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11 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

MAR 28 2014

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

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

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 SHAFER COMMERCIAL SEATING, INC., *et*
19 *al.*

20 Defendants.

Case No. RG13685119

**[PROPOSED] JUDGMENT PURSUANT
TO PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT AS TO
DEFENDANT SHAFER COMMERCIAL
SEATING**

Date: March 28, 2014

Time: 10:00 a.m.

Dept.: 17

Judge: Hon. George C. Hernandez, Jr.

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

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10 Dated: MAR 28 2014

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

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Exhibit 1
(To Judgment)

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
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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 SHAFER COMMERCIAL SEATING
18 INC.; et al.
19 Defendants.

20) Case No. RG 13-685119
21)
22) Assigned for All Purposes to
23) Judge George C. Hernandez, Jr.,
24) Department 17
25) **[PROPOSED] CONSENT JUDGMENT AS**
26) **TO SHAFER COMMERCIAL SEATING**
27) **INC.**
28) **(Health & Safety Code § 25249.6 et seq.)**
Complaint Filed: June 25, 2013

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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Peter Englander (“Englander”) and Shafer Commercial Seating (“Shafer”), with Englander and Shafer collectively referred to as the “Parties.”

1.2 Peter Englander

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

1.3 Shafer Commercial Seating Inc.

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

1.4 General Allegations

1.4.1 Englander alleges that Shafer manufactured, imported, sold and/or distributed for sale in California products with foam cushioned components containing tris(2-chloroethyl) phosphate (“TCEP”) without the requisite Proposition 65 health hazard warnings. Englander alleges that TCEP escapes from foam padding, leading to human exposures.

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

1 **1.5 Product Description**

2 The categories of products that are covered by this Consent Judgment as to Shafer are
3 identified on Exhibit A (hereinafter “Products”).¹ Polyurethane foam that is supplied, shaped or
4 manufactured for use as a component of another product, such as upholstered furniture, but which is
5 not itself a finished product, is specifically excluded from the definition of Products and shall not be
6 identified by Shafer on Exhibit A as a Product.

7 **1.6 Notice of Violation**

8 On or about March 27, 2013, Englander issued to Shafer and certain requisite public
9 enforcement agencies a “60-Day Notice of Violation” (“Notice”) that provided the recipients with
10 notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
11 consumers, and workers in California that the Products expose users to TCEP. To the best of the
12 Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations
13 set forth in the Notice.

14 **1.7 Complaint**

15 On June 25, 2013, Englander filed a Complaint in the Superior Court in and for the County
16 of Alameda against Shafer and Does 1 through 150, *Peter Englander v. Shafer Commercial Seating*
17 *Inc., et al.*, Case No. RG 13-685119 (“Complaint”), alleging violations of Proposition 65, based in
18 part on the alleged unwarned exposures to the TCEP contained in the Products.

19 **1.8 No Admission**

20 Shafer denies the material factual and legal allegations contained in Englander’s Notice and
21 Complaint and maintains that all products that it has manufactured, imported, distributed, and/or
22 sold in California, including the Products, have been and are in compliance with all laws. Nothing
23 in this Consent Judgment shall be construed as an admission by Shafer of any fact, finding,
24 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
25 constitute or be construed as an admission by Shafer of any fact, finding, conclusion, issue of law,
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27 ¹ Products shall not include, and specifically excludes, special order items where Shafer
28 provides the service of assembling the item, but for which it does not select and/or supply the raw
materials to be used in the items.

1 or violation of law. However, this section shall not diminish or otherwise affect Shafer's
2 obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

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

9 **2. DEFINITIONS**

10 **2.1 California Customers**

11 "California Customer" shall mean any customer that Shafer reasonably understands is
12 located in California, has a California warehouse or distribution center, maintains a retail outlet in
13 California, or has made internet sales into California on or after January 1, 2011.

14 **2.2 Detectable**

15 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
16 of .0025%) of any one chemical in any material, component, or constituent of a
17 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
18 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
19 determine the presence, and measure the quantity, of TCEP and/or tris(1,3-dichloro-2-propyl)
20 phosphate ("TDCPP") in a solid substance.

21 **2.3 Effective Date**

22 "Effective Date" shall mean December 31, 2013.

23 **2.4 Private Label Covered Products**

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

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1 **2.5 Reformulated Products**

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

4 **2.6 Reformulation Standard**

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

7 **2.7 Retailer**

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

10 **3. INJUNCTIVE RELIEF: REFORMULATION**

11 **3.1 Reformulation Commitment**

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

15 **3.2 Vendor Notification/Certification**

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

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3.3 Products No Longer in Shafer's Control

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

3.4 Current Inventory

Any Products in, or manufactured and en route to, Shafer's inventory as of or after December 31, 2013, that do not qualify as Reformulated Products and that Shafer has reason to believe 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.

3.5 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.

1 Each warning shall be provided in a manner such that the consumer or user understands to which
2 specific Product the warning applies, so as to minimize the risk of consumer confusion.

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

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

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

10 3.5.2 Internet Website Warning

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

17 **WARNING:** This product contains TCEP, a flame
18 retardant chemical known to the State
if California to cause cancer.⁴

19 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
20 used if Shafer had begun to use it, prior to the Effective Date. If Shafer seeks to use alternative
21 warning language, other than the language specified above or the safe harbor warning specified in
22 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, Shafer must
23 obtain the Court's approval of its proposed alternative and provide all Parties and the Office of the
24 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 ³ The characteristics of the template warnings are as follows: (a) a yellow hang tag
measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
26 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
8.5" x. 11", with no less that 32 point font, with the warning language printed on each side, which
27 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 ⁴ Footnote 1, *supra*, applies in this context as well.

1 **3.6 Alternatives to Interim Warnings**

2 The obligations of Shafer under Section 3.3 shall be relieved provided Shafer certifies on or
3 before January 15, 2014 that only Exemplar Products meeting the Reformulation Standard will be
4 offered for sale in California, or to California Customers for sale in California, after January 31,
5 2014. The obligations of Shafer under Section 3.4 shall be relieved provided Shafer certifies on or
6 before January 15, 2014 that, after June 30, 2014, it will only distribute or cause to be distributed
7 for sale in, or sell in, California, or to California Customers for sale in California, Products (i.e.,
8 Products beyond the Exemplar Product) meeting the Reformulation Standard. The certifications
9 provided by this Section are material terms and time is of the essence.

10 **4. MONETARY PAYMENTS**

11 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

21 4.1.1 Initial Civil Penalty. On or before December 31, 2013, Shafer shall make an
22 initial civil penalty payment in the amount identified on Exhibit A.

23 4.1.2 Second Civil Penalty. On or before January 31, 2014, Shafer shall make a
24 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
25 penalty may be reduced according to any penalty waiver Shafer is eligible for under Sections
26 4.1.4(i) and 4.1.4(iii), below.

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1 4.1.3 Third Civil Penalty. On or before December 31, 2014, Shafer shall make a
2 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
3 may be reduced according to any penalty waiver Shafer is eligible for under Sections 4.1.4(ii) and
4 4.1.4(iv), below.

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

11 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
12 **Products Sold or Offered for Sale in California.**

13 If Shafer so elects on Exhibit A, a portion of the second civil penalty shall be waived, to the
14 extent that it has agreed that, as of January 1, 2014, and continuing into the future, it shall only
15 manufacture or import for distribution or sale to California Customers or cause to be manufactured
16 or imported for distribution or sale to California Customers, Reformulated Products. An officer or
17 other authorized representative of Shafer that has exercised this election shall provide Englander
18 with a written certification confirming compliance with such conditions, which certification must
19 be received by Englander's counsel on or before December 31, 2013.

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

21 If Shafer so elects on Exhibit A, a portion of the third civil penalty shall be waived, to the
22 extent that it has agreed that, as of March 15, 2014, and continuing into the future, it shall only
23 manufacture or import for distribution or sale in the California or cause to be manufactured or
24 imported for distribution or sale in California, Reformulated Products which also do not contain
25 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
26 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject
27 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
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1 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
2 presence, and measure the quantity of, TDBPP in a solid substance. An officer or other authorized
3 representative of Shafer that has exercised this election shall provide Englander with a written
4 certification confirming compliance with such conditions, which certification must be received by
5 Englander's counsel on or before December 15, 2014.

6 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
7 **Exemplar Products from the California Market.**

8 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
9 other authorized representative of Shafer provides Englander with written certification, by January
10 15, 2014, confirming that each individual or establishment in California to which it supplied the
11 Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products
12 held for sale in California.⁵

13 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
14 **California of Unreformulated Inventory.**

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

19 **4.2 Representations**

20 Shafer represents that the sales data and other information concerning its size, knowledge of
21 TCEP, and prior reformulation and/or warning efforts, it provided to Englander was truthful to its
22 knowledge and a material factor upon which Englander has relied to determine the amount of civil
23 penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment. If,
24 within nine months of the Effective Date, Englander discovers and presents to Shafer, evidence
25 demonstrating that the preceding representation and warranty was materially inaccurate, then Shafer

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

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

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

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

10 If Englander provides notice and appropriate supporting information to Shafer that levels of
11 the TDCPP and/or TCEP in excess of the Reformulation Standard have been detected in one or
12 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported
13 after a deadline for meeting the Reformulation Standard has arisen for Shafer under Sections 3.1 or
14 3.6 above, Shafer may elect to pay a stipulated penalty to relieve any further potential liability
15 under Proposition 65 or sanction under this Consent Judgment as to Products sourced from the
16 vendor in question.⁶ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm
17 and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any
18 amount in excess of the Reformulation Standards but under 250 ppm.⁷ Englander shall further be
19 entitled to reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of
20 the stipulated penalty level. Shafer under this Section must provide notice and appropriate
21 supporting information relating to the purchase (e.g. vendor name and contact information
22 including representative, purchase order, certification (if any) received from vendor for the
23 exemplar or subcategory of products), test results, and a letter from a company representative or
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25 ⁶ This Section shall not be applicable where the vendor in question had previously been
26 found by Shafer to have provided unreliable certifications as to meeting the Reformulation Standard
27 in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a
28 second exceedance by Shafer's vendor at a level between 100 and 249 ppm shall not be available
after July 1, 2015.

⁷ 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 counsel attesting to the information provided, to Englander within 30 calendar days of receiving test
2 results from Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the
3 full remedies provided pursuant to this Consent Judgment and at law.

4 4.4 Reimbursement of Fees and Costs

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

23 4.5 Payment Procedures

24 4.5.1 Issuance of Payments.

25 (a) All payments owed to Englander and his counsel, pursuant to
26 Sections 4.1, 4.3, and 4.4 shall be delivered to the following payment address:
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The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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

4.5.3 Tax Documentation. Shafer shall issue a separate 1099 form for each payment required by this Section to: (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) OEHHA, who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Englander's Release of Proposition 65 Claims**

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

17 **5.2 Englander's Individual Releases of Claims**

18 Englander, in his individual capacity only and *not* in his representative capacity, provides a
19 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
20 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
21 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,
22 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
23 TCEP and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
24 delineated on Exhibit A) manufactured, imported, distributed, or sold by Shafer prior to the
25 Effective Date.⁸ The Parties further understand and agree that this Section 5.2 release shall not
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27 ⁸ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

1 extend upstream to any entities that manufactured the Products or Additional Products, or any
2 component parts thereof, or any distributors or suppliers who sold the Products or Additional
3 Products, or any component parts thereof to Shafer, except that entities upstream of Shafer that is a
4 Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the Private
5 Labeled Covered (or Additional) Products offered for sale in California by the Retailer in question.
6 Nothing in this Section affects Englander's right to commence or prosecute an action under
7 Proposition 65 against a Releasee that does not involve Shafer's Products or Additional Products.

8 **5.3 Shafer's Release of Englander**

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

15 **6. COURT APPROVAL**

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

4 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 To Shafer:

20 At the address shown on Exhibit A

To Englander:

21 Proposition 65 Coordinator
22 The Chanler Group
23 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

24 Any Party, from time to time, may specify in writing to the other Party a change of address to
25 which all notices and other communications shall be sent.
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1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

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

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 In addition to the Products, where Shafer has identified on Exhibit A additional
10 products that contain TDCPP and/or TCEP and that are sold or offered for sale by it in California,
11 or to California Customers (“Additional Products”), then by no later than December 31, 2013,
12 Shafer may provide Englander with additional information or representations necessary to enable
13 them to issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to
14 Health & Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam
15 that is supplied, shaped or manufactured for use as a component of a product, such as upholstered
16 furniture, is specifically excluded from the definition of Additional Products and shall not be
17 identified by Shafer on Exhibit A as an Additional Product. Except as agreed upon by Englander,
18 Shafer shall not include a product, as an Additional Product, that is the subject of an existing 60-day
19 notice issued by Englander or any other private enforcer at the time of execution. After receipt of
20 the required information, Englander agrees to issue a supplemental 60-day notice in compliance
21 with all statutory and regulatory requirements for the Additional Products. Englander will, and in
22 no event later than October 1, 2014, prepare and file an amendment to this Consent Judgment to
23 incorporate the Additional Products within the defined term “Products” and serve a copy thereof
24 and its supporting papers (including the basis for supplemental stipulated penalties, if any) on the
25 Office of the California Attorney General; upon the Court’s approval and finding that the
26 supplemental stipulated penalty amount, if any, is reasonable the Additional Products shall become
27 subject to Section 5.1 in addition to Section 5.2. Shafer shall, at the time it elects to utilize this
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1 Section and tenders the additional information or representations regarding the Additional Products
2 to Englander, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as
3 stipulated penalties and attorneys' fees and costs incurred by Englander in issuing the new notice
4 and engaging in other reasonably related activities, which may be released from the trust as
5 awarded by the Court upon Englander's application. Any fee award associated with the
6 modification of the Consent Judgment to include Additional Product shall not offset any associate
7 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be
8 refunded to Shafer within 15 days). Such payment shall be made "In trust for The Chanler Group"
9 and delivered as per Section 4.5.1(a) above.

10 11.2 Englander and Shafer agree to support the entry of this agreement as a Consent
11 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
12 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
13 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall
14 draft and file. If any third party objection to the noticed motion is filed, Englander and Shafer shall
15 work together to file a reply and appear at any hearing before the Court. This provision is a
16 material component of the Consent Judgment and shall be treated as such in the event of a breach.

17 **12. MODIFICATION**

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

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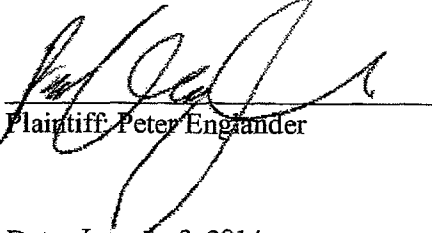
1 **13. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:


Plaintiff: Peter Englander

Defendant: Shafer Commercial Seating Inc.

Date: January 3, 2014

Date: December __, 2013

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13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Plaintiff: Peter Englander

Paul M. Shafer President
Defendant: Shafer Commercial Seating Inc.

Date: December __, 2013

Date: December 31, 2013

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EXHIBIT A

I. Name of Settling Defendant (Mandatory)

Shafer Commercial Seating Inc.

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

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):

IV. Types of Additional Products Shafer Commercial Seating Inc. Elects to Address (if any):

V. Shafer Commercial Seating Inc.'s Required Settlement Payments

A. Civil Penalties for Shafer Commercial Seating Inc.: \$53,000, as follows:

\$15,000 initial payment due on or before December 31, 2013;

\$24,000 second payment due on or before January 31, 2014, of which \$15,000 may be waived pursuant to Section 4.1.4(i) and \$9,000 may be waived pursuant to Section 4.1.4(iii); and

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\$14,000 third payment due on or before December 31, 2014, of which \$9,000 may be waived pursuant to Section 4.1.4(ii) and \$5,000 may be waived pursuant to Section 4.1.4(iv).

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

A. Total amount in Fees and Costs for Shafer Commercial Seating Inc.: \$35,000.

Payment Schedule for Fees and Costs owed:

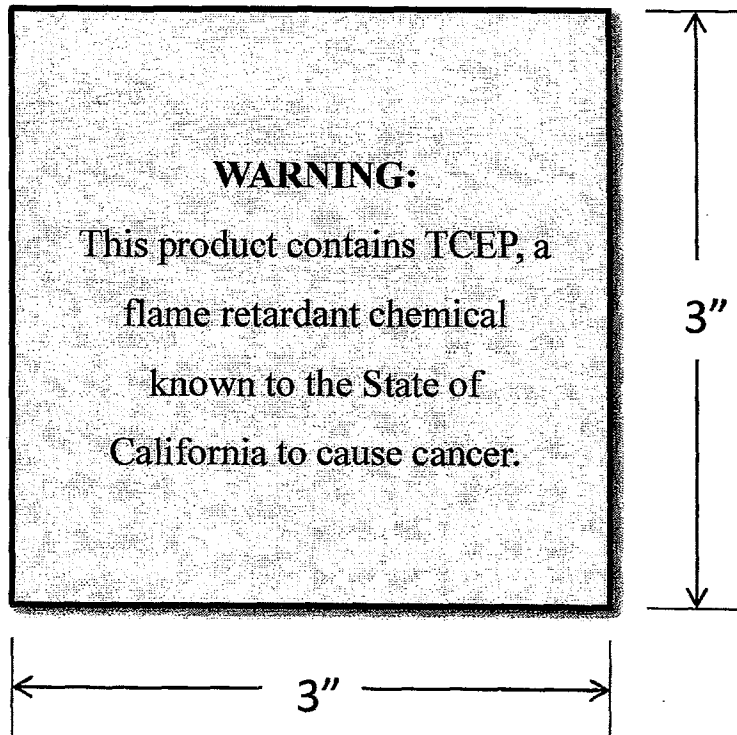
- 1. January 31, 2014: \$12,000
- 2. February 28, 2014: \$12,000
- 3. March 31, 2014: \$11,000

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

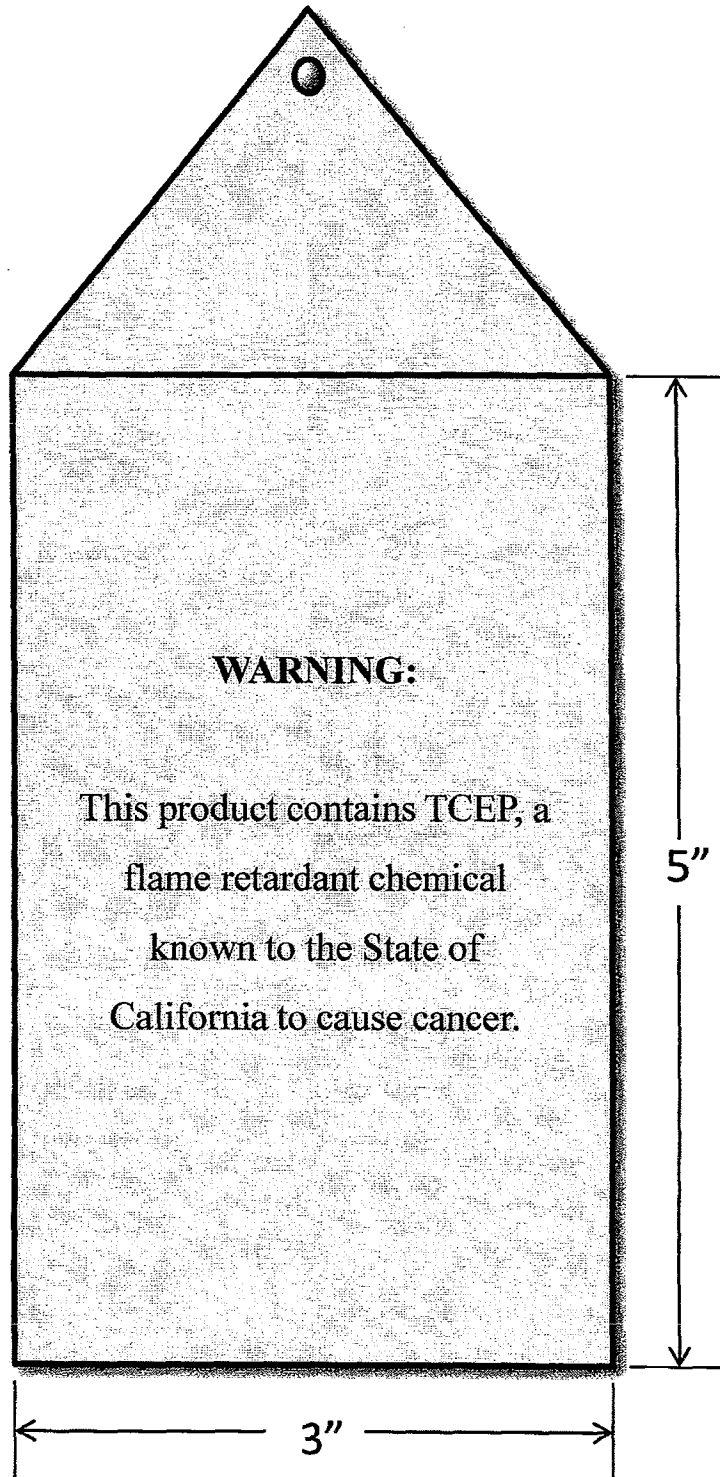
Name	Randy Shafer	Name	Best Best & Krieger LLP Danielle Sakai
Title	President	Title	Attorneys at Law
Address	4101 E. 48th Ave. Denver, CO 80216	Address	3390 University Ave., 5th Floor Riverside, CA 92501

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



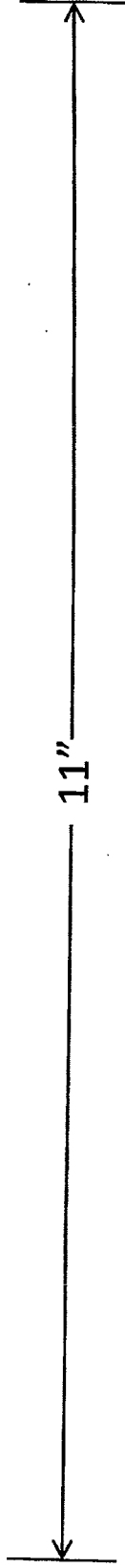
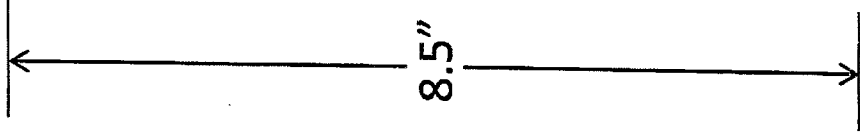
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



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

WARNING:

This product contains TCEP, a flame retardant
chemical known to the State of California to
cause cancer.



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