

1 Clifford A. Chanler, State Bar No. 135534  
2 Josh Voorhees, State Bar No. 241436  
3 Stephen E. Cohen, State Bar No. 284416  
4 THE CHANLER GROUP  
5 2560 Ninth Street, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118  
9  
10 Attorneys for Plaintiff  
11 PETER ENGLANDER

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 28 2014

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

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

12 PETER ENGLANDER,  
13 Plaintiff,  
14 v.  
15 IDEAVILLAGE PRODUCTS CORP; et al.,  
16 Defendants.

Case No. RG 13-676717

**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AND [PROPOSED]  
CONSENT JUDGMENT**

Date: February 28, 2014  
Time: 9:00 a.m.  
Dept.: 17  
Judge: Hon. George C. Hernandez, Jr.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**, and as further modified by the Order approving the Proposition 65 settlement and Consent Judgment. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

**IT IS SO ORDERED.**

Dated: FEB 28 2014

GEORGE C. HERNANDEZ, JR.  
JUDGE OF THE SUPERIOR COURT

**Exhibit 1**  
**(To Judgment)**

1 Clifford A. Chanler, State Bar No. 135534  
2 Josh Voorhees, State Bar No. 241436  
3 Stephen E. Cohen, State Bar No. 284416  
4 THE CHANLER GROUP  
5 2560 Ninth Street  
6 Parker Plaza, Suite 214  
7 Berkeley, CA 94710  
8 Telephone: (510) 848-8880  
9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff  
11 PETER ENGLANDER

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

14 PETER ENGLANDER,  
15 Plaintiff,  
16 v.  
17 IDEAVILLAGE PRODUCTS CORP; et  
18 al.,  
19 Defendants.

) Case No. RG 13-676717  
)  
)  
) Assigned for All Purposes to  
) Judge George C. Hernandez, Jr.,  
) Department 17  
)  
) **[PROPOSED] CONSENT JUDGMENT AS**  
) **TO IDEAVILLAGE PRODUCTS CORP**  
)  
) **(Health & Safety Code § 25249.6 et seq.)**  
)  
)  
) Complaint Filed: April 23, 2013  
)  
)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander  
4 (“Englander”) and Ideavillage Products Corp (“Ideavillage”), with Englander and Ideavillage  
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 eliminating  
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Ideavillage Products Corp**

11 Ideavillage 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 &  
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Englander alleges that Ideavillage 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”) and tris(2-chloroethyl) phosphate (“TCEP”) without the  
18 requisite Proposition 65 health hazard warnings. Englander alleges that TDCPP and TCEP escapes  
19 from foam padding, leading to human exposures.

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 Proposition 65 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).

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1 TDCPP and TCEP shall hereinafter be collectively referred to as the “Listed Chemicals.”

2 **1.5 Product Description**

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

8 **1.6 Notices of Violation**

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

13 On or about March 13, 2013, Englander issued to Ideavillage and certain requisite public  
14 enforcement agencies a “60-Day Notice of Violation” (“TCEP Notice”) that provided the recipients  
15 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,  
16 consumers and workers in California that the Products expose users to TCEP.

17 The TDCPP Notice and TCEP Notice shall hereinafter collectively be referred to as the  
18 “Notices.” 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 Complaint**

21 On April 23, 2013, Englander filed a Complaint in the Superior Court in and for the County  
22 of Alameda against Ideavillage, other defendants and Does 1 through 150, *Peter Englander v.*  
23 *Ideavillage Products Corp, et al.*, Case No. RG 13-676717, alleging violations of Proposition 65,  
24 based in part on the alleged unwarned exposures to TCEP contained in the Products. On August 1,  
25 2013, Englander filed a First Amended Complaint (“Complaint”), alleging additional violations of  
26 Proposition 65 against Ideavillage, including unwarned exposures to TDCPP.



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**2.3 Effective Date**

“Effective Date” shall mean October 15, 2013.

**2.4 Private Label Covered Products**

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

**2.5 Reformulated Products**

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

**2.6 Reformulation Standard**

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

**2.7 Retailer**

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

**3. INJUNCTIVE RELIEF: REFORMULATION**

**3.1 Reformulation Commitment**

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

**3.2 Vendor Notification/Certification**

On or before the Effective Date, Ideavillage shall provide written notice to all of its then-current vendors of the Products that will be sold or offered for sale in California, or to California Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated Products for potential sale in California. In addressing the obligation set forth in the preceding sentence, Ideavillage shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. Ideavillage shall subsequently obtain written certifications, no



1 later than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products  
2 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications  
3 shall be held by Ideavillage for at least two years after their receipt and shall be made available to  
4 Englander upon request.

5 **3.3 Products No Longer in Ideavillage's Control**

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

22 **3.4 Current Inventory**

23 Any Products in, or manufactured and en route to, Ideavillage's inventory as of or after  
24 December 31, 2013, that do not qualify as Reformulated Products and that Ideavillage has reason to  
25 believe may be sold or distributed for sale in California, shall contain a clear and reasonable  
26 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**

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

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

10                               **WARNING:** This product contains TCEP and  
11    TDCPP, flame retardant chemicals  
12    known to the State of California to  
  cause cancer.<sup>1</sup>

13           Attached as Exhibit B are template warnings developed by Englander that are deemed to be  
14 clear and reasonable for purposes of this Consent Judgment.<sup>2</sup> Provided that the other requirements  
15 set forth in this Section are addressed, including as to the required warning statement and method of  
16 transmission as set forth above, Ideavillage remains free not to utilize the template warnings.

17                   3.5.2   **Internet Website Warning**

18           A warning shall be given in conjunction with the sale of the Products to California, or  
19 California Customers, via the internet, which warning shall appear on one or more web pages

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20           <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be  
21 used if Ideavillage had begun to use it, prior to the Effective Date. If Ideavillage seeks to use  
22 alternative warning language, other than the language specified above or the safe harbor warning  
23 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,  
24 Ideavillage 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."

25           <sup>2</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag  
26 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side  
27 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring  
28 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 displayed to a purchaser during the checkout process. The following warning statement shall be  
2 used and shall: (a) appear adjacent to or immediately following the display, description, or price of  
3 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

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

5 **WARNING:** This product contains TCEP and  
6 TDCPP, flame retardant chemicals  
7 known to the State of California to  
8 cause cancer.<sup>3</sup>

9 **3.6 Alternatives to Interim Warnings**

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

19 **4. MONETARY PAYMENTS**

20 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

21 In settlement of all the claims referred to in this Consent Judgment, Ideavillage shall pay the  
22 civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment  
23 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d),  
24 with 75% of the funds remitted to the California Office of Environmental Health Hazard  
25 Assessment (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for  
26 Englander.” Each penalty payment shall be made within two business days of the date it is due and  
27 be delivered to the addresses listed in Section 4.5 below. Ideavillage shall be liable for payment of

28 <sup>3</sup> Footnote 1, *supra*, applies in this context as well.

1 interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are  
2 not received within two business days of the due date.

3 4.1.1 Initial Civil Penalty. On or before the Effective Date, Ideavillage shall make  
4 an initial civil penalty payment in the amount identified on Exhibit A.

5 4.1.2 Second Civil Penalty. On or before January 15, 2014, Ideavillage shall make  
6 a second civil penalty payment in the amount identified on Exhibit A. The amount of the second  
7 penalty may be reduced according to any penalty waiver Ideavillage is eligible for under Sections  
8 4.1.4(i) and 4.1.4(iii), below.

9 4.1.3 Third Civil Penalty. On or before November 30, 2014, Ideavillage shall  
10 make a third civil penalty payment in the amount identified on Exhibit A. The amount of the third  
11 penalty may be reduced according to any penalty waiver Ideavillage is eligible for under Sections  
12 4.1.4(ii) and 4.1.4(iv), below.

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

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

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

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

3 **4.2 Representations**

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

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

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

20 If Englander provides notice and appropriate supporting information to Ideavillage that  
21 levels of the Listed Chemicals in excess of the Reformulation Standard have been detected in one or  
22 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported  
23 after a deadline for meeting the Reformulation Standard has arisen for Ideavillage under Sections  
24 3.1 or 3.6 above, Ideavillage may elect to pay a stipulated penalty to relieve any further potential  
25 liability under Proposition 65 or sanction under this Consent Judgment as to Products sourced from  
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1 the vendor in question.<sup>5</sup> The stipulated penalty shall be \$1,500 if the violation level is below 100  
2 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for  
3 any amount in excess of the Reformulation Standards but under 250 ppm.<sup>6</sup> Englander shall further  
4 be entitled to reimbursement of his associated expense in an amount not to exceed \$5,000  
5 regardless of the stipulated penalty level. Ideavillage under this Section must provide notice and  
6 appropriate supporting information relating to the purchase (e.g. vendor name and contact  
7 information including representative, purchase order, certification (if any) received from vendor for  
8 the exemplar or subcategory of products), test results, and a letter from a company representative or  
9 counsel attesting to the information provided, to Englander within 30 calendar days of receiving test  
10 results from Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the  
11 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, Ideavillage expressed a desire to  
17 resolve the fee and cost issue. Ideavillage then agreed to pay Englander and his counsel under  
18 general contract principles and the private attorney general doctrine codified at California Code of  
19 Civil Procedure section 1021.5 for all work performed through the mutual execution of this  
20 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to  
21 Ideavillage's attention, negotiating a settlement in the public interest, and seeking court approval of  
22 the same. In addition, the negotiated fee and cost figure expressly includes the anticipated  
23 significant amount of time Plaintiff's counsel will incur to monitor various provisions in this  
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25 <sup>5</sup> This Section shall not be applicable where the vendor in question had previously been  
26 found by Ideavillage 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  
28 penalty for a second exceedance by Ideavillage's vendor at a level between 100 and 249 ppm shall  
not be available after July 1, 2015.

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





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

4                   4.5.3 Tax Documentation. Ideavillage shall issue a separate 1099 form for each  
5 payment required by this Section to: (a) Peter Englander, whose address and tax identification  
6 number shall be furnished upon request after this Consent Judgment has been fully executed by the  
7 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard  
8 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box  
9 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set  
10 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 Ideavillage, its  
14 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents  
15 employees, attorneys, and each entity to whom Ideavillage directly or indirectly distributes or sell  
16 Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers,  
17 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for  
18 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed  
19 Chemicals 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 Listed  
21 Chemicals from the Products, as set forth in the Notice. The Parties further understand and agree  
22 that this Section 5.1 release shall not extend upstream to any entities, other than Ideavillage, 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 Ideavillage, except any entities upstream of  
25 Ideavillage that is a Retailer of a Private Labeled Covered Product shall be released as to the Private  
26 Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer  
27 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 unknown,  
6 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,  
7 TCEP and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and  
8 delineated on Exhibit A) manufactured, imported, distributed, or sold by Ideavillage prior to the  
9 Effective Date.<sup>7</sup> The Parties further understand and agree that this Section 5.2 release shall not  
10 extend upstream to any entities that manufactured the Products or Additional Products, or any  
11 component parts thereof, or any distributors or suppliers who sold the Products or Additional  
12 Products, or any component parts thereof to Ideavillage, except that entities upstream of Ideavillage  
13 that is a Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the  
14 Private Labeled Covered (or Additional) Products offered for sale in California by the Retailer in  
15 question. Nothing in this Section affects Englander’s right to commence or prosecute an action  
16 under Proposition 65 against a Releasee that does not involve Ideavillage’s Products or Additional  
17 Products.

18           **5.3     Ideavillage’s Release of Englander**

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

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27           <sup>7</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as  
28 otherwise specified.

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

17 **7. GOVERNING LAW**

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

1 **8. NOTICES**

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

6 To Ideavillage:

To Englander:

7 At the address shown on Exhibit A

8 Proposition 65 Coordinator  
9 The Chanler Group  
10 2560 Ninth Street  
11 Parker Plaza, Suite 214  
12 Berkeley, CA 94710-2565

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

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

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

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

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

22 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

23 11.1 In addition to the Products, where Ideavillage has identified on Exhibit A additional  
24 products that contain TDCPP and/or TCEP and that are sold or offered for sale by it in California,  
25 or to California Customers ("Additional Products"), then by no later than October 15, 2013,  
26 Ideavillage may provide Englander with additional information or representations necessary to  
27 enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant  
28 to Health & Safety Code section 25249.7, that includes the Additional Products. Polyurethane  
foam that is supplied, shaped or manufactured for use as a component of a product, such as

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

22 11.2 Englander and Ideavillage agree to support the entry of this agreement as a Consent  
23 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The  
24 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed  
25 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall  
26 draft and file. If any third party objection to the noticed motion is filed, Englander and Ideavillage  
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28

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


3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**


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

11  
12 AGREED TO:

13   
14 \_\_\_\_\_  
15 Plaintiff Peter Englander

16  
17 Date: October 10, 2013

AGREED TO:

13   
14 \_\_\_\_\_  
15 Defendant: Ideavillage Products Corp

16  
17 Date: October \_\_, 2013

18 *November 5, 2013*

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EXHIBIT A

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I. Name of Settling Defendant (Mandatory)

Ideavillage Products Corp.

II. Names of Releasees (Optional; May be Partial)

CVS Caremark Corporation; CVS Pharmacy, Inc.

III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

Foam-cushioned pads for children and infants to lie on, such as rest mats

Upholstered furniture

Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

Car seats, strollers

Other (specify): Massaging Pillows containing TDCPP and/or TCEP

IV. Types of Additional Products Ideavillage Products Corp Elects to Address (if any):

V. Ideavillage Products Corp's Required Settlement Payments

A. Civil Penalties for Ideavillage Product Corp: \$86,000, as follows:

\$17,000 initial payment due on or before the Effective Date;

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

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

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VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

A. Fees and Costs for Ideavillage Products Corp: \$43,000.

VII. Person(s) to receive Notices pursuant to Section 8

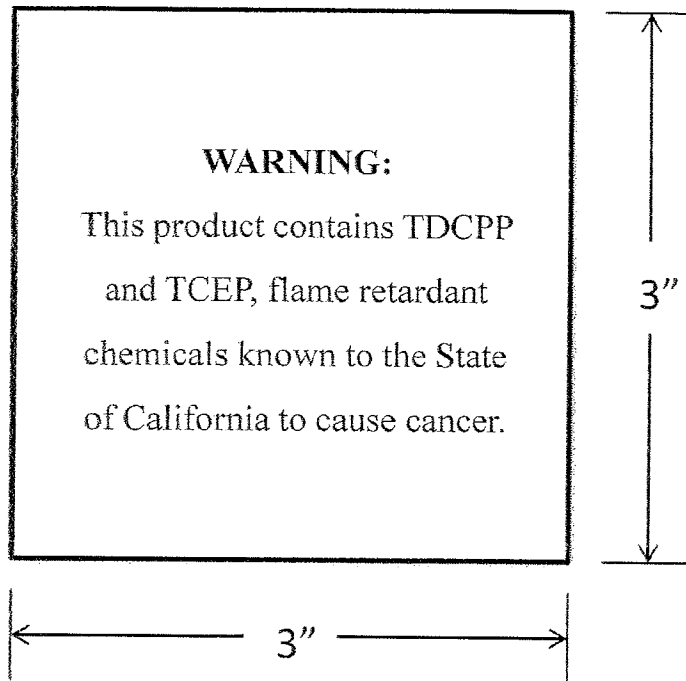
Anand Khubani, President  
Ideavillage Products Corp.  
155 US Route 46 West, 4<sup>th</sup> Floor  
Wayne, NJ 07470

Don Beshada, Esq.  
Beshada Farnese LLP  
108 Wanaque Ave.  
Pompton Lakes, NJ 07442

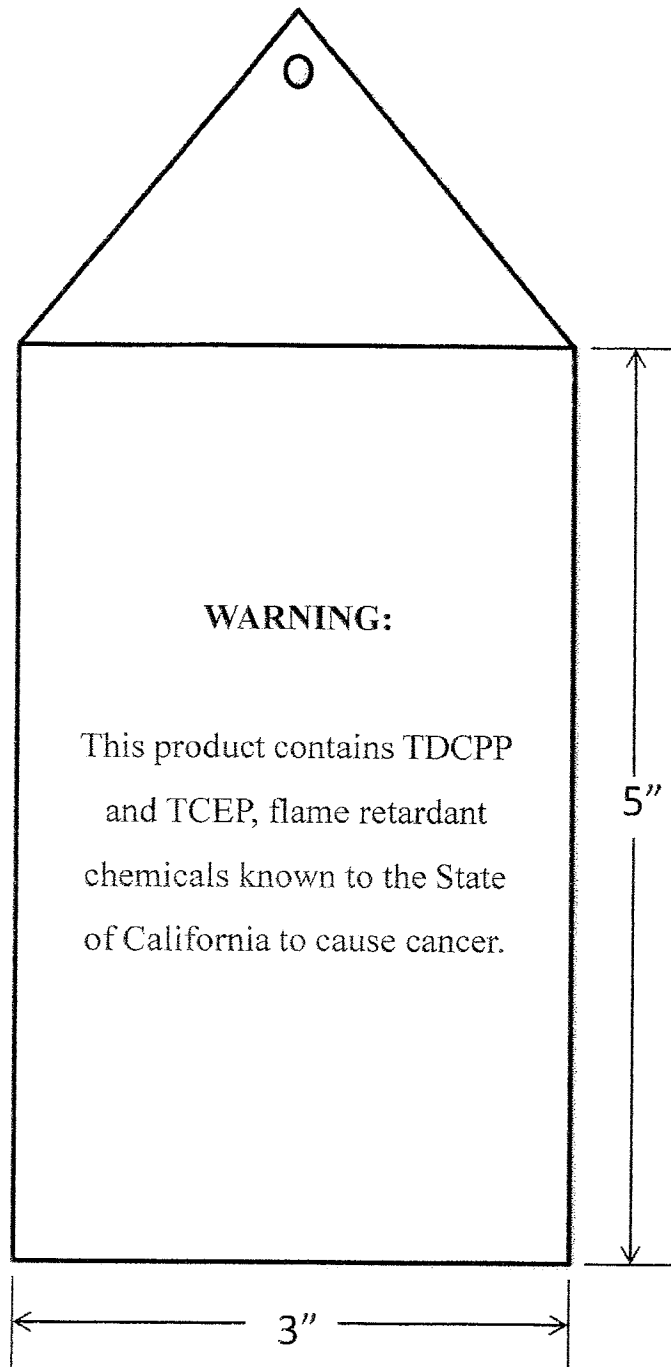


EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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



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

**WARNING:**

This product contains TDCCP and TCEP, flame

8.5"

retardant chemicals known to the State of

California to cause cancer.

11"

**INSTRUCTIONS:**

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