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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 BENETTI'S ITALIA, INC.; et al.

20 Defendant.

Case No. RG13676719

~~PROPOSED~~ JUDGMENT PURSUANT
TO PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT AS TO
DEFENDANT BENETTI'S ITALIA, INC.

Date: March 7, 2014

Time: 9:00 a.m.

Dept.: 17

Judge: Hon. George C. Hernandez, Jr.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to 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**. 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: **MAR - 7 2014**

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

Exhibit 1
(To Judgment)

1 Brian C. Johnson, State Bar No. 235965
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3 THE CHANLER GROUP
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9 Attorneys for Plaintiffs
10 PETER ENGLANDER & LAURENCE VINOCUR

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

LAURENCE VINOCUR,
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
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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.

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3.4 Current Inventory

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

3.5 Product Warnings

3.5.1 Product Labeling

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

A warning provided pursuant to this Consent Judgment shall state:

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

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

⁴ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling Defendant employed it prior to the Effective Date. A Settling Defendant that seeks to use warning language other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks to use an alternate method of transmission for the 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 ("OEHHHA"), 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.

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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,
28 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.

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 11. 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.

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1 **4.5 Payment Procedures**

2 **4.5.1 Issuance of Payments.**

3 (b) 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:
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To Settling Defendants:
At the address shown on Exhibit A

To Plaintiffs:
Proposition 65 Coordinator
The Charler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

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

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

11.1 In addition to the Products, where a Settling Defendant has identified on Exhibit A additional products that contain Listed Chemicals and that are sold or offered for sale by it in California, or to California Customers, ("Additional Products"), then by no later than October 15, 2013, the Settling Defendant may provide Plaintiffs with additional information or representations necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant 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 upholstered furniture, is specifically excluded from the definition of Additional Products and shall not be identified by a Settling Defendant on Exhibit A as an Additional Product. Except as agreed upon by Plaintiffs, Settling Defendants shall not include a product, as an Additional Product, that is the subject of an existing 60-day notice issued by Plaintiffs or any other private enforcer at the time of execution. After receipt of the required information, Plaintiffs agree to issue 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.

28

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.

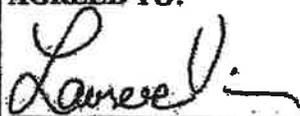
5 **AGREED TO:**
6 
7 _____
8 Plaintiff: PETER ENGLANDER

AGREED TO:

Settling Defendant:
NORSTAR OFFICE PRODUCTS, INC.

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10 Dated: October 11, 2013

Dated: _____

11
12 **AGREED TO:**
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14 _____
15 Plaintiff: LAURENCE VINO CUR

AGREED TO:

Defendant INTERCON, INC.

16
17 Dated: October 11, 2013

Dated: _____

AGREED TO:

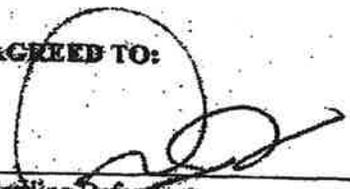
Settling Defendant:
BENETTI'S ITALIA, INC.

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

Settling Defendant:
NORSTAR OFFICE PRODUCTS, INC.

9
10 Dated: _____

Dated: 10/11/13

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12 **AGREED TO:**

AGREED TO:

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15 Plaintiff: LAURENCE VINOUCUR

Defendant INTERCON, INC.

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17 Dated: _____

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Settling Defendant:
BENETT'S ITALIA, INC.

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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:**

AGREED TO:

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8 Plaintiff: PETER ENGLANDER

Settling Defendant:
NORSTAR OFFICE PRODUCTS, INC.

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10 Dated: _____

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12 **AGREED TO:**

AGREED TO:

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15 Plaintiff: LAURENCE VINOUCUR

Timothy P. Hand
Defendant: THERCOM, INC.

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17 Dated: _____

Dated: 10/14/2013

AGREED TO:

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21 Settling Defendant:
BENETT'S ITALIA, INC.

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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:**

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 VINO CUR

Defendant INTERCON, INC.

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17 Dated: _____

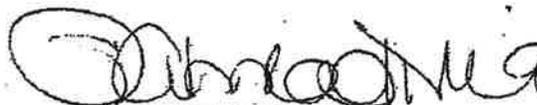
Dated: _____

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AGREED TO:

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Settling Defendant:
BENETTI'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@bcflaw.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@aql.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:

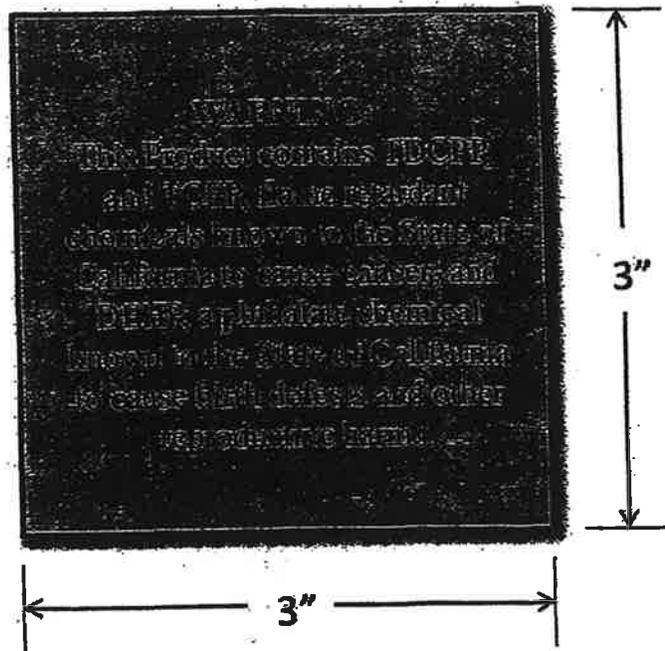
Tim Newlin
Sourcing Manager
Intercon, Inc.
635 N. Billy Mitchell Rd., Suite: B
Salt Lake City, Utah 84116
Email: tnewlin@intercon1.com

With a copy to:

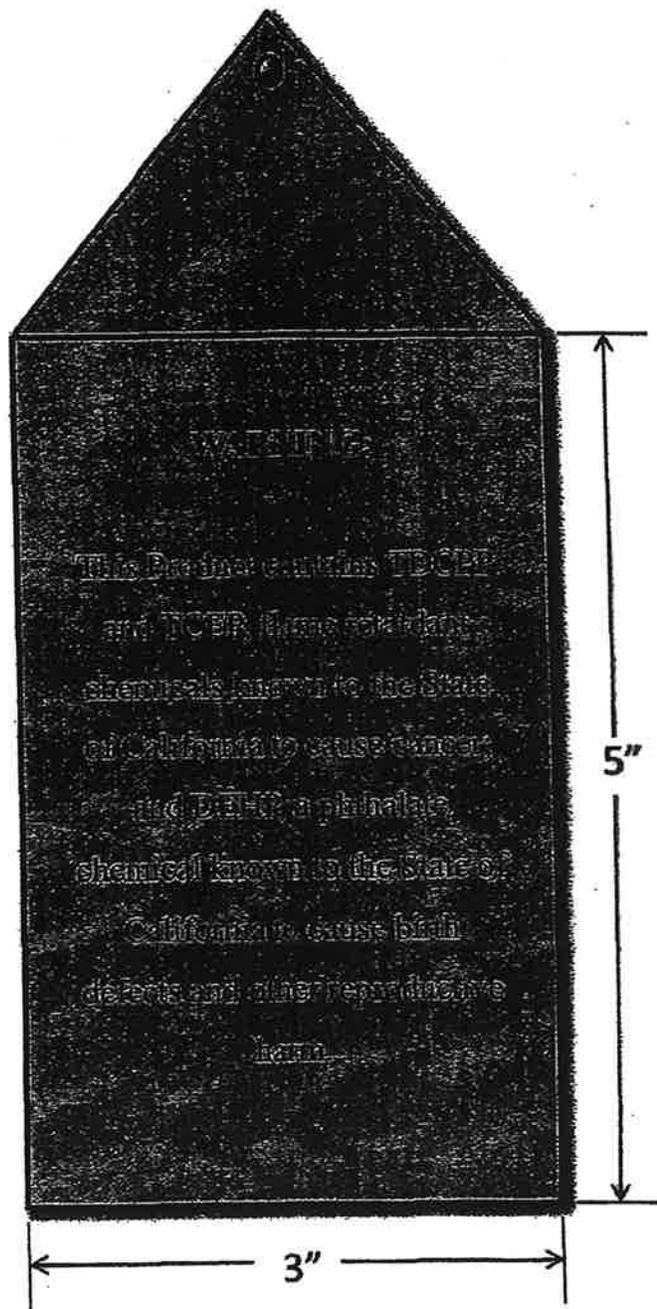
Joshua Bloom, Esq.
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435
Fax: 415-228-5450
Email: jab@bcltlaw.com

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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.