailer
28 settling Defendants’ inventory as of December 31, 2013.

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

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

6 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
7 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
8 set forth in this Section are addressed, including as to the required warning statement and method
9 of transmission as set forth above, Room & Board remains free not to utilize the template
10 warnings.

11 **3.5.2 Internet Website Warning**

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

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

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

1 The warning text shall be the same type size or larger than the Product description text:

2 **WARNING:** This product contains TDCPP, a
3 flame retardant chemical known to
4 the State of California to cause
5 cancer.⁴

6 **3.6 Alternatives to Interim Warnings**

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

16 **4. MONETARY PAYMENTS**

17 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

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

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

3 4.1.2 Second Civil Penalty. On or before January 15, 2014, Room & Board shall
4 make a second civil penalty payment in the amount identified on Room & Board's Exhibit A. The
5 amount of the second penalty may be reduced according to any penalty waiver Room & Board is
6 eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

7 4.1.3 Third Civil Penalty. On or before November 30, 2014, Room & Board shall
8 make a third civil penalty payment in the amount identified on Room & Board's Exhibit A. The
9 amount of the third penalty may be reduced according to any penalty waiver Room & Board is
10 eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

18 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
19 **Products Sold or Offered for Sale in California.**

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

1 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

2 As shown on Room & Board's Exhibit A, a portion of the third civil penalty shall be
3 waived, to the extent that it has agreed that, as of March 31, 2014, and continuing into the future, it
4 shall only manufacture or import for distribution or sale in California or cause to be manufactured
5 or imported for distribution or sale in California, Reformulated Products which also do not contain
6 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
7 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject
8 product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545
9 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
10 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
11 representative of Room & Board that has exercised this election shall provide Englander with a
12 written certification confirming compliance with such conditions, which certification must be
13 received by Englander's counsel on or before November 15, 2014.

14 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
15 **Exemplar Products from the California Market.**

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

21 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
22 **California of Unreformulated Inventory.**

23 As shown on Room & Board's Exhibit A, a portion of the third civil penalty shall be
24 waived, if an officer or other authorized representative of Room & Board provides Englander with
25

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

1 written certification, on or before November 15, confirming that, as of July 1, 2014, it has and will
2 continue to distribute, offer for sale, or sell in California, or to California Customers, only
3 Reformulated Products.

4 4.2 Representations

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

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

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

22 If Englander provides notice and appropriate supporting information to Room & Board that
23 levels of the TDCPP in excess of the Reformulation Standard have been detected in one or more
24 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after
25 a deadline for meeting the Reformulation Standard has arisen for Room & Board under Sections
26 3.1 or 3.6 above, Room & Board may elect to pay a stipulated penalty to relieve any further
27 potential liability under Proposition 65 or sanction under this Consent Judgment as to Products

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1 sourced from the vendor in question.⁶ The stipulated penalty shall be \$1,500 if the violation level
2 is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being
3 applicable for any amount in excess of the Reformulation Standards but under 250 ppm.⁷
4 Englander shall further be entitled to reimbursement of his associated expense in an amount not to
5 exceed \$5,000 regardless of the stipulated penalty level. Room & Board under this Section must
6 provide notice and appropriate supporting information relating to the purchase (e.g. vendor name
7 and contact information including representative, purchase order, certification (if any) received
8 from vendor for the exemplar or subcategory of products), test results, and a letter from a company
9 representative or counsel attesting to the information provided, to Englander within 30 calendar
10 days of receiving test results from Englander's counsel. Any violation levels at or above 250 ppm
11 shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

12 4.4 Reimbursement of Fees and Costs

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

24 ⁶ This Section shall not be applicable where the vendor in question had previously been
25 found by Room & Board to have provided unreliable certifications as to meeting the
26 Reformulation Standard in its Products on more than one occasion. Notwithstanding the
foregoing, a stipulated penalty for a second exceedance by Room & Board's vendor at a level
between 100 and 249 ppm shall not be available after July 1, 2015.

27 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 anticipated significant amount of time Englander's counsel will incur to monitor various
2 provisions in this agreement over the next two years. Room & Board more specifically agreed,
3 upon the Court's approval and entry of this Consent Judgment, to pay Englander's counsel the
4 amount of fees and costs indicated on Room & Board's Exhibit A. Room & Board further agreed
5 to tender and shall tender its full required payment under this Section to a trust account at The
6 Chanler Group (made payable "In Trust for The Chanler Group") within two business days of the
7 Effective Date. Such funds shall be released from the trust account upon the Court's approval and
8 entry of this Consent Judgment.

9 4.5 Payment Procedures

10 4.5.1 Issuance of Payments.

11 (a) All payments owed to Englander and his 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
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

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

21 For United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Non-United States Postal Service Delivery:

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

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
3 in Section 4.5.1(a) above, as proof of payment to OEHHA.

4 4.5.3 Tax Documentation. Room & Board shall issue a separate 1099 form for
5 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
7 fully 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
9 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
10 Chanler Group" (BIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

11 **5. CLAIMS COVERED AND RELEASED**

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

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

1 **5.2 Englander's Individual Releases of Claims**

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

15 **5.3 Room & Board's Release of Englander**

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

22 **6. COURT APPROVAL**

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

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

11 **7. GOVERNING LAW**

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

21 **8. NOTICES**

22 Unless specified herein, all correspondence and notices required to be provided pursuant to
23 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
24 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the
25 other party at the following addresses:
26
27
28

1 To Room & Board:

To Englander:

2 At the address shown on Exhibit A

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

3
4
5 Any Party, from time to time, may specify in writing to the other Party a change of address to
6 which all notices and other communications shall be sent.

7
8 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

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

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 Englander and Room & Board agree to support the entry of this agreement as a Consent
17 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
18 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
19 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall
20 draft and file. If any third party objection to the noticed motion is filed, Englander and Room &
21 Board shall work together to file a reply and appear at any hearing before the Court. This
22 provision is a material component of the Consent Judgment and shall be treated as such in the
23 event of a breach.

24 **12. MODIFICATION**

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

1 **13. AUTHORIZATION**


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

5
6 **AGREED TO:**

7
8 
9 _____
10 Plaintiff, Peter Englander

11 Date: November 27, 2013

6 **AGREED TO:**
7 Settling Defendant:
8 Room & Board, Inc.

9 By: 
10 Name: (Zaven Chingew)
11 President + COO

12 Date: October 15, 2013

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1 **EXHIBIT A**

2 I. Name of Settling Defendant: ROOM & BOARD, INC.

3 II. Names of Releasees (optional/partial):

4 III. Types of Covered Products Applicable to Room & Board:

5 Padded Upholstered Furniture, including Ottomans, containing TDCPP

6 IV. Types of Additional Products Room & Board Elects to Address (if any):

7 V. Room & Board Required Settlement Payments

8 A. Penalties of \$81,000, as follows:

9 \$15,000 initial payment due on or before the Effective Date;

10 \$42,000 second payment due on or before January 15, 2014, of which
11 \$23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be
waived pursuant to Section 4.1.4(iii); and

12 \$24,000 third payment due on or before November 30, 2014, of which
13 \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be
waived pursuant to Section 4.1.4(iv).

14 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
15 attributable to Room & Board, Inc.: \$35,000.

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

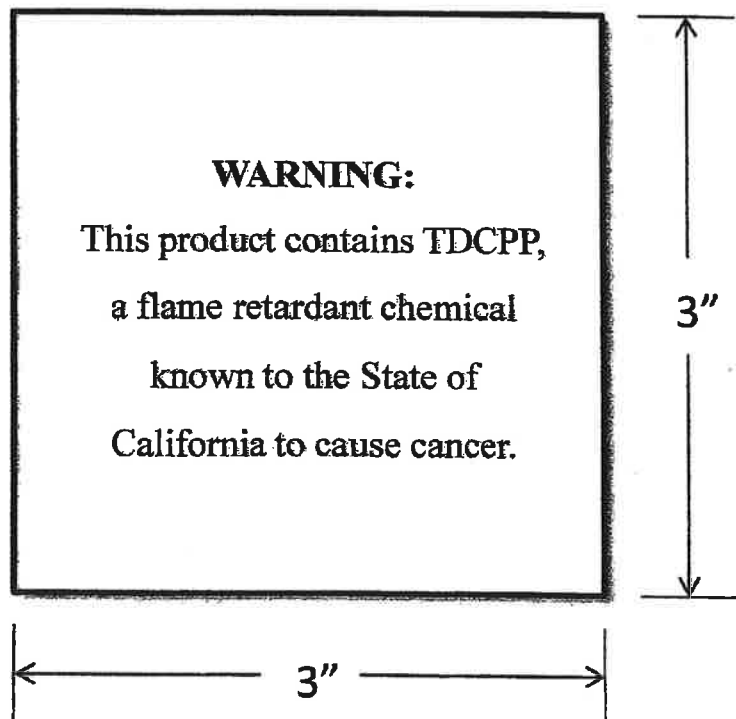
17 Steve Freeman
18 Room & Board, Inc.
19 Room & Board
20 4600 Olson Memorial Highway
Minneapolis, Minnesota 55422

21 With a copy to:

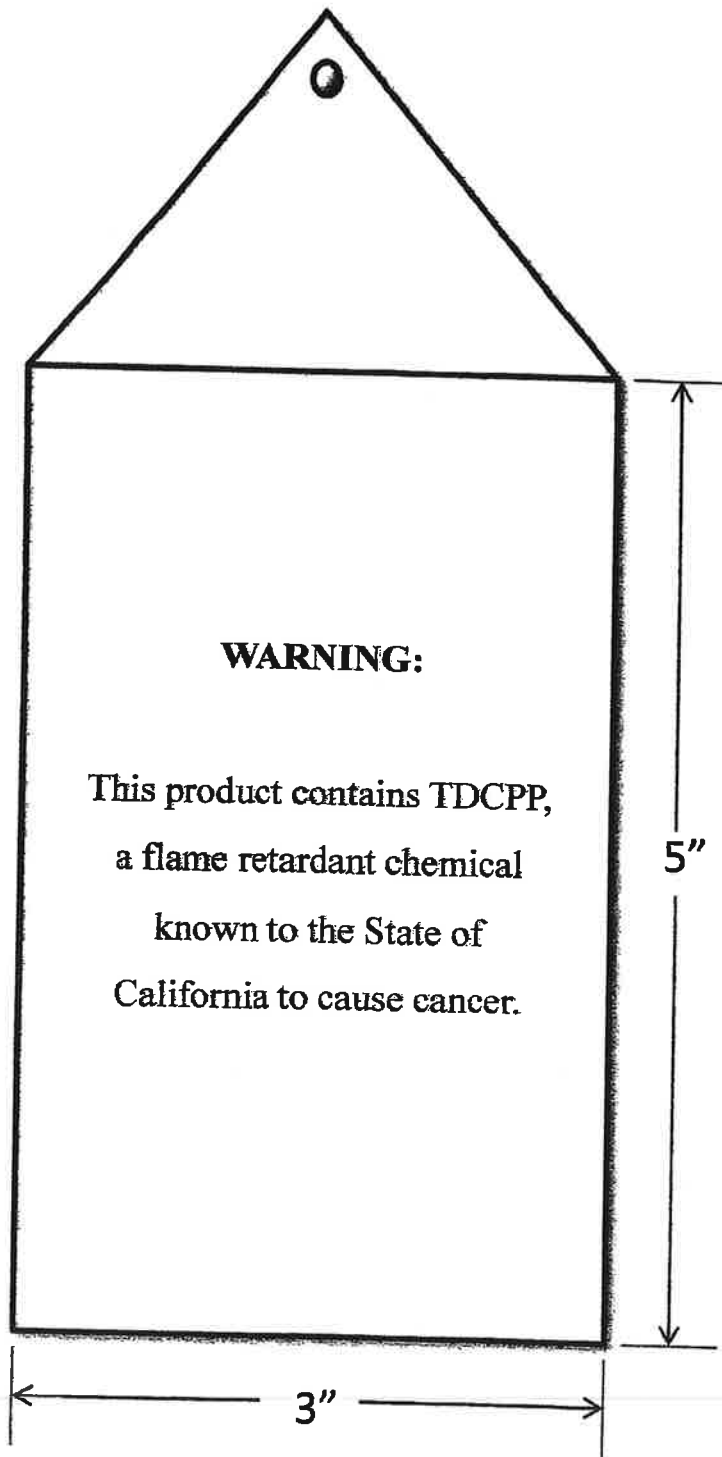
22 Jeffrey B. Margulies
23 Norton Rose Fulbright
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



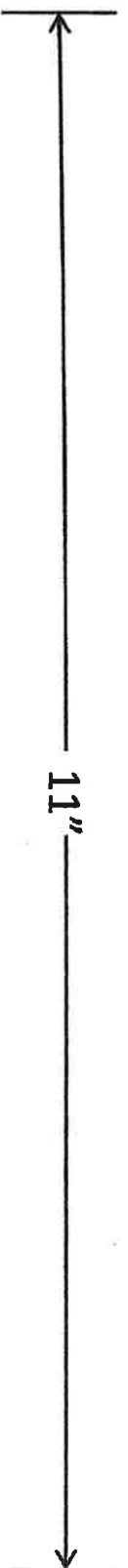
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to

cause cancer.



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

Exhibit 3
(To Judgment)

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 ASHLEY FURNITURE INDUSTRIES,
18 INC.; *et al.*,

19 Defendants.

Case No. RG13672407

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

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT HUMAN TOUCH, LLC**

(Health & Safety Code § 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendant Human Touch, LLC (“Human Touch”), with Englander and Human
5 Touch each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Human Touch employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Human Touch manufactured, imported, sold and/or distributed for
16 sale in California, upholstered furniture with foam padding containing tris(1,3-dichloro-2-propyl)
17 phosphate (“TDCPP”) and upholstered furniture with foam padding containing tris(2-chloroethyl)
18 (“TCEP”) without providing the clear and reasonable health hazard warnings required by
19 Proposition 65.

20 **1.5 Listed Chemicals**

21 1.5.1 On April 1, 1992, California listed TCEP pursuant to Proposition 65, as a
22 chemical known to cause cancer. TCEP became subject to the “clear and reasonable warning”
23 requirements of the act one year later on April 1, 1993. Cal. Code Regs., tit. 27, § 27001(b); Health
24 & Safety Code §§ 25249.8 and 25249.10(b).

25 1.5.2 On October 28, 2011, California identified and listed TDCPP Pursuant to
26 Proposition 65, as a chemical known to cause cancer. TDCPP became subject to the “clear and
27 reasonable warning” requirements of the act one year later on October 28, 2012. Cal. Code Regs.,
28 tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). TDCPP and TCEP are

1 referred to collectively herein after as the "Listed Chemicals." Englander alleges that TDCPP and
2 TCEP escape from the foam padding, resulting in human exposures.

3 1.5 Product Description

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

8 1.6 Notices of Violation

9 On January 10, 2013, and February 26, 2013, Englander served Human Touch and certain
10 requisite public enforcement agencies with two separate 60-Day Notices of Violation ("Notices")
11 alleging that Human Touch violated Proposition 65 when it failed to warn customers, consumers,
12 and workers in California that the Products expose users to TDCPP and TCEP. To the best of the
13 Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations
14 set forth in the Notices.

15 1.7 Complaint

16 On March 21, 2013, Englander commenced the instant action. Thereafter, on July 9, 2013,
17 Englander filed a Second Amended Complaint ("Complaint"), the operative pleading in this action,
18 naming Human Touch as a defendant, and stating a cause of action for the alleged violations of
19 Proposition 65 that are the subject of the Notices.

20 1.8 No Admission

21 Human Touch denies the material, factual, and legal allegations contained in the Notices
22 and Complaint and maintains that all of the products that it has sold or distributed for sale in
23 California, including the Products, have been and are in compliance with all laws. Nothing in this
24 Consent Judgment shall be construed as an admission by Human Touch of any fact, finding,
25 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
26 Judgment constitute or be construed as an admission by Human Touch of any fact, finding,
27 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or
28

1 otherwise affect Human Touch's obligations, responsibilities, and duties under this Consent
2 Judgment.

3 **1.9 Jurisdiction**

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

9 **2. DEFINITIONS**

10 **2.1 California Customer**

11 "California Customer" shall mean any customer that Human Touch reasonably understands
12 is located in California, has a California warehouse or distribution center, maintains a retail outlet in
13 California, or has distributed Products for sale in California, online via the internet or by any other
14 means, on or after January 1, 2011.

15 **2.2 No Detectable Amount**

16 "No Detectable Amount" shall mean no more than 25 parts per million ("ppm") (the
17 equivalent of .0025%) of any one chemical in any material, component, or constituent of a
18 subject product, when analyzed by a domestic NVLAP (National Volunteer Laboratory
19 Accreditation Program) accredited laboratory pursuant to EPA testing methodologies 3545 and
20 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
21 or measure the amount, of TDCPP and/or TCEP in a solid substance.

22 **2.3 Effective Date**

23 "Effective Date" means December 22, 2013.

24 **2.4 Private Label Covered Products**

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

28

1 **2.5 Reformulated Products**

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

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 sale to consumers in
9 California.

10 **3. INJUNCTIVE RELIEF: REFORMULATION**

11 **3.1 Reformulation Commitment**

12 Commencing on April 30, 2014, and continuing thereafter, Human Touch shall not
13 manufacture or import for distribution or sale to California Customers, or cause to be manufactured
14 or imported for distribution or sale to California Customers, any Products that are not Reformulated
15 Products.

16 **3.2 Vendor Notification/Certification**

17 Within 30 days of the Effective Date, Human Touch shall provide written notice to all of its
18 then-current vendors of Products that are sold or offered for sale in California, or to California
19 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
20 Products. In addressing the obligation set forth in the preceding sentence, Human Touch shall not
21 employ statements to encourage a vendor to delay compliance with the Reformulation Standard.
22 No later than May 1, 2014, Human Touch shall obtain a written certification from each such
23 vendor, and any newly engaged vendors, that the Products it manufactures comply with the
24 Reformulation Standard. Such certifications shall be held by Human Touch for at least two years
25 from receipt, and shall be made available to Englander upon request.

26 **3.3 Products No Longer in Human Touch’s Control**

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

1 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
2 in the Notice (“Exemplar Product”); and (b) any California Customer and/or Retailer that Human
3 Touch believes is reasonably likely to have any inventory of Exemplar Products for resale in
4 California as of January 1, 2013.

5 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 that
7 the recipient either: (a) label the Exemplar Products remaining in inventory prior to offering them
8 for sale in California, or to California Customers, pursuant to Section 3.5; or (b) return, at Human
9 Touch’s expense, all units of the Exemplar Product held for sale in California, or to California
10 Customers, to Human Touch or a party Human Touch has otherwise designated. The Notification
11 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar
12 Product will be labeled or returned. Human Touch shall maintain records of all correspondence
13 generated pursuant to this Section for two years after the Effective Date and shall promptly produce
14 copies of such records upon Englander’s written request.

15 3.4 Current Inventory

16 Any Products in, or manufactured and en route to, Human Touch’s inventory on or after
17 January 31, 2014, that do not qualify as Reformulated Products, and that Human Touch has reason
18 to believe may be sold or distributed for sale in California, shall contain a clear and reasonable
19 warning as set forth in Section 3.5 below unless Section 3.6 applies.

20 3.5 Product Warnings

21 3.5.1 Product Labeling. Any warning provided under Section 3.3 or 3.4 above
22 shall be affixed to the packaging, labeling, or directly on each Product. Each warning shall be
23 prominently placed with such conspicuousness when compared with other words, statements,
24 designs, or devices as to render it likely to be read and understood by an ordinary individual under
25 customary conditions before purchase. Each warning shall be provided in a manner such that the
26 consumer or user understands to which specific Product the warning applies, so as to minimize the
27 risk of consumer confusion.

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

1 **WARNING:** This product contains [TDCPP and/or
2 TCEP], flame retardant chemicals
3 known to the State of California to
4 cause cancer.¹

5 **3.5.2 Internet Website Warning.** A warning shall be given in conjunction with
6 Human Touch's sale of the Products over its website online via the internet into California, or to
7 California Customers. The warning shall appear on one or more web pages displayed to a
8 purchaser prior to completing payment and/or during the "checkout" process. The following
9 warning statement shall be used and shall: (a) appear adjacent to or immediately following the
10 display, description, or price of the Product; (b) be accessible via a hyperlink that appears adjacent
11 to or immediately following the display, description, or price of the Product; or (c) appear as a pop-
12 up box. The warning, hyperlink and/or pop-up box text shall be the same type size or larger than
13 the Product description text, and shall state:

14 **WARNING:** This product contains [TDCPP and/or
15 TCEP], flame retardant chemicals
16 known to the State of California to
17 cause cancer.²

18 **3.6 Alternatives to Interim Warnings**

19 Human Touch's obligation under Section 3.3 shall be relieved if it provides Englander with
20 written notice on or before January 15, 2014 certifying that only Exemplar Products meeting the
21 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
22 California, after January 31, 2014. The obligations of Human Touch under Section 3.4 shall be
23 relieved upon Englander's receipt of Human Touch's written certification on or before January 15,

24

¹ The regulatory safe harbor warning language specified in 27 Cal. Code Regs. §
25 25603.2(a)(1) shall be deemed acceptable under this Consent Judgment, if Human Touch employed
26 it prior to the Effective Date. Human Touch must obtain Court approval for any alternative
27 warning statement other than that set forth above or the regulatory safe harbor language found at 27
28 Cal. Code Regs. § 25603.2(a)(1), and/or for any proposed alternate method of warning
 transmission. In doing so, Human Touch agrees to provide the Parties and the Office of the
 Attorney General with timely notice and an opportunity to oppose or comment on 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 Cal. Code Regs. § 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" unless Human Touch knows the Product to
 which such warning is applied contains a Proposition 65-listed chemical in addition to TDCPP or
 TCEP that is known to cause birth defects or other reproductive harm.

² The preceding footnote applies in this context as well.

1 2014, that, as of July 30, 2014, it will only distribute or cause to be distributed for sale, or sell in
2 California, or to California Customers for sale in California, Products (i.e., Products beyond the
3 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
4 Section are material terms and time is of the essence.

5 **4. MONETARY PAYMENTS**

6 **4.1 Civil Penalties**

7 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims referred
8 to in this Consent Judgment, Human Touch shall pay the civil penalties shown on Exhibit A. Each
9 penalty payment will be allocated in accordance with California Health & Safety Code section
10 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
11 Health Hazard Assessment (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in
12 Trust for Englander.” Each penalty payment shall be delivered within two business days of the date
13 it is due at the addresses provided in Section 4.5, below. Human Touch shall be liable for payment
14 of simple interest at a rate of 10% for all amounts due and owing that are not received within two
15 business days of the date they are due, if any.

16 **4.1.1 Initial Civil Penalty.** Within five days of the Effective Date, Human Touch
17 shall make an initial civil penalty payment in the amount identified on Exhibit A.

18 **4.1.2 Second Civil Penalty.** On or before February 15, 2014, Human Touch shall
19 make a second civil penalty payment in the amount identified on Exhibit A. The amount of the
20 second penalty may be reduced according to any penalty waiver for which Human Touch is eligible
21 under Sections 4.1.4(i) and 4.1.4(iii), below.

22 **4.1.3 Third Civil Penalty.** On or before December 31, 2014, Human Touch shall
23 make a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
24 penalty may be reduced according to any penalty waiver for which Human Touch is eligible under
25 Sections 4.1.4(ii) and 4.1.4(iv), below.

26 **4.1.4 Reductions to Civil Penalty Payment Amounts.** Human Touch may
27 reduce the amount of the second and/or third civil penalty payments identified on Exhibit A by
28 providing Englander with certification of certain efforts undertaken to reformulate its Products or

1 limit the ongoing sale of non-reformulated Products in California. The option to provide a written
2 certification in lieu of making a portion of Human Touch's second or third civil penalty payments
3 constitutes a material term of this Consent Judgment, and with regard to such terms, time is of the
4 essence.

5 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of
Products Sold or Offered for Sale in California.**

6 If Human Touch so elects on Exhibit A, a portion of the second civil penalty shall be
7 waived, if, as of February 1, 2014, and continuing thereafter, Human Touch agrees that it will only
8 manufacture or import for distribution or sale to California Customers or cause to be manufactured
9 or imported for distribution or sale to California Customers, Reformulated Products. An officer or
10 other authorized representative shall provide Englander with a written certification confirming
11 compliance with such conditions, no later than January 15, 2014.

12 **4.1.4(ii) Partial Penalty Waiver for Accelerated Extended
Reformulation.**

13 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if, as of April 15,
14 2014, and continuing thereafter, Human Touch agrees that it will only manufacture or import for
15 distribution or sale in California, or cause to be manufactured or imported for distribution or sale in
16 California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate
17 ("TDBPP") in a detectable amount of more than 25 ppm (.0025%) in any material, component, or
18 constituent of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to
19 EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or
20 state agencies to determine the presence, and measure the quantity, of TDBPP in a solid substance.
21 An officer or other authorized representative shall provide Englander with a written certification
22 confirming compliance with such conditions, no later than November 15, 2014.

23 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Non-Reformulated
Exemplar Products from the California Market.**

24 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
25 other authorized representative of Human Touch provides Englander with written certification, by
26 January 15, 2014, confirming that each individual or establishment in California to which it
27
28

1 supplied the Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to
2 return all Exemplar Products held for sale in California.³

3 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
4 **California of Inventory of Non-Reformulated Products.**

5 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
6 other authorized representative of Human Touch provides Englander with written certification, on
7 or before November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to
8 manufacture for sale or purchase for sale in California, or to California Customers, only
9 Reformulated Products.

10 **4.2 Representations Regarding Sales and Other Information**

11 Human Touch represents that the sales data and other information concerning its size,
12 knowledge of TDCPP/TCEP presence, and prior reformulation and/or warning efforts, provided to
13 Englander is true and accurate based on its knowledge and are material factors upon which
14 Englander relies to determine the amount of civil penalties assessed pursuant to Health and Safety
15 Code section 25249.7(b). If, within nine months of the Effective Date, Englander discovers and
16 presents to Human Touch, evidence demonstrating that the preceding representations and
17 warranties are materially inaccurate, then Human Touch shall have 30 days to meet and confer
18 regarding the Englander's contention. Should this 30 day period pass without any resolution,
19 Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for
20 damages for breach of contract.

21 Human Touch further represents that in implementing the requirements set forth in Sections
22 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
23 reformulation of its Products and Additional Products on a nationwide basis and not employ
24 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
25 goods intended for sale to California Consumers.

26
27 ³ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander have, prior to August 31, 2013, provided Human Touch 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 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

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

19 **4.4 Reimbursement of Fees and Costs**

20 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee
22 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
23 other settlement terms had been finalized, Human Touch expressed a desire to resolve Englander's
24

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

28 ⁵ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner provided in Sections 4.1 and 4.5.

1 outstanding fees and costs. Under general contract principles and the private attorney general
2 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
3 through the mutual execution of this agreement, including the fees and costs incurred as a result of
4 investigating, bringing this matter to Human Touch's attention, negotiating a settlement in the
5 public interest, and seeking court approval of the same. In addition, the negotiated fee and cost
6 figure expressly includes the anticipated significant amount of time Englander's counsel will incur
7 to monitor various provisions in this agreement over the next two years, with the exception of
8 additional fees that may be incurred pursuant to any election made by Human Touch under Section
9 11. Human Touch agrees to pay Englander, upon the Court's approval and entry of this Consent
10 Judgment, the amount of fees and costs indicated on Exhibit A. Human Touch further agrees to
11 tender its payment in full under this Section to "The Chanler Group in Trust" within five business
12 days of the Effective Date, which amounts shall not be disbursed until the Court's approval and
13 entry of this Consent Judgment.

14 **4.5 Payment Procedures**

15 **4.5.1 Payment Addresses.** All payments and tax forms for Englander and his
16 counsel under this Consent Judgment shall be delivered to the following addresses:

17 (a) All payments to Englander and his counsel shall be delivered to:

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

21 (b) All payments and tax forms required for OEHHA under this Consent
22 Judgment shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of
23 the following addresses, as appropriate:

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

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For Non-United States Postal Service Delivery or Courier:

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 provided in Section 4.5.1(a).

4.5.3 Tax Documentation. Human Touch shall provide a separate 1099 form for its payments to each of the following payees under this Consent Judgment: (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) "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486); and (c) "The Chanler Group" (EIN: 94-3171522).

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 Human Touch, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Human Touch directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims alleging violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed Chemicals in the Products, as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entity that manufactured the Products or any component parts thereof, or any distributor or supplier who sold the Products or any component parts thereof to Human Touch, except that entities upstream who provided a Private Labeled Covered Product to Human Touch, if any, shall be released as to the

1 Private Labeled Covered Products Human Touch has offered for sale in California, or to California
2 Customers.

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

4 Englander, in his individual capacity only and *not* in any 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 any nature, character, or kind, whether known or unknown, suspected or
8 unsuspected, limited to and arising out of alleged or actual exposures to TDCPP, TCEP, and/or
9 TDBPP in Products or Additional Products (as defined in Section 11.1 and delineated on Exhibit A)
10 manufactured, imported, distributed, or sold by Human Touch prior to the Effective Date.⁶ The
11 Parties further understand and agree that this Section 5.2 release shall not extend upstream to any
12 entity that manufactured any Products or Additional Products, or any component parts thereof, or
13 any distributors or suppliers who sold any Products or Additional Products, or any component parts
14 thereof to Human Touch, except that entities upstream of Human Touch that is a Retailer of a
15 Private Labeled Covered (or Additional) Product shall be released as to the Private Labeled
16 Covered (or Additional) Products offered for sale in California by the Human Touch. Nothing in
17 this Section affects Englander's right to commence or prosecute an action under Proposition 65
18 against a Releasee that does not involve Human Touch's Products or Additional Products.

19 **5.3 Human Touch' Release of Englander**

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

26
27 _____
28 ⁶ The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

1 **COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
4 within one year after it has been fully executed by the Parties. Englander and Human Touch agree
5 to support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent
6 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
7 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this
8 Consent Judgment, which motion Englander shall draft and file and Human Touch shall support,
9 appearing at the hearing if so requested. If any third-party objection to the motion is filed,
10 Englander and Human Touch agree to work together to file a reply and appear at any hearing. This
11 provision is a material component of the Consent Judgment and shall be treated as such in the event
12 of a breach.

13 If the Court does not approve the Consent Judgment, the Parties agree to meet and confer as
14 to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a
15 course of action to take, then the case shall proceed in its normal course on the Court's trial
16 calendar. If the Court's approval is ultimately overturned by an appellate court, the Parties shall
17 meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not
18 jointly agree on a course of action to take, then the case shall proceed in its normal course on the
19 Court's trial calendar. In the event that this Consent Judgment is entered by the Court and
20 subsequently overturned by any appellate court, any monies that have been provided to OEHHA,
21 Englander or his counsel under this Consent Judgment shall be refunded within 15 days of the
22 appellate decision becoming final. If the Court does not approve and enter the Consent Judgment
23 within one year of the Effective Date, any monies that have been provided to OEHHA or held in
24 trust for Englander or his counsel pursuant to Section 4 shall be refunded to the Human Touch
25 within 15 days.

26 **GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California.
28 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by

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

6 **8. NOTICE**

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

11 To Human Touch:

12 At the address shown on Exhibit A

To Englander:

13 Attn: Proposition 65 Coordinator
14 The Chanler Group
2560 Ninth Street
15 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

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

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

22 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

23 Englander and his counsel agree to comply with the reporting form requirements referenced
24 in California Health and Safety Code section 25249.7(f).

25 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

26 In addition to the Products identified on Exhibit A, on or before December 22, 2013, Human
27 Touch may provide Englander with additional information or representations necessary to enable
28 him to issue a 60-day notice of violation and valid certificate of merit pursuant to Health & Safety

1 Code section 25249.7 for “Additional Products” that contain TDCPP, TCEP, and/or other
2 Proposition 65-listed chemicals (“Additional Products”). Polyurethane foam that is supplied,
3 shaped or manufactured for use as a component of a product, such as upholstered furniture, is
4 specifically excluded from the definition of Additional Products and shall not be identified by
5 Human Touch on Exhibit A as an Additional Product. Except as agreed upon by Englander,
6 Human Touch shall not include a product as an Additional Product that is the subject of an existing
7 60-day notice, issued by Englander or any other private enforcer at the time Human Touch elects to
8 proceed under this Section.

9 After receipt of the required information, Englander agrees to issue a supplemental 60-day
10 notice of violation of Health and Safety Code section 25249.6 in compliance with all statutory and
11 regulatory requirements for the Additional Products identified by Human Touch, if any. On or
12 before October 1, 2014, Englander will prepare and file an amendment to this Consent Judgment to
13 incorporate the Additional Products within the defined term “Products” and serve a copy thereof
14 and its supporting papers (including the basis for supplemental stipulated penalties, if any) on the
15 Office of the California Attorney General; upon the Court’s approval thereof and finding that the
16 supplemental stipulated penalty amount, if any, is reasonable, the Additional Products shall become
17 subject to Sections 5.1 and 5.2. Human Touch shall, at the time it elects to proceed under this
18 Section and tenders the additional information or representations regarding any Additional Products
19 to Englander, tender to The Chanler Group’s trust account an amount not to exceed \$8,750 as
20 stipulated penalties and attorneys’ fees and costs incurred by Englander and his counsel in issuing
21 the new notice of violation, and engaging in other reasonably related activities, which may be
22 released from the trust as awarded by the Court upon Englander’s application for approval of the
23 amendment to this Consent Judgment. Any fee award associated with the modification of the
24 Consent Judgment to include Additional Products shall not offset any associated supplemental
25 penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be refunded to
26 Human Touch within 15 days). Such payment shall be made to “in trust for The Chanler Group”
27 and delivered to the address provided in Section 4.5.1(a).

28

1 **13. MODIFICATION**

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

5 **14. AUTHORIZATION**

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

9 **AGREED TO:**

AGREED TO:

10
11 Date: December 20, 2013

Date: 12/22/2013

12
13 By: 

PETER ENGLANDER

By: 

David Wood, Chief Executive Officer
HUMAN TOUCH, LLC

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EXHIBIT A

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3 I. Settling Defendant: **Human Touch, LLC (“Human Touch”)**

4 II. Types of Covered Products: Upholstered Furniture manufactured or distributed by Human
5 Touch (including, but not limited to, ottomans, footstools, and other furniture that utilizes
6 polyurethane foam) and replacement parts and components manufactured or distributed by
7 Human Touch for the same.

8 III. Human Touch’s Settlement Payments:

9 A. Initial Settlement Payments: \$40,000

- 10 1. Initial Civil Penalty: \$8,000
11 2. Attorneys’ Fees and Costs: \$ 32,000

12 B. Second Civil Penalty: \$12,000

- 13 1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: \$8,000
14 2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: \$4,000

15 C. Third Civil Penalty: \$5,000

- 16 1. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: \$3,000
17 2. Section 4.1.4(iv) Partial Penalty Waiver, if applicable: \$2,000

18 IV. Persons to receive notice under Section 8:

19 David Wood, Chief Executive Officer
20 Human Touch, LLC
21 3030 Walnut Avenue
22 Long Beach, CA 90807

23 With a copy to:

24 Patrick W. Dennis, Esq.
25 Vanessa C. Adriance, Esq.
26 Gibson, Dunn & Crutcher LLP
27 333 South Grand Avenue
28 Los Angeles, CA 90071-3197

Email: vadriance@gibsondunn.com
pdennis@gibsondunn.com

Fax: (213) 229-6754

Fax: (213) 229-6567

Exhibit 4
(To Judgment)

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiffs
10 PETER ENGLANDER & LAURENCE VINO CUR

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

LAURENCE VINO CUR,
Plaintiff,

v.

NORSTAR OFFICE PRODUCTS, INC; et
al.
Defendants.

PETER ENGLANDER,
Plaintiff,

v.

ASHLEY FURNITURE INDUSTRIES,
INC; et al.
Defendants.

PETER ENGLANDER,
Plaintiff,

v.

BENETTI'S ITALIA, INC; et al.
Defendants.

For Entry in Case Nos. RG13672551,
RG13672407 & RG13676719

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

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANTS NORSTAR OFFICE
PRODUCTS, INC., INTERCON, INC., AND
BENETTI'S ITALIA, INC.**

(Health & Safety Code § 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiffs Laurence Vinocur and
4 Peter Englander ("Plaintiffs") and the defendants identified in Exhibit A ("Settling Defendants"),
5 with Plaintiffs and the Settling Defendants collectively referred to as the "Parties."

6 **1.2 Plaintiffs**

7 Plaintiffs are individuals residing in the State of California who seek to promote awareness
8 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Settling Defendants**

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

14 **1.4 General Allegations**

15 1.4.1 Plaintiffs allege that each Settling Defendant manufactured, imported, sold
16 and/or distributed for sale in California, products with (a) foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") and/or tris(2-chloroethyl) phosphate ("TCEP");
18 and/or (b) upholstered furniture with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate
19 without the requisite Proposition 65 health hazard warnings.

20 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed
21 TCEP as a chemical known to cause cancer. TCEP became subject to the "clear and reasonable
22 warning" requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §
23 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

24 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
25 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the "clear and
26 reasonable warning" requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
27 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Plaintiffs allege that
28 TDCPP and TCEP escape from foam padding, leading to human exposures.

1 1.4.4 Pursuant to Proposition 65, on October 24, 2003, California identified and
2 listed di(2-ethylhexyl)phthalate ("DEHP") as a chemical known to cause birth defects or other
3 reproductive harm. DEHP became subject to the "clear and reasonable warning" requirements of
4 Proposition 65 one year later on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health &
5 Safety Code §§ 25249.8 and 25249.10(b). DEHP, TDCPP and TCEP are hereinafter collectively
6 referred to as the "Listed Chemicals."

7 **1.5 Product Description**

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

13 **1.6 Notices of Violation**

14 Beginning in December 2012, Plaintiffs served Settling Defendants and certain requisite
15 public enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the
16 recipients with notice of alleged violations of Proposition 65 based on the failure to warn
17 customers, consumers, and workers in California that the Products expose users to one or more
18 Listed Chemicals.¹ To the best of the Parties' knowledge, no public enforcer has commenced or is
19 diligently prosecuting the allegations set forth in the Notices.

20 **1.7 Complaints**

21 On July 9, 2013, Plaintiff Laurence Vinocur filed a First Amended Complaint in this Court
22 against the Settling Defendant Norstar Office Products, Inc., Case No. RG13672551; on July 9,
23 2013, Plaintiff Peter Englander filed a Second Amended Complaint in this Court against the
24 Settling Defendant Intercon, Inc., Case No. RG13672407; and on April 23, 2013, Plaintiff Peter
25 Englander filed a Complaint in this Court against the Settling Defendant Benetti's Italia, Inc., Case

26
27 ¹ Based on their further investigation, Plaintiffs have also issued supplemental 60-day
28 notices to some of the Settling Defendants alleging that the Products contain and expose
Californiaans 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 No. RG13676719, alleging, as applicable, violations of Proposition 65, based in part on the alleged
2 unwarned exposures to TDCPP and/or TCEP and/or DEHP contained in the Products. Plaintiffs'
3 operative pleading in each of these three actions for which the Parties will seek to enter this
4 Consent Judgment are referred to collectively as the "Complaints."

5 **1.8 No Admission**

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

15 **1.9 Consent to Jurisdiction**

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

21 **2. DEFINITIONS**

22 **2.1 California Customers**

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

26 **2.2 No Detectable Amount**

27 "No Detectable Amount" shall mean containing no more than 25 parts per million ("ppm")
28 (the equivalent of .0025%) of any one chemical in any material, component, or constituent of a

1 subject product, when analyzed by a laboratory certified by the State of California or accredited by
2 the State of California, a federal agency, the National Environmental Laboratory Accreditation
3 Program or similar nationally recognized accrediting organization pursuant to EPA testing
4 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
5 determine the presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

6 **2.3 Effective Date**

7 "Effective Date" shall mean October 31, 2013.

8 **2.4 Private Label Covered Products**

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

12 **2.5 Reformulated Products**

13 "Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP
14 or TCEP.²

15 **2.6 Reformulation Standard**

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

18 **2.7 Retailer**

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

21 **3. INJUNCTIVE RELIEF: REFORMULATION**

22 **3.1 Reformulation Commitment**

23 Commencing on March 31, 2014, Settling Defendants shall not manufacture or import for
24 distribution or sale to California Customers, or cause to be manufactured or imported for
25 distribution or sale to California Customers, any Products that are not Reformulated Products.

26
27 ² As to a Settling Defendant who received a notice concerning DEHP, the term
28 "Reformulated Products" further requires that the Products for which claims concerning DEHP
were noticed (the "Phthalate Products") contain no more than 1,000 ppm each of DEHP, BBP,
and/or DBP.

1 **3.2 Vendor Notification/Certification**

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

12 **3.3 Products No Longer in a Settling Defendant's Control**

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

1
2 **3.4 Current Inventory**

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

7
8 **3.5 Product Warnings**

9 **3.5.1 Product Labeling**

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

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

17 **WARNING:** This product contains [TDCPP and/or
18 TCEP], flame retardant chemicals
19 known to the State of California to
20 cause cancer.⁴

21
22
23 ³ This shall not apply to Products which are Private Label Covered Products in a Retailer
Settling Defendants' inventory as of December 31, 2013.

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

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

5 **3.5.2 Internet Website Warning**

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

11 The warning text shall be the same type size or larger than the Product description text:

12 **WARNING:** This product contains [TDCPP and/or
13 TCEP], flame retardant chemicals
14 known to the State of California to
cause cancer.⁶

15 **3.6 Alternatives to Interim Warnings**

16 The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the
17 Settling Defendant certifies no later than December 15, 2013, that only Exemplar Products meeting
18 the Reformulation Standard will be offered for sale in California, or to California Customers for
19 sale in California, after December 31, 2013. The obligations of a Settling Defendant under Section
20 3.4 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013, that
21 after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California,
22 or to California Customers for sale in California, Products (i.e., Products beyond the Exemplar
23

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

28 ⁶ Footnote 4, *supra*, applies in this context as well.

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

3 **4. MONETARY PAYMENTS**

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

5 In settlement of all the claims referred to in this Consent Judgment, a Settling Defendant
6 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.⁷

7 Each penalty payment will be allocated in accordance with California Health & Safety Code
8 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
9 Health Hazard Assessment ("OEHHA"), 12.5% of the penalty remitted to "The Chanler Group in
10 Trust for Englander" and the remaining 12.5% of the penalty remitted to "The Chanler Group in
11 Trust for Vinocur." Each penalty payment shall be made within two business days of the date it is
12 due and be delivered to the addresses listed in Section 4.5 below. A Settling Defendant shall be
13 liable for payment of simple interest at a rate of 10% for all amounts due and owing under this
14 Section that are received more than two business days after the due date.

15 **4.1.1 Initial Civil Penalty.** On or before the Effective Date, each Settling
16 Defendant shall make an initial civil penalty payment in the amount identified on the Settling
17 Defendant's Exhibit A.

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

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

26

27

28 ⁷ 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 **4.1.4 Reductions to Civil Penalty Payment Amounts.** Each Settling Defendant
2 may reduce the amount of the second and/or third civil penalty payments identified on the Settling
3 Defendant's Exhibit A by providing Plaintiffs with certification of certain efforts undertaken to
4 reformulate their Products or limit the ongoing sale of non-reformulated Products in California.
5 The options to provide a written certification in lieu of making a portion of a Settling Defendant's
6 civil penalty payment constitute material terms of this Consent Judgment, and with regard to such
7 terms, time is of the essence.

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

10 As shown on an electing Settling Defendant's Exhibit A, a portion of the second civil
11 penalty shall be waived, to the extent that it has agreed that, as of November 1, 2013, and
12 continuing into the future, it shall only manufacture or import for distribution or sale to California
13 Customers, or cause to be manufactured or imported for distribution or sale to California
14 Customers, Reformulated Products. An officer or other authorized representative of a Settling
15 Defendant that has exercised this election shall provide Plaintiffs counsel with a written
16 certification confirming compliance with such conditions no later than December 15, 2013.

17 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

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

1 other authorized representative of a Settling Defendant that has exercised this election shall provide
2 Plaintiffs counsel with a written certification confirming compliance with such conditions no later
3 than November 15, 2014.

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

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

11 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
12 **California of Inventory of Non-Reformulated Products.**

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

18 **4.2 Representations Regarding Sales, Company Size and Compliance**

19 Each Settling Defendant represents that the sales data and other information concerning its
20 size, knowledge of the presence of the Listed Chemicals, and prior reformulation and/or warning
21 efforts, it provided to Plaintiffs is truthful to its knowledge and material factors upon which
22 Plaintiffs relied to determine the amount of civil penalties assessed pursuant to Health & Safety
23 Code § 25249.7(b) under this Consent Judgment. If, within nine months of the Effective Date,
24 Plaintiffs discover and present to a Settling Defendant, evidence demonstrating that the preceding
25 representations and/or warranties are materially inaccurate, then a Settling Defendant shall have 30

26 ⁸ For purposes of this Section, the term Exemplar Products shall further include Products for
27 which Plaintiffs have, prior to August 31, 2013, provided the Settling Defendants with test results
28 from a laboratory certified by the State of California or accredited by the State of California, a
federal agency, the National Environmental Laboratory Accreditation Program or similar nationally
recognized accrediting organization showing the presence of a Listed Chemical at a level in excess
of 250 ppm pursuant to EPA testing methodologies 3545 or 8270C.

1 days to meet and confer regarding the Plaintiffs' contention. Should this 30 day period pass
2 without any resolution between the Plaintiffs and the Settling Defendant, Plaintiffs shall be entitled
3 to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

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

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

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

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

28 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 and a letter from a company representative or counsel attesting to the information provided to
2 Plaintiffs within 30 calendar days of receiving test results from Plaintiffs' counsel. Any violation
3 levels at or above 250 ppm shall be subject to the full remedies available pursuant to this Consent
4 Judgment and at law.

5 **4.4 Reimbursement of Fees and Costs**

6 The Parties acknowledge that Plaintiffs and their counsel offered to resolve the non-
7 monetary terms of this dispute before reaching terms on the amount of fees and costs to be
8 reimbursed to them, thereby leaving this fee reimbursement issue to be resolved after the material
9 terms of the agreement had been agreed to in principle. The Parties then agreed to resolve the fee
10 and cost issue shortly after the other settlement terms had been tentatively finalized subject to
11 agreement on fees and costs. The Parties then attempted to and did reach accord on compensation
12 due Plaintiffs and their counsel under general contract principles and the private attorney general
13 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
14 through the mutual execution of this agreement, including the fees and costs incurred as a result of
15 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in
16 the public interest, and seeking court approval of the same. In addition, the negotiated fee and cost
17 figure expressly includes the anticipated significant amount of time plaintiffs' counsel will incur to
18 monitor various provisions in this agreement over the next two years, with the exception of
19 additional fees that may be incurred pursuant to a Settling Defendant's election in Section II. Each
20 Settling Defendant more specifically agreed, upon the Court's approval and entry of this Consent
21 Judgment, to pay Plaintiffs' counsel the amount of fees and costs indicated on the Settling
22 Defendant's Exhibit A. Each Settling Defendant further agreed to tender and shall tender its full
23 required payment under this Section to "The Chanler Group in Trust" within two business days of
24 the Effective Date. Such funds shall be released from the trust account upon the Court's approval
25 and entry of this Consent Judgment.

26
27
28

1 **4.5 Payment Procedures**

2 **4.5.1 Issuance of Payments.**

3 (a) All payments and tax forms owed to Plaintiffs and their counsel under
4 this Consent Judgment shall be delivered to the following address:

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

10 (b) All payments and tax forms owed to OEHHA under this Consent
11 Judgment shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of
12 the following addresses, as appropriate:

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

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

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

28 **4.5.3 Tax Documentation.** Each Settling Defendant shall issue a separate 1099
form for its payments under this Consent Judgment to each of the following payees: (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) Laurence Vinocur, whose address and
tax identification number shall be furnished upon request after this Consent Judgment has been
fully executed by the Parties; (c) "California Office of Environmental Health Hazard Assessment"
(EIN: 68-0284486); and (d) "The Chanler Group" (EIN: 94-3171522).

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Plaintiffs' Release of Proposition 65 Claims**

3 Plaintiffs, acting on their own behalf and in the public interest, release each Settling
4 Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
5 agents employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
6 distribute or sell Products, including, but not limited, to downstream distributors, wholesalers,
7 customers, retailers, franchisees, cooperative members, and licensees, including without limitation
8 those entities identified in Section II of Exhibit A (collectively, "Releasees"), from all claims for
9 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
10 Chemicals in the Products, as set forth in the Notices. Compliance with the terms of this Consent
11 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
12 Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree
13 that this Section 5.1 release shall not extend upstream to any entities, other than Settling
14 Defendants, that manufactured the Products or any component parts thereof, or any distributors or
15 suppliers who sold the Products or any component parts thereof to a Settling Defendant, except that
16 entities upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered Product
17 shall be released as to the Private Labeled Covered Products offered for sale in California, or to
18 California Customers, by the Retailer in question.¹¹

19 **5.2 Plaintiffs' Individual Releases of Claims**

20 Plaintiffs, in their individual capacities only and *not* in their representative capacities,
21 provide a release herein which shall be effective as a full and final accord and satisfaction, as a bar
22 to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
23 claims, liabilities, and demands of Plaintiffs of any nature, character, or kind, whether known or
24 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
25 TDCPP, TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1
26

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

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

11 5.3 Settling Defendants' Release of Plaintiffs

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

18 6. COURT APPROVAL

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

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

28 ¹³ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"
shall include DEHP, BBP and DBP with respect to any Settling Defendant that received a notice
alleging violations of Proposition 65 as to exposures to DEHP.

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

12 **7. GOVERNING LAW**

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

22 **8. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
25 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the
26 other party at the following addresses:
27
28

1 To Settling Defendants:

To Plaintiffs:

2 At the address shown on Exhibit A

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

3
4
5
6 Any party, from time to time, may specify in writing to any other party a change of address to
7 which all notices and other communications shall be sent.

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

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

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

13 Plaintiffs and their attorneys agree to comply with the reporting form requirements
14 referenced in California Health & Safety Code section 25249.7(f).

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 11.1 In addition to the Products, where a Settling Defendant has identified on Exhibit A
17 additional products that contain Listed Chemicals and that are sold or offered for sale by it in
18 California, or to California Customers, ("Additional Products"), then by no later than October 15,
19 2013, the Settling Defendant may provide Plaintiffs with additional information or representations
20 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit
21 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.
22 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
23 such as upholstered furniture, is specifically excluded from the definition of Additional Products
24 and shall not be identified by a Settling Defendant on Exhibit A as an Additional Product. Except
25 as agreed upon by Plaintiffs, Settling Defendants shall not include a product, as an Additional
26 Product, that is the subject of an existing 60-day notice issued by Plaintiffs or any other private
27 enforcer at the time of execution. After receipt of the required information, Plaintiffs agree to issue
28 a supplemental 60-day notice in compliance with all statutory and regulatory requirements for the

1 Additional Products. On or before October 1, 2014, Plaintiffs will prepare and file an amendment
2 to this Consent Judgment to incorporate the Additional Products within the defined term "Products"
3 and serve a copy thereof and its supporting papers (including the basis for supplemental stipulated
4 penalties, if any) on the Office of the California Attorney General; upon the Court's approval and
5 finding that the supplemental stipulated penalty amount, if any, is reasonable, the Additional
6 Products shall become subject to Sections 5.1 and 5.2. The Settling Defendant shall, at the time it
7 elects to utilize this Section and provides the additional information or representations regarding the
8 Additional Products to Plaintiffs, if any, tender to The Chanler Group's trust account an amount not
9 to exceed \$8,750 for the stipulated penalties, and attorneys' fees and costs incurred by Plaintiffs in
10 issuing a supplemental notice for the Additional Products, and engaging in reasonably related
11 activities. Thereafter, the tendered amount may be released from the trust as awarded by the Court
12 upon Plaintiffs' application. Any fee award associated with the modification of the Consent
13 Judgment to include Additional Products shall not offset any associated supplemental penalty
14 award, if any. (Any tendered funds remaining in the trust thereafter shall be refunded to the
15 Settling Defendant within 15 days). Such payment shall be made payable "in trust for The Chanler
16 Group" and delivered to the address provided in Section 4.5.1(a) above.

17 11.2 Plaintiffs and Settling Defendant(s) agree to support the entry of this agreement as a
18 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
19 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7(f)(4), a
20 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiffs
21 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiffs and each
22 Settling Defendant shall work together to file a reply and appear at any hearing. This provision is a
23 material component of the Consent Judgment and shall be treated as such in the event of a breach.


24 **12. MODIFICATION**

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

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1 **13. AUTHORIZATION**

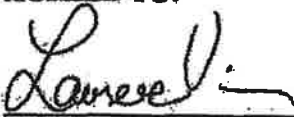
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5 **AGREED TO:**
6 
7 _____
8 Plaintiff: PETER ENGLANDER
9
10 Dated: October 11, 2013

AGREED TO:

Settling Defendant:
NORSTAR OFFICE PRODUCTS, INC.

Dated: _____

12 **AGREED TO:**
13 
14 _____
15 Plaintiff: LAURENCE VINO CUR
16
17 Dated: October 11, 2013

AGREED TO:

Defendant INTERCON, INC.

Dated: _____

AGREED TO:

Settling Defendant:
BENETT'S ITALIA, INC.

Dated: _____

1 **13. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

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8 Plaintiff: PETER ENGLANDER


9 Settling Defendant:
10 NORSTAR OFFICE PRODUCTS, INC.

11 Dated: _____

Dated: 10/11/13

12 **AGREED TO:**

AGREED TO:

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15 Plaintiff: LAURENCE VINOUCUR

Defendant INTERCON, INC.

16 Dated: _____

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18 **AGREED TO:**

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21 Settling Defendant:
22 BENETT'S ITALIA, INC.

23 Dated: _____

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1 **13. AUTHORIZATION**

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3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5 **AGREED TO:**

AGREED TO:

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7
8 Plaintiff: PETER ENGLANDER

Settling Defendant:
NORSTAR OFFICE PRODUCTS, INC.

9
10 Dated: _____

Dated: _____

11
12 **AGREED TO:**

AGREED TO:

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15 Plaintiff: LAURENCE VINO CUR

Timothy P. Hendon
Defendant INTERCOM, INC.

16
17 Dated: _____

Dated: 10/14/2013

AGREED TO:

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21 Settling Defendant:
BENETT'S ITALIA, INC.

22
23 Dated: _____

1 **13. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

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8 Plaintiff PETER ENGLANDER

Settling Defendant:
NORSTAR OFFICE PRODUCTS, INC.

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10 Dated: _____

Dated: _____

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13 **AGREED TO:**

AGREED TO:

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15 Plaintiff LAURENCE VINGCUR

Defendant INTERCON, INC.

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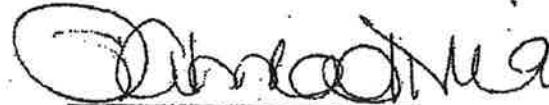
17 Dated: _____

Dated: _____

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Settling Defendant:
BENETT'S ITALIA, INC.

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Dated: 10/11/13

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EXHIBIT A

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- I. Settling Defendant: **Norstar Office Products, Inc.**
- II. Names of Releases (Optional; May be Partial): **OfficeMax, Inc., and Kantor's Discount Office Furniture and Equipment, Inc.**
- III. Types of Covered Products: **Upholstered Furniture**
- IV. Types of Additional Products: **None**
- V. Settling Defendant's Required Settlement Payments:
 - A. Initial Payment: **\$66,000**
 - 1. Initial Civil Penalty: **\$ 22,000**
 - 2. Attorneys' Fees and Costs: **\$44,000**
 - B. Second Civil Penalty: **\$24,000**
 - 1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: **\$14,000**
 - 2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: **\$10,000**
 - C. Third Civil Penalty: **\$ 14,000**
 - 1. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: **\$ 8,000**
 - 2. Section 4.1.4(iv) Partial Penalty Waiver, if applicable: **\$ 6,000**

VI. Persons to receive notices under Section 8:

Catherine Malet
Operation Manager
Norstar Office Products
5353 Jillson Street
Commerce, CA 90040
Fax: 323-262-2300
Email: Catherine@bosschair.com

With a copy to:

Joshua Bloom, Esq.
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435
Fax: 415-228-5450
Email: jab@bcitlaw.com

EXHIBIT A

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I. Settling Defendant: **Benetti's Italia, Inc.**

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

III. Types of Covered Products: Upholstered Furniture

IV. Types of Additional Products: None

V. Settling Defendant's Required Settlement Payments:

A. Initial Payment: \$31,000

1. Initial Civil Penalty: \$6,000
2. Attorneys' Fees and Costs: \$25,000

B. Second Civil Penalty: \$6,400

1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: \$3,700
2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: \$ 2,700

C. Third Civil Penalty: \$3,700

1. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: \$2,000
2. Section 4.1.4(iv) Partial Penalty Waiver, if applicable: \$1,700

VI. Initial Payment Schedule:

1. October 31, 2013: \$6,000 Initial Civil Penalty
2. November 30, 2013: \$5,000 Fees and Costs
3. December 31, 2013: \$5,000 Fees and Costs
4. January 31, 2014: \$5,000 Fees and Costs
5. February 28, 2014: \$5,000 Fees and Costs
6. March 31, 2014: \$5,000 Fees and Costs

VI. Persons to receive notices under Section 8:

Sarah Ahmadinia
Vice President, C.O.O.
Benetti's Italia, Inc.
18554 S. Susana Rd.
Compton, CA 90221
Fax: 310-768-8150
Email: sahmadinia@aol.com

With a copy to:

Joshua Bloom, Esq.
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435
Fax: 415-228-5450
Email: jab@bcltlaw.com

EXHIBIT A

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I. Settling Defendant: Intercon, Inc.

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

III. Types of Covered Products: Upholstered Furniture

IV. Types of Additional Products: None

V. Settling Defendant's Required Settlement Payments:

A. Initial Payment: \$53,000

1. Initial Civil Penalty: \$16,000
2. Attorneys' Fees and Costs: \$ 37,000

B. Second Civil Penalty: \$17,600

1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: \$10,000
2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: \$7,600

C. Third Civil Penalty: \$10,000

1. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: \$5,700
2. Section 4.1.4(iv) Partial Penalty Waiver, if applicable: \$4,300

VI. Persons to receive notices under Section 8:

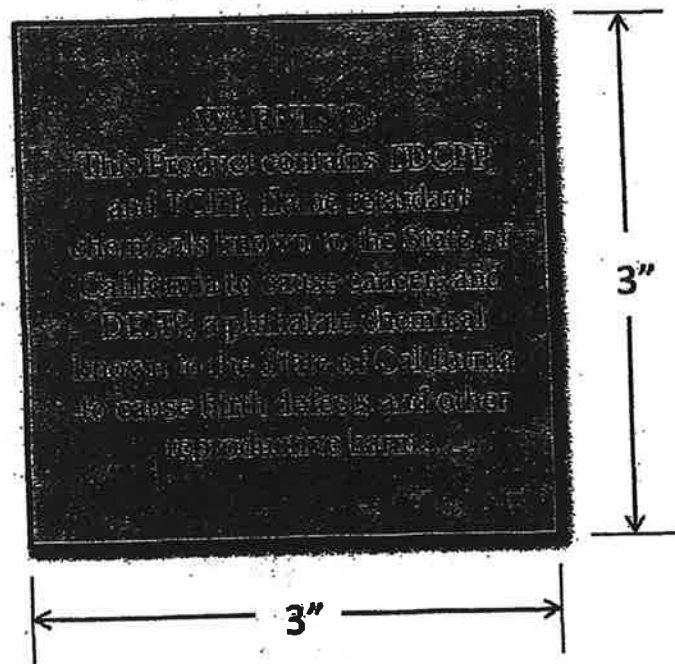
Tim Newlin
Sourcing Manager
Intercon, Inc.
635 N. Billy Mitchell Rd., Suite: B
Salt Lake City, Utah 84116
Email: newlin@intercon1.com

With a copy to:

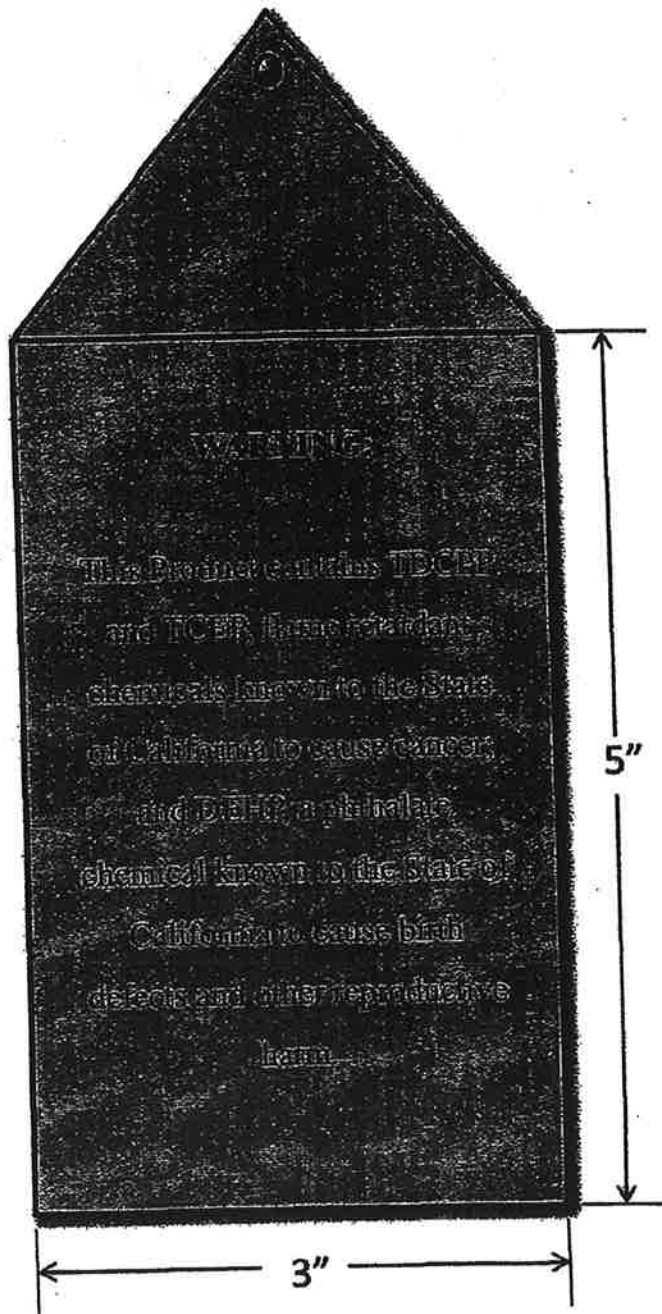
Joshua Bloom, Esq.
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



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

WARNING:

This Product contains TDCPP and TCEP, flame retardant chemicals known to the State of California to cause cancer; and DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

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