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ENDORSED
FILED
ALAMEDA COUNTY

MAR - 7 2014

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 EUROMARKET DESIGNS, INC.; et al.

18 Defendant.

Case No. RG13673023

**~~PROPOSED~~ JUDGMENT PURSUANT
TO PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT AS TO
DEFENDANT EUROMARKET DESIGNS,
INC.**

Date: March 7, 2014

Time: 9:00 a.m.

Dept.: 17

Judge: Hon. George C. Hernandez, Jr.

Exhibit 1
(To Judgment)

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Attorneys for Plaintiff
PETER ENGLANDER

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

PETER ENGLANDER
Plaintiff,

v.

EUROMARKET DESIGNS, INC.; et al.
Defendants.

) Case No. RG13673023
)
) *Assigned for All Purposes to*
) *The Hon. George C. Hernandez, Jr.,*
) *Department 17*
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT EUROMARKET**
) **DESIGNS, 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 plaintiff Peter Englander
4 (“Englander”) and defendant Euromarket Designs, Inc. (“Euromarket”), with Englander and
5 Euromarket 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 Euromarket employs ten or more persons and is a person in the course of doing business for
12 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 **1.4.1** Englander alleges that Euromarket manufactured, imported, sold and/or
16 distributed for sale in California, upholstered furniture with foam padding containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without providing the clear and reasonable health hazard
18 warnings required by Proposition 65.

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

24 **1.5 Product Description**

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

1 **1.6 Notices of Violation**

2 On or about January 2, 2013, Englander issued to Shenandoah Furniture, Inc., and certain
3 requisite public enforcement agencies a "60-Day Notices of Violation" ("Shenandoah Notice") that
4 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
5 failure to warn customers, consumers, and workers in California that the Products expose users to
6 TDCPP.

7 On or about February 5, 2013, Englander issued to Euromarket and certain requisite public
8 enforcement agencies a "60-Day Notices of Violation" ("Euromarket Notice") that provided the
9 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
10 customers, consumers, and workers in California that the Products expose users to TDCPP.

11 Based on his further investigation, Englander issued a 60-day notice to Euromarket on
12 March 13, 2013 ("Supplemental Notice") that provided the recipients with notice of alleged
13 violations of Proposition 65 based on the alleged failure to warn customers, consumers, and
14 workers in California that the Products expose users to TCEP.

15 The Shenandoah Notice, Euromarket Notice and Supplemental Notice shall hereinafter
16 collectively be referred to as the "Notices." To the best of the Parties' knowledge, no public
17 enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices

18 **1.7 Complaint**

19 On April 10, 2013, Englander filed a First Amended Complaint in the instant action naming
20 Euromarket as a defendant, and asserting a cause of action for the alleged violations of Proposition
21 65 that are the subject of the Notice. Upon entry of this Consent Judgment, the Complaint shall be
22 deemed amended *nunc pro tunc* to include the violations of Proposition 65 alleged by Englander in
23 the Supplemental Notice.

24 **1.8 No Admission**

25 Euromarket denies the material, factual, and legal allegations contained in the Notice and
26 Complaint and maintains that all of the products that it has sold or distributed for sale in California,
27 including the Products, have been and are in compliance with all laws. Nothing in this Consent
28 Judgment shall be construed as an admission by Euromarket of any fact, finding, conclusion of law,

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

5 **1.9 Consent to Jurisdiction**

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

11 **2. DEFINITIONS**

12 **2.1 California Customer**

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

17 **2.2 No Detectable Amount**

18 "No Detectable Amount" shall mean no more than 25 parts per million ("ppm") (the
19 equivalent of .0025%) of any one chemical in any material, component, or constituent of a
20 subject product, when analyzed by a laboratory accredited by NVLAP (National Volunteer
21 Laboratory Accreditation Program), American Association for Lab Accreditation (A2LA), ANSI-
22 ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International
23 Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson
24 Laboratory Accreditation, Inc. (PJLA), or International Laboratory Accreditation
25 Cooperation (ILAC) (such laboratory referred to as an "Accredited Lab") pursuant to EPA testing
26 methodologies 3545 and 8270C, or equivalent methodologies utilized by such Accredited
27 Laboratory or federal or state agencies to determine the presence, or measure the amount, of
28

1 TDCPP or TCEP in a solid substance (such methodologies referred to as "Approved
2 Methodologies").

3 **2.3 Effective Date**

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

5 **2.4 Private Label Covered Products**

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

9 **2.5 Reformulated Products**

10 "Reformulated Products" shall mean Products that contain No Detectable Amount of
11 TDCPP and TCEP.

12 **2.6 Reformulation Standard**

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

15 **2.7 Retailer**

16 "Retailer" means a person that offers a Product directly for sale to consumers in California.

17 **3. INJUNCTIVE RELIEF: REFORMULATION**

18 **3.1 Reformulation Commitment**

19 Commencing on March 31, 2014, and continuing thereafter, Euromarket shall not
20 manufacture or import for distribution or sale to California Customers for sale in California, or
21 cause to be manufactured or imported for distribution or sale to California Customers for sale in
22 California, any Products that are not Reformulated Products.

23 **3.2 Vendor Notification/Certification**

24 No later than 30 days after the Effective Date, Euromarket shall provide written notice to all
25 of its then-current vendors of Products that are sold or offered for sale in California, or sold or
26 offered for sale to California Customers, instructing each such vendor to use reasonable efforts to
27 provide only Reformulated Products. In addressing the obligation set forth in the preceding
28 sentence, Euromarket shall not employ statements to encourage a vendor to delay compliance with

1 the Reformulation Standard. No later than April 1, 2014, Euromarket shall obtain a written
2 certification from each such vendor, and any other vendors engaged as of that date, that the
3 Products it manufactures comply with the Reformulation Standard. Such certifications shall be held
4 by Euromarket for at least two years from receipt, and shall be made available to Englander upon
5 request.

6 3.3 Products No Longer in Euromarket's Control

7 No later than 30 days after the Effective Date, Euromarket shall send a letter ("Notification
8 Letter"), electronic or otherwise, to: (1) each California Customer and/or Retailer which it, after
9 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
10 ("Exemplar Product"); and (2) any California Customer and/or Retailer which it, before October 28,
11 2011, supplied the Exemplar Product for resale in California and that Euromarket has reason to
12 believe has any inventory of Exemplar Products for resale in California as of the January 1, 2013.
13 The Notification Letter shall advise the recipient that the Exemplar Product "contains TDCPP
14 and/or TCEP, chemicals known to the State of California to cause cancer," and request that the
15 recipient either: (a) label the Exemplar Products remaining in inventory prior to offering them for
16 sale in California, or to California Customers, pursuant to Section 3.5; or (b) return, at
17 Euromarket's expense, all units of the Exemplar Product held for sale in California, or to California
18 Customers, to Euromarket or a party Euromarket has otherwise designated. The Notification Letter
19 shall require a response from the recipient within 20 days confirming whether the Exemplar Product
20 will be labeled or returned. The Settling Defendant shall maintain records of all Notification
21 Letters and responses for two years after the Effective Date and shall promptly produce copies of
22 such records upon Englander' written request.

23 3.4 Current Inventory

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

1 3.5 **Product Warnings**

2 3.5.1 **Product Labeling.** Any warning provided under Section 3.3 or 3.4 above
3 shall be affixed to the packaging, labeling, or directly on each Product. Each warning shall be
4 prominently placed with such conspicuousness when compared with other words, statements,
5 designs, or devices as to render it likely to be read and understood by an ordinary individual under
6 customary conditions before purchase. Each warning shall be provided in a manner such that the
7 consumer or user understands to which specific Product the warning applies, so as to minimize the
8 risk of consumer confusion.

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

10 **WARNING:** This product contains [TDCPP and/or
11 TCEP], flame retardant chemicals
12 known to the State of California to
13 cause cancer.¹

14 3.5.2 **Internet Website Warning.** For any Product for which a warning is
15 provided pursuant to Section 3.5.1, a warning also shall be given in conjunction with Euromarket's
16 sale of the Products into California, or to California Customers online via the internet. The warning
17 shall appear on one or more web pages displayed to a purchaser prior to completing payment and/or
18 during the "checkout" process. The following warning statement shall be used and shall: (a)
19 appear adjacent to or immediately following the display, description, or price of the Product; (b)
20 appear as a pop-up box; or (c) otherwise appear automatically to the consumer. The warning text
21 shall be the same type size or larger than the Product description text, and shall state:

22 **WARNING:** This product contains [TDCPP and/or
23 TCEP], flame retardant chemicals
24 known to the State of California to
25 cause cancer.²

26 ¹ The regulatory safe harbor warning language specified in 27 Cal. Code Regs. § 25603.21
27 shall be deemed acceptable under this Consent Judgment, if Euromarket had employed it prior to
28 the Effective Date. Euromarket must obtain Court approval for any alternative warning statement
other than that set forth above or the regulatory safe harbor language found at 27 Cal. Code Regs. §
25603.2, and/or for any proposed alternate method of warning transmission. In doing so,
Euromarket agrees to provide all Parties and the Office of the Attorney General with timely notice
and an opportunity to oppose or comment on the proposed warning or transmission method 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."

² The preceding footnote applies in this context as well.

1 **3.6 Alternatives to Interim Warnings**

2 **3.6.1 Re Product No Longer in Euromarket's Control.** Euromarket's obligation
3 under Section 3.3 shall be relieved if it provides Englander with written notice on or before
4 December 15, 2013 certifying that only Exemplar Products meeting the Reformulation Standard
5 will be offered for sale by Euromarket in California, or to California Customers for sale in
6 California, after December 31, 2013.

7 **3.6.2 Re Current Inventory.** The obligations of Euromarket under Section 3.4
8 shall be relieved upon Englander's receipt of Euromarket's written certification on or before
9 December 15, 2013, that, as of June 30, 2014, it will only distribute or cause to be distributed for
10 sale, or sell in California, or to California Customers for sale in California, Products (i.e., Products
11 beyond the Exemplar Product) meeting the Reformulation Standard. The certifications provided by
12 this 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, Euromarket shall pay
16 the civil penalties shown on Exhibit A. Each penalty payment will be allocated in accordance with
17 California Health & Safety Code section 25249.12(c)(1) and (d), with 75% of the funds remitted to
18 the California Office of Environmental Health Hazard Assessment ("OEHHA"), 25% of the penalty
19 remitted to "The Chanler Group in Trust for Englander." Each penalty payment shall be delivered
20 within two business days of the date it is due at the addresses provided in Section 4.5, below.

21 Euromarket shall be liable for payment of simple interest at a rate of 10% for all amounts due and
22 owing that are not received within two business days of the date they are due, if any.

23 **4.1.1 Initial Civil Penalty.** On or before the Effective Date, Euromarket shall
24 make an initial civil penalty payment in the amount identified on Exhibit A.

25 **4.1.2 Second Civil Penalty.** On or before January 15, 2014, Euromarket shall
26 make a second civil penalty payment in the amount identified on Exhibit A. The amount of the
27 second penalty may be reduced according to any penalty waiver for which Euromarket is eligible
28 under Sections 4.1.4(i) and 4.1.4(iii), below.

1 **4.1.3 Third Civil Penalty.** On or before November 30, 2014, Euromarket shall
2 make a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
3 penalty may be reduced according to any penalty waiver for which Euromarket is eligible under
4 Sections 4.1.4(ii) and 4.1.4(iv), below.

5 **4.1.4 Reductions to Civil Penalty Payment Amounts.** Euromarket may reduce
6 the amount of the second and/or third civil penalty payments identified on Exhibit A by providing
7 Englander with certification of certain efforts undertaken to reformulate its Products or limit the
8 ongoing sale of non-reformulated Products in California. The option to provide a written
9 certification in lieu of making a portion of Euromarket's second or third civil penalty payments
10 constitutes a material term of this Consent Judgment, and with regard to such term, time is of the
11 essence.

12 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of
Products Sold or Offered for Sale in California.**

13 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if, as of
14 November 1, 2013, and continuing thereafter, Euromarket agrees that it will only manufacture or
15 import for distribution or sale to California Customers for sale in California or cause to be
16 manufactured or imported for distribution or sale to California Customers for sale in California,
17 Reformulated Products. An officer or other authorized representative shall provide Englander with
18 a written certification confirming compliance with such conditions, no later than December 15,
19 2013.

20 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

21 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if, as of March
22 15, 2014, and continuing thereafter, Euromarket agrees that it will only manufacture or import for
23 distribution or sale in California or cause to be manufactured or imported for distribution or sale in
24 California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate
25 ("TDBPP") in a detectable amount of more than 25 parts per million ("ppm") (the equivalent of
26 .0025%) in any material, component, or constituent of a subject product, when analyzed by by an
27 Accredited Lab pursuant to an Approved Methodology. An officer or other authorized
28

1 representative shall provide Englander with a written certification confirming compliance with such
2 conditions, no later than November 15, 2014.

3 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Non-Reformulated**
4 **Exemplar Products from the California Market.**

5 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
6 other authorized representative of Euromarket provides Englander with written certification, by
7 December 15, 2013, confirming that each California Customer or Retailer to which it supplied the
8 Exemplar Product for resale in California after October 28, 2011, has elected, pursuant to Section
9 3.3, to return all Exemplar Products held for sale in California.³

10 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
11 **California of Inventory of Non-Reformulated Products.**

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

17 **4.2 Representations and Warranties**

18 Euromarket represents that the sales data and information concerning its size, knowledge of
19 TDCPP/TCEP presence, and prior reformulation and/or warning efforts, provided to Englander
20 were true and accurate based on its knowledge and are material factors upon which Englander relied
21 to determine the amount of civil penalties assessed pursuant to Health and Safety Code section
22 25249.7(b). If, within nine months of the Effective Date, Englander discovers and presents to
23 Euromarket, evidence demonstrating that the preceding representation and warranty was materially
24 inaccurate, then Euromarket shall have 30 days to meet and confer regarding Englander's
25 contention. Should this 30 day period pass without any resolution between Englander and
26 Euromarket, Englander shall be entitled to file a formal legal claim including, but not limited to, a
27 claim for damages for breach of contract; Euromarket reserves all defenses respecting any such

28 ³ For purposes of this Section, the term Exemplar Products shall further include Products for
which Englander has, prior to August 31, 2013, provided Euromarket 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 claim. Euromarket further represents that in implementing the requirements set forth in Sections
2 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercially reasonable best
3 efforts to achieve reformulation of its Products on a nationwide basis and not employ statements
4 that will encourage a vendor to limit its compliance with the Reformulation Standard to goods
5 intended for sale to California Consumers.

6 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

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

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

⁵ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 **4.4 Reimbursement of Fees and Costs**

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

19 **4.5 Payment Procedures**

20 **4.5.1 Payment Addresses.**

21 (a) All payments owed to Englander and his counsel, pursuant to
22 Sections 4.1 and 4.2 shall be delivered to the following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710

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

1 **4.6.3 Payments to OEHHA.** All payments to OEHHA made under this Consent
2 Judgment are to be delivered directly to OEHHA (Memo line "Prop 65 Penalties"). The initial
3 civil penalty payment shall be made within 10 days of the date the time for appeal of an Order
4 granting approval of this Consent Judgment has run without an appeal being taken or the date the
5 Order granting approval of this Consent Judgment is affirmed on appeal . Provided the Consent
6 Judgment has been approved, all additional civil penalty payments are to be made the date
7 provided herein. All payments under this Consent Judgment shall be delivered to one of the
8 addresses provided in Section 4.5.1.

9 **5. CLAIMS COVERED AND RELEASED**

10 **5.1 Englander's Release of Proposition 65 Claims**

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

25 **5.2 Englander's Individual Releases of Claims**

26 Englander, in his individual capacity only and *not* in any representative capacity, provides a
27 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
28 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,

1 liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or
2 unsuspected, limited to and arising out of alleged or actual exposures to TDCPP, TCEP, and/or
3 TDBPP in Products manufactured, imported, distributed, or sold by Euromarket prior to the
4 Effective Date. The Parties further understand and agree that this Section 5.2 release shall not
5 extend upstream to any entity that manufactured any Products, or any component parts thereof, or
6 any distributors or suppliers who sold any Products, or any component parts thereof, except to the
7 extent, and solely to the extent, those Products, or any component parts thereof, were offered for
8 sale in California by Euromarket, including but not limited to Private Labeled Covered Products
9 offered for sale in California by Euromarket. Nothing in this Section affects Englander's right to
10 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
11 Euromarket's Products.

12 **5.3 Euromarket's Release of Englander**

13 Euromarket, on its own behalf, and on behalf of its past and current agents, representatives,
14 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
15 attorneys and other representatives, through the Effective Date, for any and all actions taken or
16 statements made (or those that could have been taken or made) by Englander and his attorneys and
17 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
18 Proposition 65 against it in this matter, or with respect to the Products.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved in its entirety and entered by the
21 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
22 within one year after it has been fully executed by all Parties. Englander and Euromarket agree to
23 support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent
24 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
25 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this
26 Consent Judgment, which motion Englander shall draft and file and Euromarket shall support,
27 appearing at the hearing if so requested. If any third-party objection to the motion is filed,
28 Englander and Euromarket agree to work together to file a reply and appear at any hearing. This

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

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

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California.
17 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
18 reason of law generally, or as to the Products, then Euromarket may provide Englander with notice
19 of any asserted change in the law, and shall have no further obligations pursuant to this Consent
20 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this
21 Consent Judgment shall be interpreted to relieve Euromarket from its obligation to comply with any
22 pertinent state or federal law or regulation.

23 **8. NOTICE**

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

3 To Euromarket:

4 At the address shown on Exhibit A

To Englander:

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

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

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

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

14 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

17 **11. MODIFICATION**

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

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1 **12. 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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7 
8 Plaintiff PETER ENGLANDER

Defendant EUROMARKET DESIGNS, INC.

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10 Dated: November 27, 2013

Dated: _____

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1 **12. 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:

6
7 _____
8 Plaintiff PETER ENGLANDER

Juliana J. Daniels
Defendant EUROMARKET DESIGNS, INC.

9
10 Dated: _____

Dated: 11/20/15

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1 EXHIBIT A

2 I. Name of Settling Defendant:

3 EUROMARKET DESIGNS, INC. ("Euromarket")

4 II. Names of Releasees:

5 SHENANDOAH FURNITURE, INC - As to those Products manufactured, distributed, sold
6 and/or offered for sale by Euromarket only.

7 III. Types of Products:

Upholstered Furniture manufactured, distributed, sold or
8 offered for sale by Euromarket (including, but not limited to,
9 sofas, loveseats, chairs, stools, ottomans, headboards, and
10 other furniture that utilizes polyurethane foam) and
11 replacement parts and components offered by Euromarket for
12 said Upholstered Furniture

11 IV. Euromarket Designs, Inc.'s Required Settlement Payments

12 A. Civil Penalties Euromarket Designs, Inc., \$96,000, as follows:

13 \$30,000 initial payment due on or before the Effective Date;

14 \$42,000 second payment due on or before January 15, 2014, of which
15 \$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

16 \$24,000 third payment due on or before November 30, 2014, of which
17 \$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).

18 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
19 attributable to Euromarket Designs, Inc.: \$42,500.

20 V. Person(s) to receive Notices pursuant to Section 8

21 Victoria L. Donati
22 Name

John Olech
Name

23 General Counsel
24 Title

Director of Global Partner
24 Title Operations

25 Address Crate & Barrel

Address Crate & Barrel

26 1250 Techny Road

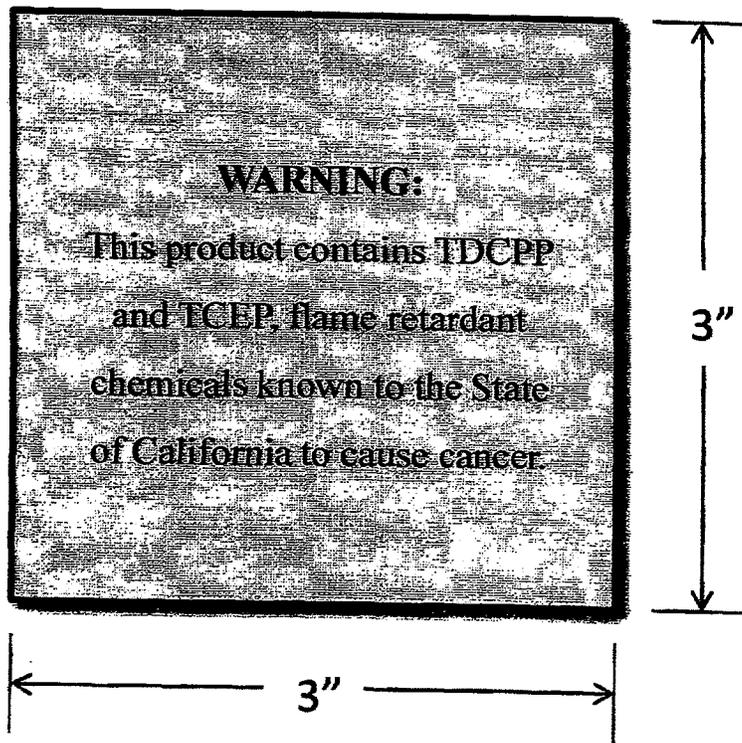
1250 Techny Road

27 Northbrook, IL 60062

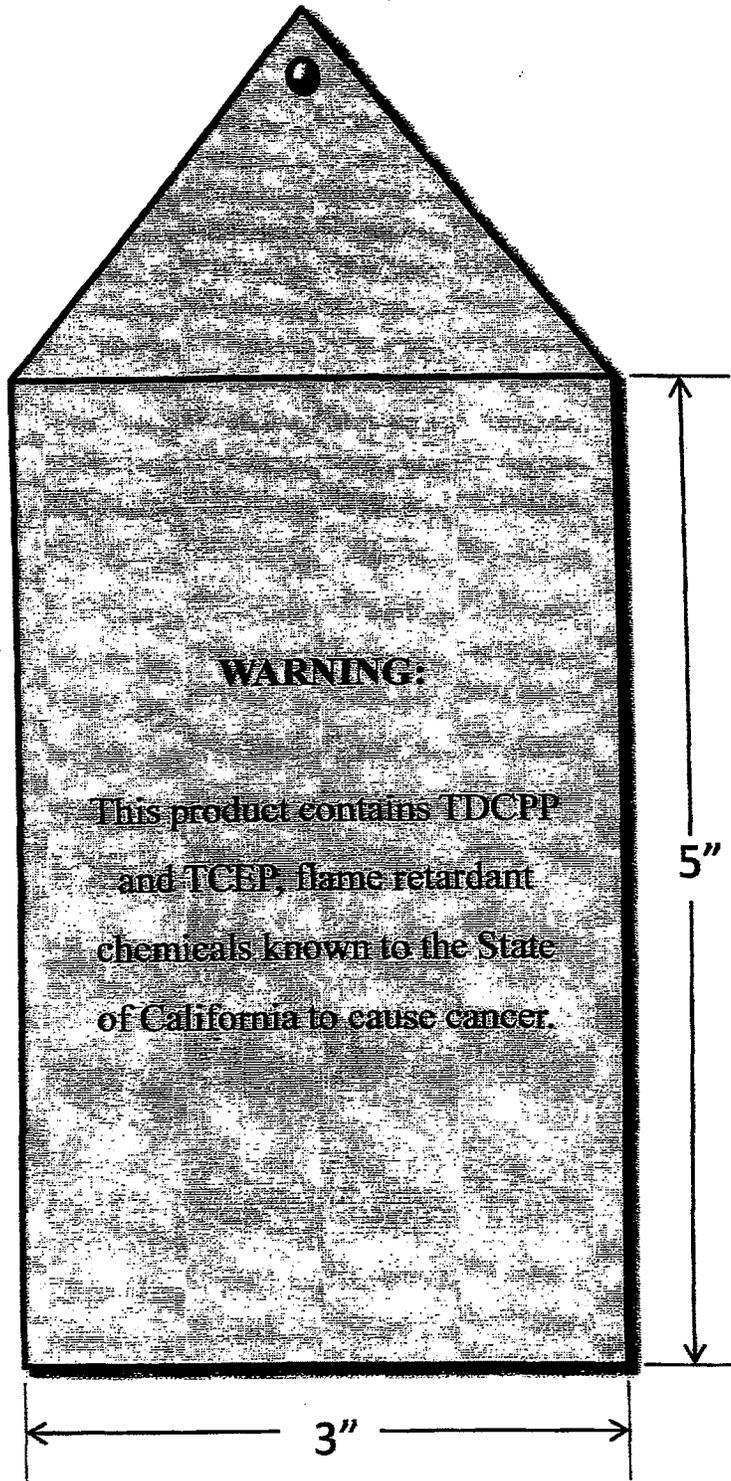
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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.

8.5"

11"

INSTRUCTIONS:

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