

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Attorneys for Plaintiffs
PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

MAR 28 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

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

PETER ENGLANDER,

Plaintiffs,

v.

BEXCO ENTERPRISES, INC., *et al.*

Defendants.

Case No. RG13688520

~~PROPOSED~~ JUDGMENT PURSUANT
TO PROPOSITION 65 SETTLEMENTS
AND CONSENT JUDGMENT AS TO
DEFENDANTS A.R.T FURNITURE,
INC.; MAGNUSSEN HOLDINGS INC.
AND THEODORE ALEXANDER USA,
INC.

Date: March 28, 2014
Time: 10:00 a.m.
Dept.: 17
Judge: Hon. George C. Hernandez, Jr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IT IS SO ORDERED.

Dated: MAR 28 2014

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

Exhibit 1
(To Judgment)

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

9 Attorneys for Plaintiff
10 PETER ENGLANDER

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER

14 Plaintiff,

15 v.

16 BEXCO ENTERPRISES, INC., et al.

17 Defendants.

Case No. RG13688520

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

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT A.R.T. FURNITURE,
INC.**

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 1.4.1 Englander alleges that A.R.T. manufactured, imported, sold and/or
16 distributed for sale in California, upholstered furniture with foam padding containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without providing the clear and reasonable health hazard
18 warnings required by Proposition 65.

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

24 **1.5 Product Description**

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

1 **1.6 Notice of Violation**

2 On May 1, 2013, Englander served A.R.T. and certain requisite public enforcement agencies
3 with a 60-Day Notice of Violation (“Notice”), alleging that A.R.T. violated Proposition 65 when it
4 failed to warn its customers, consumers, and workers in California that the Products expose users to
5 TDCPP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
6 prosecuting the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On July 22, 2013, Englander commenced the instant action (“Complaint”), naming A.R.T.
9 as a defendant, and stating a cause of action for the alleged violations of Proposition 65 that are the
10 subject of the Notice.

11 **1.8 No Admission**

12 A.R.T. denies the material, factual, and legal allegations contained in the Notice and
13 Complaint and maintains that all of the products that it has sold or distributed for sale in California,
14 including the Products, have been and are in compliance with all laws. Nothing in this Consent
15 Judgment shall be construed as an admission by A.R.T. of any fact, finding, conclusion of law,
16 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
17 construed as an admission by A.R.T. of any fact, finding, conclusion of law, issue of law, or
18 violation of law. This Section shall not, however, diminish or otherwise affect A.R.T.’s
19 obligations, responsibilities, and duties under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over A.R.T. as to the allegations contained in the Complaint, that venue is proper in the
23 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section 664.6.

25 **2. DEFINITIONS**

26 **2.1 California Customer**

27 “California Customer” shall mean any customer of A.R.T. that A.R.T. reasonably
28 understands is located in California, has a California warehouse or distribution center, maintains a

1 retail outlet in California, or has distributed Products for sale in California, online via the internet or
2 by any other means, on or after January 1, 2011.

3 **2.2 No Detectable Amount**

4 “No Detectable Amount” shall mean no more than 25 parts per million (“ppm”) (the
5 equivalent of .0025%) of any one chemical in any material, component, or constituent of a
6 subject product, when analyzed by a domestic NVLAP (National Volunteer Laboratory
7 Accreditation Program) accredited laboratory pursuant to EPA testing methodologies 3545 and
8 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
9 or measure the amount, of TDCPP or TCEP in a solid substance.

10 **2.3 Effective Date**

11 “Effective Date” shall mean January 15, 2014.

12 **2.4 Private Label Covered Products**

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

16 **2.5 Reformulated Products**

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

19 **2.6 Reformulation Standard**

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

22 **2.7 Retailer**

23 “Retailer” means a person that offers a Product for sale to consumers in California.

24 **3. INJUNCTIVE RELIEF: REFORMULATION**

25 **3.1 Reformulation Commitment**

26 Commencing on July 1, 2014, and continuing thereafter, A.R.T. shall not manufacture or
27 import for distribution or sale to California Customers for sale in California, or cause to be
28

1 manufactured or imported for distribution or sale to California Customers for sale in California, any
2 Products that are not Reformulated Products.

3 **3.2 Vendor Notification/Certification**

4 No later than 30 days after the Effective Date, A.R.T. shall provide written notice to all of
5 its then-current vendors of Products that are sold or offered for sale in California, or to California
6 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
7 Products. In addressing the obligation set forth in the preceding sentence, A.R.T. shall not employ
8 statements to encourage a vendor to delay compliance with the Reformulation Standard. No later
9 than July 1, 2014, A.R.T. shall obtain a written certification from each such vendor, and any other
10 vendors engaged as of that date, that the Products it manufactures comply with the Reformulation
11 Standard. Such certifications shall be held by A.R.T. for at least two years from receipt, and shall
12 be made available to Englander upon request.

13 **3.3 Products No Longer in A.R.T.'s Control**

14 No later than 30 days after the Effective Date, A.R.T. shall send a letter ("Notification
15 Letter"), electronic or otherwise, to: (1) each California Customer and/or Retailer which it, after
16 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
17 ("Exemplar Product"); and (2) any California Customer and/or Retailer which it, before October 28,
18 2011, supplied the Exemplar Product for resale in California and that A.R.T. believes is reasonably
19 likely to have any inventory of Exemplar Products for resale in California as of the January 1, 2013.
20 The Notification Letter shall advise the recipient that the Exemplar Product "contains TDCPP
21 and/or TCEP, chemicals known to the State of California to cause cancer," and request that the
22 recipient either: (a) label the Exemplar Products remaining in inventory prior to offering them for
23 sale in California, or to California Customers, pursuant to Section 3.5; or (b) return, at A.R.T.'s
24 expense, all units of the Exemplar Product held for sale in California, or to California Customers, to
25 A.R.T. or a party A.R.T. has otherwise designated. The Notification Letter shall require a response
26 from the recipient within 20 days confirming whether the Exemplar Product will be labeled or
27 returned. The Settling Defendant shall maintain records of all Notification Letters and responses
28

1 for two years after the Effective Date and shall promptly produce copies of such records upon
2 Englander's written request.

3 **3.4 Current Inventory**

4 Any Products in, or manufactured and en route to, A.R.T.'s inventory as of or after January
5 31, 2014, that do not qualify as Reformulated Products, and that A.R.T. has reason to believe may
6 be sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth
7 in Section 3.5 below unless Section 3.6 applies.

8 **3.5 Product Warnings**

9 **3.5.1 Product Labeling.** Any warning provided under Section 3.3 or 3.4 above
10 shall be affixed to the packaging, labeling, or directly on each Product. Each warning shall be
11 prominently placed with such conspicuousness when compared with other words, statements,
12 designs, or devices as to render it likely to be read and understood by an ordinary individual under
13 customary conditions before purchase. Each warning shall be provided in a manner such that the
14 consumer or user understands to which specific Product the warning applies, so as to minimize the
15 risk of consumer confusion.

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

17 **WARNING:** This product contains [TDCPP and/or
18 TCEP], flame retardant chemicals
19 known to the State of California to
20 cause cancer.¹

21 **3.5.2 Internet Website Warning.** A warning shall be given in conjunction with
22 A.R.T.'s sale of the Products into California, or to California Customers online via the internet.
23 The warning shall appear on one or more web pages displayed to a purchaser prior to completing
24 payment and/or during the "checkout" process. The following warning statement shall be used and

24 ¹ The regulatory safe harbor warning language specified in 27 Cal. Code Regs. §
25 25603.2(a)(1) shall be deemed acceptable under this Consent Judgment, if A.R.T. employed it prior
26 to the Effective Date. A.R.T. must obtain Court approval for any alternative warning statement
27 other than that set forth above or the regulatory safe harbor language found at 27 Cal. Code Regs. §
28 25603.2(a)(1), and/or for any proposed alternate method of warning transmission. In doing so,
A.R.T. agrees to provide the Parties and the Office of the Attorney General with timely notice and
an opportunity to oppose or comment on before the Court acts on the request. The Parties agree
that the following hybrid warning language shall not be deemed to meet the requirements of 27 Cal.
Code Regs. § 25601 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 shall: (a) appear adjacent to or immediately following the display, description, or price of the
2 Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer. The
3 warning text shall be the same type size or larger than the Product description text, and shall state:

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

8 **3.6 Alternatives to Interim Warnings**

9 A.R.T.'s obligation under Section 3.3 shall be relieved if it provides Englander with written
10 notice on or before March 15, 2014 certifying that only Exemplar Products meeting the
11 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
12 California, after March 31, 2014. The obligations of A.R.T. under Section 3.4 shall be relieved
13 upon Englander's receipt of A.R.T.'s written certification on or before March 15, 2014, that, as of
14 July 1, 2014, it will only distribute or cause to be distributed for sale, or sell in California, or to
15 California Customers for sale in California, Products (i.e., Products beyond the Exemplar Product)
16 meeting the Reformulation Standard. The certifications provided by this Section are material terms
17 and time is of the essence.

18 **4. MONETARY PAYMENTS**

19 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

28 ² The preceding footnote applies in this context as well.

1 4.1.1 **Initial Civil Penalty.** On or before the Effective Date, A.R.T. shall make an
2 initial civil penalty payment in the amount identified on Exhibit A.

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

7 4.1.3 **Third Civil Penalty.** On or before December 31, 2014, A.R.T. shall make a
8 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
9 may be reduced according to any penalty waiver for which A.R.T. is eligible under Sections
10 4.1.4(ii) and 4.1.4(iv), below.

11 4.1.4 **Reductions to Civil Penalty Payment Amounts.** A.R.T. may reduce the
12 amount of the second and/or third civil penalty payments identified on Exhibit A by providing
13 Englander with certification of certain efforts undertaken to reformulate its Products or limit the
14 ongoing sale of non-reformulated Products in California. The option to provide a written
15 certification in lieu of making a portion of A.R.T.'s second or third civil penalty payments
16 constitutes a material term of this Consent Judgment, and with regard to such term, time is of the
17 essence.

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

20 If A.R.T. so Elects on Exhibit A, a portion of the second civil penalty shall be waived, if, as
21 of April 15, 2014, and continuing thereafter, A.R.T. agrees that it will only manufacture or import
22 for distribution or sale to California Customers for sale in California or cause to be manufactured or
23 imported for distribution or sale to California Customers for sale in California, Reformulated
24 Products. An officer or other authorized representative shall provide Englander with a written
25 certification confirming compliance with such conditions, no later than May 15, 2014.

26 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

27 If A.R.T. so Elects on Exhibit A, a portion of the third civil penalty shall be waived, if, as of
28 July 1, 2014, and continuing thereafter, A.R.T. agrees that it will only manufacture or import for
distribution or sale in California or cause to be manufactured or imported for distribution or sale in

1 California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate
2 (“TDBPP”) in a detectable amount of more than 25 parts per million (“ppm”) (the equivalent of
3 .0025%) in any material, component, or constituent of a subject product, when analyzed by a
4 NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or
5 equivalent methodologies utilized by federal or state agencies to determine the presence, and
6 measure the quantity, of TDBPP in a solid substance. An officer or other authorized representative
7 shall provide Englander with a written certification confirming compliance with such conditions, no
8 later than November 15, 2014.

9 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Non-Reformulated**
10 **Exemplar Products from the California Market.**

11 As shown on A.R.T.’s Exhibit A, a portion of the second civil penalty shall be waived, if an
12 officer or other authorized representative of A.R.T. provides Englander with written certification,
13 by April 15, 2014, confirming that each California Customer or Retailer to which it supplied the
14 Exemplar Product for resale in California after October 28, 2011, has elected, pursuant to Section
15 3.3, to return all Exemplar Products held for sale in California.³

16 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
17 **California of Inventory of Non-Reformulated Products.**

18 As shown on A.R.T.’s Exhibit A, a portion of the third civil penalty shall be waived, if an
19 officer or other authorized representative of A.R.T. provides Englander with written certification,
20 on or before December 31, 2014, confirming that, as of July 1, 2014, it has and will continue to
21 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
22 Products.

23 **4.2 Representations and Warranties**

24 A.R.T. represents that the sales data and other information concerning its size, knowledge of
25 TDCPP/TCEP presence, and prior reformulation and/or warning efforts, provided to Englander
26 were true and accurate based on its knowledge and are material factors upon which Englander relied

27 ³ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander has, prior to August 31, 2013, provided A.R.T. with test results from a NVLAP
accredited laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm
pursuant to EPA testing methodologies 3545 or 8270C.

1 to determine the amount of civil penalties assessed pursuant to Health and Safety Code section
2 25249.7(b). If, within nine months of the Effective Date, Englander discovers and presents to
3 A.R.T., evidence demonstrating that the preceding representation and warranty was materially
4 inaccurate, then A.R.T. shall have 30 days to meet and confer regarding Englander's contention.
5 Should this 30 day period pass without any resolution between Englander and A.R.T., Englander
6 shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for
7 breach of contract. A.R.T. further represents that in implementing the requirements set forth in
8 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to
9 achieve reformulation of its Products on a nationwide basis and not employ statements that will
10 encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for
11 sale to California Consumers.

12 4.3 Penalties for Certain Violations of the Reformulation Standard.

13 If Englander provides notice and credible supporting information to A.R.T. that levels of
14 TDCPP in excess of the Reformulation Standard have been detected in one or more Products
15 labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline
16 for meeting the Reformulation Standard under Sections 3.1 or 3.6 above, has commenced, then
17 A.R.T. may elect to pay a stipulated penalty to relieve any further potential liability under
18 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
19 question.⁴ The stipulated penalty shall be \$1,000 if the violation level is below 100 ppm and \$2,000
20 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
21 excess of the Reformulation Standards but under 250 ppm.⁵ Englander shall further be entitled to
22 reimbursement of his associated expenses in an amount not to exceed \$3,000 regardless of the
23 stipulated penalty level. If the Parties proceed under this Section, A.R.T. must provide notice and
24

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

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

1 appropriate supporting information relating to the purchase (e.g. vendor name and contact
2 information including representative, purchase order, certification (if any) received from vendor for
3 the exemplar or subcategory of products), test results, and a letter from a company representative or
4 counsel attesting to the information provided to Englander within 30 calendar days of receiving
5 notice and credible supporting evidence from Englander’s counsel. Any violation levels at or above
6 250 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at
7 law.

8 **4.4 Reimbursement of Fees and Costs**

9 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee
11 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
12 other settlement terms had been finalized, A.R.T. expressed a desire to resolve Englander’s
13 outstanding fees and costs. Under general contract principles and the private attorney general
14 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
15 through the mutual execution of this agreement, including the fees and costs incurred as a result of
16 investigating, bringing this matter to A.R.T.’s attention, negotiating a settlement in the public
17 interest, and seeking court approval of the same. In addition, the negotiated fee and cost figure
18 expressly includes the anticipated significant amount of time Englander’s counsel will incur to
19 monitor various provisions in this agreement over the next two years, with the exception of
20 additional fees that may be incurred pursuant to A.R.T.’s election under Section 11, if any. A.R.T.
21 agreed to pay Englander, upon the Court’s approval and entry of this Consent Judgment, the
22 amount of fees and costs indicated on Exhibit A. A.R.T. further agreed to tender and shall tender
23 its payment in full under this Section to Englander’s counsel’s trust account – payable to “The
24 Chanler Group in Trust” – within two business days of the Effective Date. Such funds shall be
25 disbursed upon the Court’s approval and entry of this Consent Judgment.

26
27
28

1 **4.5 Payment Procedures**

2 **4.5.1 Payment Addresses.**

3 (a) All payments owed to Englander and his counsel, pursuant to
4 Sections 4.1 and 4.2 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 owed to OEHHA (EIN: 68-0284486), pursuant to
11 Section 4.1, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one
12 of 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 or Courier:

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 The Chanler Group at the address set forth in
27 Section 4.3.1(a) above.

28 **4.5.3 Tax Documentation.** A.R.T. shall provide a separate 1099 form for each
29 payment required by this Consent Judgment to: (a) Peter Englander, whose address and tax
30 identification number shall be furnished upon request after this Consent Judgment has been fully
31 executed by the Parties; (b) “California Office of Environmental Health Hazard Assessment” (EIN:
32 68-0284486); and (c) “The Chanler Group” (EIN: 94-3171522) , and deliver such form to the payee
33 at the payment addresses provided in Section 4.3.1, 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 A.R.T., its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
5 attorneys, and each entity to whom A.R.T. directly or indirectly distributes or sells the Products,
6 including, but not limited, to downstream distributors, wholesalers, customers, retailers (including,
7 without limitation, J.C. Penney Company, Inc.), franchisees, cooperative members, and licensees
8 (collectively, “Releasees”), from all claims alleging violations of Proposition 65 through the
9 Effective Date based on unwarned exposures to the Listed Chemicals in the Products, as set forth in
10 the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
11 Proposition 65 with respect to exposures to TDCPP from the Products, as set forth in the Notice.
12 The Parties further understand and agree that this Section 5.1 release shall not extend upstream to
13 any entity that manufactured the Products or any component parts thereof, or any distributor or
14 supplier who sold the Products or any component parts thereof to A.R.T., except that entities
15 upstream who provided a Private Labeled Covered Product to A.R.T., if any, shall be released as to
16 the Private Labeled Covered Products A.R.T. has offered for sale in California, or to California
17 Customers.

18 **5.2 Englander’s Individual Releases of Claims**

19 Englander, in his individual capacity only and *not* in any representative capacity, provides a
20 release to A.R.T. and Releasees which shall be effective as a full and final accord and satisfaction,
21 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,
22 losses, claims, liabilities, and demands of any nature, character, or kind, whether known or
23 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
24 TDCPP, TCEP, and/or TDBPP in Products manufactured, imported, distributed, or sold by A.R.T.
25 prior to the Effective Date.⁶ The Parties further understand and agree that this Section 5.2 release
26 shall not extend upstream to any entity that manufactured any Products or any component parts
27 thereof, or any distributors or suppliers who sold any Products or any component parts thereof,
28

1 except to the extent, and solely to the extent, those Products, or any component parts thereof, were
2 offered for sale in California by A.R.T., including but not limited to Private Labeled Covered
3 Products offered for sale in California by the A.R.T.. Nothing in this Section affects Englander's
4 right to commence or prosecute an action under Proposition 65 against a Releasee that does not
5 involve A.R.T.'s Products or Additional Products.

6 5.3 A.R.T.'s Release of Englander

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

13 6. COURT APPROVAL

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

24 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
25 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
26 of action to take, then the case shall proceed in its normal course on the Court's trial calendar. If
27 the Court's approval is ultimately overturned by an appellate court, the Parties shall meet and
28 confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly

1 agree on a course of action to take, then the case shall proceed in its normal course on the Court's
2 trial calendar. In the event that this Consent Judgment is entered by the Court and subsequently
3 overturned by any appellate court, any monies that have been provided to OEHHA, Englander, or
4 his counsel pursuant to Section 3, above, shall be refunded within 15 days of the appellate decision
5 becoming final. If the Court does not approve and enter the Consent Judgment within one year of
6 the Effective Date, any monies that have been provided to OEHHA or held in trust for Englander or
7 his counsel pursuant to Section 3, above, shall be refunded to the A.R.T. within 15 days.

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of California.
10 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
11 reason of law generally, or as to the Products, then A.R.T. may provide Englander with notice of
12 any asserted change in the law, and shall have no further obligations pursuant to this Consent
13 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this
14 Consent Judgment shall be interpreted to relieve A.R.T. from its obligation to comply with any
15 pertinent state or federal law or regulation.

16 **8. NOTICE**

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

21 To A.R.T.:

22 At the address shown on Exhibit A

To Englander:

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

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

28

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

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

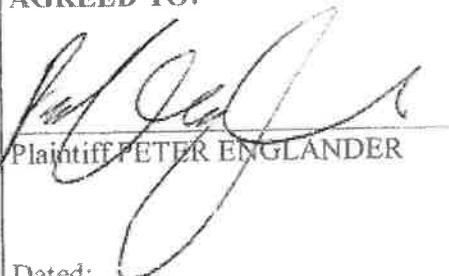
8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

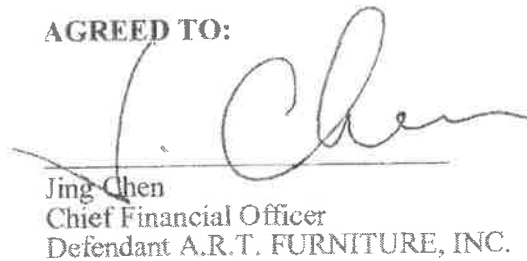
13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this
15 Consent Judgment.

16 **AGREED TO:**

17 
18 Plaintiff PETER ENGLANDER

19 Dated:
20 January 7, 2014 _____

16 **AGREED TO:**

17 
18 Jing Chen
19 Chief Financial Officer
20 Defendant A.R.T. FURNITURE, INC.

21 Dated:
22 January 6, 2014 _____

23
24
25
26
27
28

EXHIBIT A

I. Settling Defendant: **A.R.T. Furniture, Inc. ("A.R.T.")**

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

III. Downstream Entities Released: The downstream entities covered by the Release in Section 5 include, but are not limited to, J. C. Penney Corporation, Inc. and J. C. Penney Company, Inc.

IV. A.R.T.'s Settlement Payments:

A. Initial Settlement Payments: \$34,000

1. Initial Civil Penalty: \$9,000
2. Attorneys' Fees and Costs: \$ 25,000

B. Second Civil Penalty: \$12,000

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

C. Third Civil Penalty: \$5,000

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

V. Persons to receive notice under Section 8:

<p>Jing Chen, Chief Financial Officer A.R.T. Furniture, Inc. 1165 Auto Center Drive Ontario, CA 91761</p> <p>Email: jchen@arthomefurnishings.com</p> <p>Tel: (909) 390-1039 Fax: (909) 390-1059</p>	<p>Todd O. Maiden, Esq. Jamon L. Bollock, Esq. Reed Smith, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105</p> <p>Email: tmaiden@reedsmith.com jbollock@reedsmith.com</p> <p>Tel: (415) 659-5918 Fax: (415) 391-8269</p>
---	---

Exhibit 2
(To Judgment)

1 Clifford A. Chanler, State Bar No. 135534
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
PETER ENGLANDER
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 PETER ENGLANDER,

13 Plaintiff,

14 v.

15 BEXCO ENTERPRISES, INC., *et al.*

16 Defendants.
17

) Case No. RG13688520

) *Assigned for All Purposes to*
) *The Hon. George C. Hernandez, Jr., Dept. 17*

) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANTS MAGNUSSEN HOME**
) **FURNISHINGS, INC. AND MAGNUSSEN**
) **HOLDINGS INC.**

) (Health & Safety Code § 25249.5 *et seq.*)
18

19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendants Magnussen Home Furnishings, Inc. and Magnussen Holdings Inc.
5 (“Magnussen”), with Englander and Magnussen each referred to individually as a “Party” and
6 collectively as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Englander alleges that Magnussen manufactured, imported, sold and/or distributed for sale
17 in California, padded upholstered furniture including benches containing tris(2-chloroethyl)
18 phosphate (“TCEP”) without providing the clear and reasonable health hazard warnings required by
19 Proposition 65. Englander further alleges that TCEP escapes from the foam padding components
20 resulting in human exposures.

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

25 **1.5 Product Description**

26 The categories of products that are covered by this Consent Judgment are identified on
27 Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or manufactured for
28

1 use as a component of another product, such as upholstered furniture, but which is not itself a
2 finished product, is specifically excluded from the definition of Products included on Exhibit A.

3 **1.6 Notice of Violation**

4 On May 1, 2013, Englander served Magnussen and certain requisite public enforcement
5 agencies with a 60-Day Notice of Violation (“Notice”) alleging that Magnussen violated
6 Proposition 65 when it failed to warn its customers, consumers, and workers in California that the
7 Products expose users to TCEP. To the best of the Parties’ knowledge, no public enforcer has
8 commenced and is diligently prosecuting the allegations set forth the Notice.

9 **1.7 Complaint**

10 On July 22, 2013, Englander commenced the instant action (“Complaint”), naming
11 Magnussen as a defendant, and stating a cause of action for violations of Proposition that are the
12 subject of the Notice.

13 **1.8 No Admission**

14 Magnussen denies the material, factual, and legal allegations contained in the Notice and
15 Complaint and maintains that all of the products that it has sold or distributed for sale in California,
16 including the Products, have been and are in compliance with all laws. Nothing in this Consent
17 Judgment shall be construed as an admission by Magnussen of any fact, finding, conclusion of law,
18 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
19 construed as an admission by Magnussen of any fact, finding, conclusion of law, issue of law, or
20 violation of law. This Section shall not, however, diminish or otherwise affect Magnussen’s
21 obligations, responsibilities, and duties under this Consent Judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Magnussen as to the allegations contained in the Complaint, that venue is proper in
25 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of
26 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section
27 664.6.

28

1 **2. DEFINITIONS**

2 **2.1 California Customer**

3 “California Customer” shall mean any customer of Magnussen’s that Magnussen reasonably
4 understands is located in California, has a California warehouse or distribution center, maintains a
5 retail outlet in California, or has distributed Products for sale in California, online via the internet or
6 by any other means, on or after January 1, 2011.

7 **2.2 No Detectable Amount**

8 “No Detectable Amount” shall mean no more than 25 parts per million (“ppm”) (the
9 equivalent of .0025%) of any one chemical in any material, component, or constituent of a
10 subject product, when analyzed pursuant to EPA testing methodologies 3545 and 8270C, or
11 equivalent methodologies utilized by federal or state agencies to determine the presence, or measure
12 the amount, of TCEP and tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), in a solid substance.

13 **2.3 Effective Date**

14 “Effective Date” shall mean January 15, 2014.

15 **2.4 Reformulated Products**

16 “Reformulated Products” shall mean Products that contain No Detectable Amount of
17 TDCPP and TCEP.

18 **2.5 Reformulation Standard**

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

21 **2.6 Retailer**

22 “Retailer” means an individual or entity that offers a Product for sale to consumers in
23 California.

24 **3. INJUNCTIVE RELIEF: REFORMULATION**

25 **3.1 Reformulation Commitment**

26 Commencing on April 30, 2014, and continuing thereafter, Magnussen shall not
27 manufacture or purchase for distribution or sale to California Customers, or cause to be
28

1 manufactured or purchased for distribution or sale to California Customers, any Products that do
2 not meet the definition of Reformulated Products established by Section 2.4.

3 **3.2 Vendor Notification/Certification**

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

13 **3.3 Products No Longer in Magnussen's Control**

14 No later than 45 days after the Effective Date, Magnussen shall send a letter ("Notification
15 Letter"), electronic or otherwise, to: (a) each California Customer and/or Retailer which it, after
16 October 28, 2011, supplied the item for resale in California described as an exemplar in a notice of
17 violation that Englander has alleged contains TCEP ("Exemplar Product"); and (b) any California
18 Customer and/or Retailer that Magnussen believes is reasonably likely to have had any inventory of
19 an Exemplar Product for resale in California as of January 1, 2013. The Notification Letter shall
20 advise the recipient that the Exemplar Product "contains TCEP, a chemical that is known to the
21 State of California to cause cancer," and request that the recipient either: (a) label the Exemplar
22 Products remaining in inventory prior to offering them for sale in California, or to California
23 Customers, pursuant to Section 3.5; or (b) return, at Magnussen's expense, all units of the Exemplar
24 Product held for sale in California, or to California Customers, to Magnussen or a party Magnussen
25 has otherwise designated. The Notification Letter shall require a response from the recipient within
26 15 days confirming whether the Exemplar Product will be labeled or returned. Magnussen shall
27 maintain copies of all Notification Letters and responses thereto for two years after the Effective
28 Date and shall promptly produce copies of such records upon Englander's written request.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.4 Current Inventory

Any Products in, or manufactured and en route to, Magnussen’s inventory as of or after December 31, 2013, that do not qualify as Reformulated Products, and that Magnussen has reason to believe may be sold or distributed for sale in California or to California Customers 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 when 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 TCEP, a flame retardant chemical known to the State of California to cause cancer.¹

Attached as Exhibit B are template warnings developed by Englander that are deemed to be clear and reasonable for purposes of this Consent Judgment.² Provided that

¹ The regulatory safe harbor warning language specified in 27 Cal. Code Regs. § 25603.2 may also be used if Magnussen employed such warning prior to the Effective Date. If Magnussen seeks to use alternative warning language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it 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 does not meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used under this Consent Judgment: (a) “cancer or birth defects or other reproductive harm”; and (b) “cancer, birth defects or other reproductive harm.”

1 the other requirements set forth in this Section are addressed, including as to the required
2 warning statement and method of transmission as set forth above, Magnussen remains free
3 not to utilize the template warnings.

4 **3.5.2 Internet Website Warning.** A warning shall be given in conjunction with
5 the sale of the Products into California, or to California Customers online via the internet.
6 The warning shall appear on one or more web pages displayed to a purchaser prior to
7 completing payment and/or during the “checkout” process. The following warning
8 statement shall be used and shall: (a) appear adjacent to or immediately following the
9 display, description, or price of the Product; (b) appear as a pop-up box; or (c) otherwise
10 appear automatically to the customer. The warning text shall be the same type size or larger
11 than the Product description text, and shall state:

12 **WARNING:** This product contains TCEP, a flame
13 retardant chemical known to the State
14 of California to cause cancer.³

14 **3.6 Alternatives to Interim Warnings**

15 Magnussen’s obligation under Section 3.3 shall be relieved if it provides Englander with
16 written notice on or before January 15, 2014 certifying that only Exemplar Products meeting the
17 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
18 California, after December 31, 2013. The obligations of Magnussen under Section 3.4 shall be
19 relieved upon Englander’s receipt of Magnussen’s written certification on or before January 15,
20 2014, that, as of June 30, 2014, it will only distribute or cause to be distributed for sale, or sell in
21 California, or to California Customers for sale in California, Products (i.e., Products beyond the
22 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
23 Section are material terms and time is of the essence.

24 ² 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 that 32 point font, with the warning language printed on each side, which
28 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.

³ Footnote 1, *supra*, applies in this context as well.

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalties**

3 In settlement of all the claims referred to in this Consent Judgment, pursuant to Health and
4 Safety Code section 25249.7(b), Magnussen shall pay the civil penalties shown on Exhibit A. Each
5 penalty payment will be allocated in accordance with California Health & Safety Code section
6 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
7 Health Hazard Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group in
8 Trust for Englander.” Each penalty payment shall be delivered within two business days of the date
9 it is due at the addresses provided in Section 4.5. Magnussen shall be liable for payment of simple
10 interest at a rate of 10% for all amounts due and owing that are not received within two business
11 days of the due date, if any.

12 **4.1.1 Initial Civil Penalty.** On or before the Effective Date, Magnussen shall
13 make an initial civil penalty payment in the amount identified on Exhibit A.

14 **4.1.2 Second Civil Penalty.** On or before March 1, 2014, Magnussen shall make a
15 second civil penalty payment in the amount identified on Exhibit A. The amount of the
16 second penalty may be reduced according to any penalty waiver for which Magnussen is
17 eligible under Sections 4.1.4(i) and 4.1.4(iii), below.

18 **4.1.3 Third Civil Penalty.** On or before January 31, 2014, Magnussen shall make
19 a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
20 penalty may be reduced according to any penalty waiver for which Magnussen is eligible
21 under Sections 4.1.4(ii) and 4.1.4(iv), below.

22 **4.1.4 Reductions to Civil Penalty Amounts.** Magnussen may reduce the amount
23 of the second and/or third civil penalty payments identified on Exhibit A by providing
24 Englander with certification of certain efforts undertaken to reformulate its Products or limit
25 the ongoing sale of non-reformulated Products in California. The option to provide a
26 written certification in lieu of making a portion of Magnussen’s second or third civil penalty
27 payments constitutes a material term of this Consent Judgment, and with regard to such
28 term, time is of the essence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

If Magnussen so Elects on Exhibit A, a portion of the second civil penalty shall be waived, if, as of January 31, 2014, and continuing thereafter, Magnussen agrees that it will only manufacture for distribution or sale to California Customers or cause to be manufactured for distribution or sale to California Customers, Reformulated Products. An officer or other authorized representative shall provide Englander with a written certification confirming compliance with such conditions, which certification must be received by Englander’s counsel on or before January 15, 2014.

4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.

As set forth on Exhibit A, a portion of the third civil penalty shall be waived, if, as of April 30, 2014, and continuing thereafter, Magnussen agrees that it will only manufacture for distribution or sale in California or cause to be manufactured for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject product, when pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized representative shall provide Englander with a written certification confirming compliance with such conditions, no later than January 15, 2014.

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

As set forth on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of Magnussen provides Englander with written certification, by March 1, 2014, confirming that each individual or establishment in California to which it supplied the Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to return all Exemplar Products held for sale in California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4.1.4(iv) **Partial Penalty Waiver for Cessation of Distribution of Non- Reformulated Products into California.**

As set forth on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of Magnussen provides Englander with written certification, on or before January 15, 2014, confirming that, commencing on July 1, 2014, it will only distribute, offer for sale, or sell in California, or to California Customers, Reformulated Products.

4.2 Representations

Magnussen represents that the sales data and other information concerning its size, knowledge of TCEP presence, and prior reformulation and/or warning efforts, provided to Englander was true and accurate based on its knowledge and are material factors upon which Englander relied to determine the amount of civil penalties assessed pursuant to Health and Safety Code section 25249.7(b).

If, within nine months of the Effective Date, Englander discovers and presents to Magnussen, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Magnussen shall have 30 days to meet and confer regarding Englander’s contention. Should this 30 day period pass without any resolution between Englander and Magnussen, Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

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

4.3 Penalties for Certain Violations of the Reformulation Standard

If Englander provides notice and appropriate supporting information to Magnussen that levels of a TCEP in excess of the Reformulation Standard have been detected in one or more Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline for meeting the Reformulation Standard under Sections 3.1 or 3.6 above, then Magnussen

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

14 4.4 Reimbursement of Fees and Costs

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

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

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

1 monitor various provisions in this agreement over the next two years. Magnussen agreed to pay
2 Englander, upon the Court's approval and entry of this Consent Judgment, the amount of fees and
3 costs indicated on Exhibit A. Magnussen further agreed to tender and shall tender its payment in
4 full under this Section to Englander's counsel's trust account – payable to "The Chanler Group in
5 Trust" – within two business days of the Effective Date. Such funds shall be disbursed upon the
6 Court's approval and entry of this Consent Judgment.

7 **4.5 Payment Procedures**

8 **4.5.1 Payment Addresses.**

9 (a) All payments and tax forms owed to Englander and his counsel under
10 this Consent Judgment shall be delivered to the following address:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

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

19 For United States Postal Service Delivery:

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

25 For Non-United States Postal Service Delivery or Courier:

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

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

1 4.5.3 **Tax Documentation.** Magnussen shall shall issue a separate 1099 form for
2 each payment required by this Section to: (a) Peter Englander, whose address and tax
3 identification number shall be furnished upon request after this Consent Judgment has been
4 fully executed by the Parties; (b) OEHHA, who shall be identified as “California Office of
5 Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be
6 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) “The
7 Chanler Group” (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

8 **5. CLAIMS COVERED AND RELEASED**

9 5.1 **Englander’s Release of Proposition 65 Claims**

10 Englander, acting on his own behalf and in the public interest, releases Magnussen, its
11 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents,
12 employees, attorneys, and all of their successors and assigns (“Defendant Releasees”), and each
13 entity to whom Magnussen directly or indirectly distributes or sells the Products, including, but not
14 limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
15 members, and licensees (collectively, “Downstream Releasees”), from all claims alleging violations
16 of Proposition 65 through the Effective Date based on unwarned exposures to TCEP in the
17 Products, as set forth in the Notice. Compliance with the terms of this Consent Judgment
18 constitutes compliance with Proposition 65 with respect to exposures to TCEP from the Products,
19 as set forth in the Notice. The Parties further understand and agree that this Section 5.1 release shall
20 not extend upstream to any entity that manufactured the Products or any component parts thereof,
21 or any distributor or supplier who sold the Products or any component parts thereof to Magnussen.

22 5.2 **Englander’s Individual Releases of Claims**

23 Englander, in his individual capacity only and *not* in any representative capacity, provides a
24 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
25 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
26 liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or
27 unsuspected, limited to and arising out of alleged or actual exposures to TDCPP, TCEP, and/or
28 TDBPP in Products manufactured, imported, distributed, or sold by Defendant Releasees prior to

1 the Effective Date. The Parties further understand and agree that this Section 5.2 release shall not
2 extend upstream to any entity that manufactured any Products or Additional Products, or any
3 component parts thereof, or any distributors or suppliers who sold any Products or Additional
4 Products, or any component parts thereof to Magnussen. Nothing in this Section affects
5 Englander's right to commence or prosecute an action under Proposition 65 against a Releasee that
6 does not involve a Magnussen's Products.

7 **5.3 Magnussen's Release of Englander**

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

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
17 within one year after it has been fully executed by all Parties. If the Court does not approve the
18 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal
19 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall
20 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately
21 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the
22 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,
23 then the case shall proceed in its normal course on the Court's trial calendar. In the event that this
24 Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any
25 monies that have been provided to OEHHA, Englander or his counsel under this Consent Judgment
26 shall be refunded within 15 days of the appellate decision becoming final. If the Court does not
27 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
28

1 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 4,
2 above, shall be refunded to Magnussen within 15 days.

3 **7. GOVERNING LAW**

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

11 **8. NOTICE**

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

16 To Magnussen:	To Englander:
17 At the address shown on Exhibit A	Attn: Proposition 65 Coordinator
18	The Chanler Group
19	2560 Ninth Street
20	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

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

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

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

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

11.1 Englander and Magnussen agree to support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Englander shall draft and file and Magnussen shall support, appearing at the hearing if so requested. If any third-party objection to the motion is filed, Englander and Magnussen agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. MODIFICATION

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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:

Date: Januray 15, 2014

Date: JANUARY 10, 2014

By: 
PETER ENGLANDER

By: 
MAGNUSSEN HOME FURNISHINGS, INC.

Date: January 15, 2014

Date: January 10, 2014

AGREED TO:

Date: JANUARY 10, 2014

By: 
MAGNUSSEN HOLDINGS INC.

Date: January 10, 2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

I. Name of Settling Defendant: MAGNUSSEN HOLDINGS, INC., MAGNUSSEN HOME FURNISHINGS, INC.

II. Names of Releasees (optional/partial):

III. Types of Covered Products Applicable to Magnussen:

Padded upholstered furniture including benches containing TCEP.

IV. Types of Additional Products Magnussen Holdings, Inc. Elects to Address (if any):

V. Magnussen's Required Settlement Payments

A. Penalties of \$83,000, as follows:

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

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

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

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs attributable to Magnussen Holdings, Inc.: \$44,000.

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

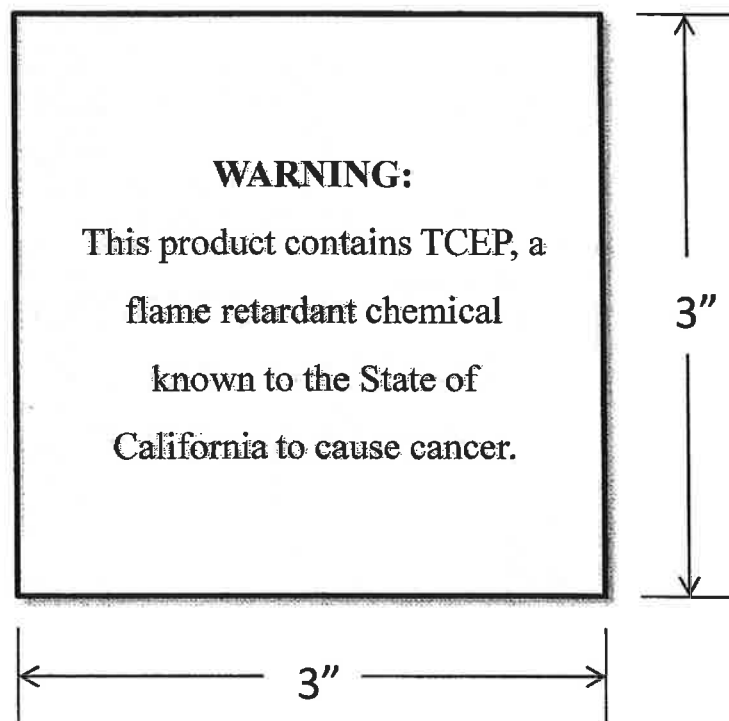
Kent MacFarlane
CFO
Magnussen Home Furnishings Ltd.
66 Hincks Street, Unit 1
New Hamburg, Ontario
N3A 2A3
Canada

With a copy to:

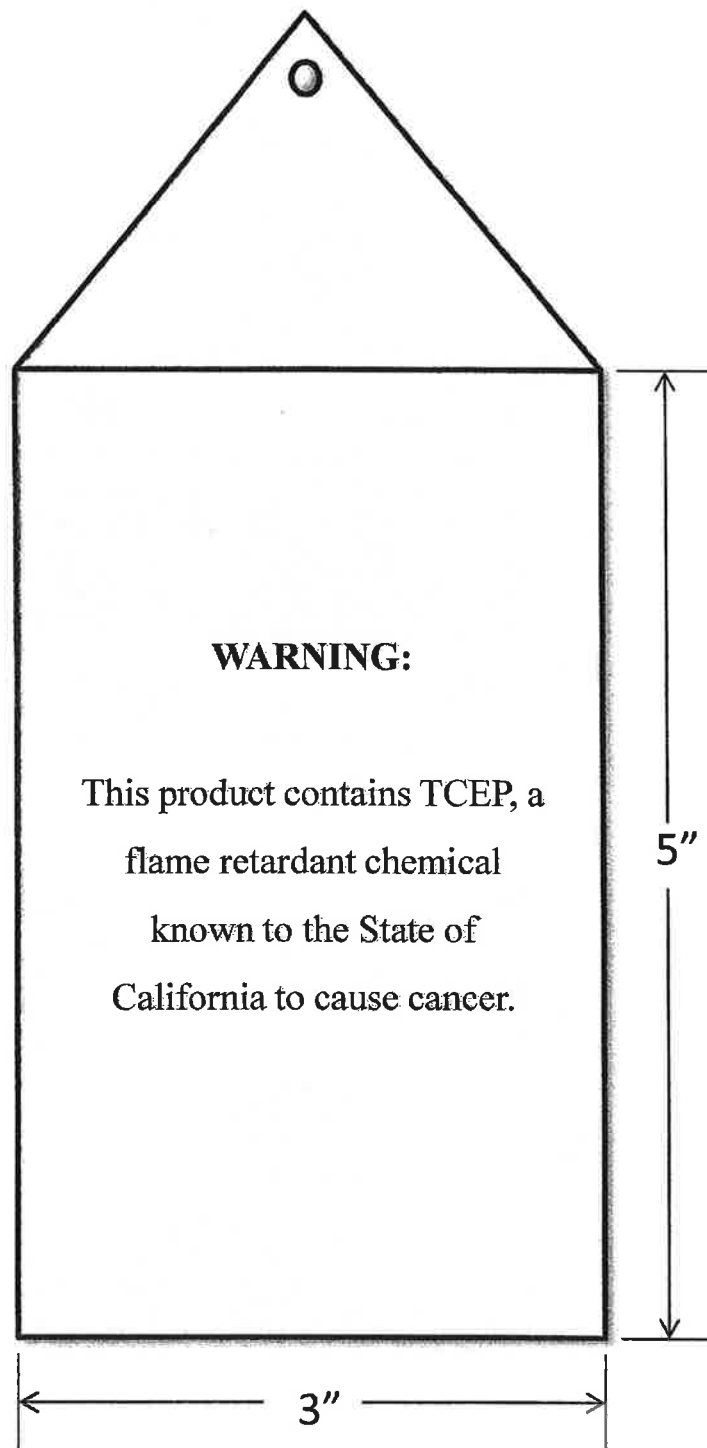
Jeffrey B. Margulies
Norton Rose Fulbright
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B
(ILLUSTRATIVE WARNINGS)



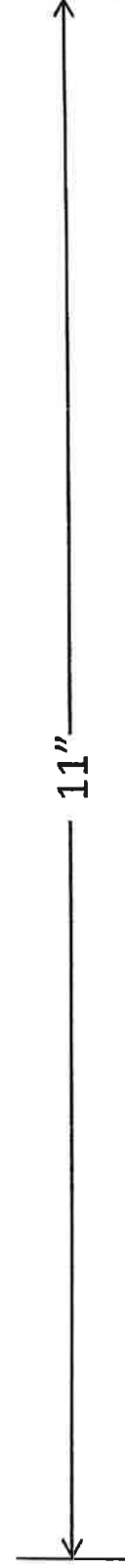
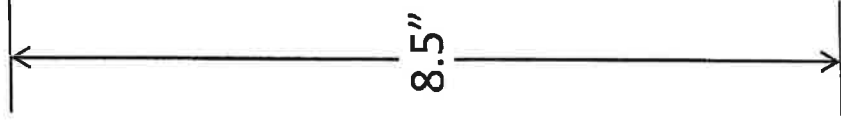
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



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.

Exhibit 3
(To Judgment)

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

5 Attorneys for Plaintiff
6 PETER ENGLANDER

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

PETER ENGLANDER,
Plaintiff,
v.
BEXCO ENTERPRISES, INC.; *et al.*,
Defendants.

) Case No. RG 13688520
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT THEODORE**
) **ALEXANDER USA, INC.**
)
)
) **(Health & Safety Code § 25249.6 et seq.**
) **Complaint Filed: July 22, 2013)**

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Peter Englander**

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

10 **1.3 Theodore Alexander USA, Inc.**

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

14 **1.4 General Allegations**

15 **1.4.1** Englander alleges that Theodore Alexander manufactured, imported, sold
16 and/or distributed for sale in California, products with foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health
18 hazard warnings.

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

24 TDCPP shall hereinafter be referred to as the “Listed Chemical.”

25 **1.5 Product Description**

26 The categories of products that are covered by this Consent Judgment as to Theodore
27 Alexander are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is

1 supplied, shaped or manufactured for use as a component of a product, such as upholstered
2 furniture, is specifically excluded from the definition of Products and shall not be identified by
3 Theodore Alexander on Exhibit A as a Product.

4 1.6 Notice of Violation

5 On April 11, 2013, Englander served Theodore Alexander and certain requisite public
6 enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients
7 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
8 consumers, and workers in California that the Products expose users to TDCPP.

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

11 1.7 Complaint

12 On July 22, 2013, Englander filed a Complaint in the Superior Court in and for the County
13 of Alameda against Theodore Alexander, among others, and Does 1 through 150, *Peter Englander*
14 *v. Bexco Enterprises, Inc., et al.*, Case No. RG 13688520, alleging violations of Proposition 65,
15 based in part on the alleged unwarned exposures to TDCPP contained in the Products
16 ("Complaint").

17 1.8 No Admission

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

1 **1.9 Consent to Jurisdiction**

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

7 **2. DEFINITIONS**

8 **2.1 California Customers**

9 “California Customer” shall mean any customer that Theodore Alexander reasonably
10 understands is located in California, has a California warehouse or distribution center, maintains a
11 retail outlet in California, or has made internet sales into California on or after March 4, 2011.

12 **2.2 Detectable**

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

19 **2.3 Effective Date**

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

21 **2.4 Private Label Covered Products**

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

25 **2.5 Reformulated Products**

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

1 **2.6 Reformulation Standard**

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

4 **2.7 Retailer**

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

7 **3. INJUNCTIVE RELIEF: REFORMULATION**

8 **3.1 Reformulation Commitment**

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

12 **3.2 Vendor Notification/Certification**

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

23 **3.3 Products No Longer in Theodore Alexander's Control**

24 No later than 45 days after the Effective Date, Theodore Alexander shall send a letter,
25 electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer
26 which it, after October 28, 2011, supplied the item for resale in California described as an
27 exemplar in the Notice received by Theodore Alexander from Englander ("Exemplar Product");

28

4

1 and (2) any California Customer and/or Retailer that Theodore Alexander reasonably understands
2 or believes had any inventory for resale in California of Exemplar Product as of the relevant
3 Notice's dates. The Notification Letter shall advise the recipient that the Exemplar Product
4 "contains TDCPP, a chemical known to the State of California to cause cancer," and request that
5 the recipient either: (a) label the Exemplar Products remaining in inventory for sale in California,
6 or to California Customers, pursuant to Section 3.5; or (b) return, at Theodore Alexander's sole
7 expense, all units of the Exemplar Product held for sale in California, or to California Customers,
8 to Theodore Alexander or a party Theodore Alexander has otherwise designated. The Notification
9 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar
10 Product will be labeled or returned. Theodore Alexander shall maintain records of all
11 correspondence or other communications generated pursuant to this Section for two years after the
12 Effective Date and shall promptly produce copies of such records upon Englander's written
13 request.

14 **3.4 Current Inventory**

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

19 **3.5 Product Warnings**

20 **3.5.1 Product Labeling**

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

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

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

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.² Provided that the other requirements
8 set forth in this Section are addressed, including as to the required warning statement and method
9 of transmission as set forth above, Theodore Alexander remains free not to utilize the template
10 warnings.

11 **3.5.2 Internet Website Warning**

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

18 ¹ The regulatory safe harbor warning language specified in of 27 CCR § 25603.2 may also
19 be used if Theodore Alexander had begun to use it, prior to the Effective Date. If Theodore
20 Alexander seeks to use alternative warning language, other than the language specified above or
21 the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of
22 transmission of the warning, it must obtain the Court's approval of its proposed alternative and
23 provide all Parties and the Office of the Attorney General with timely notice and the opportunity to
24 comment or object before the Court acts on the request. The Parties agree that the following
25 warning language shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and
26 shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other
27 reproductive harm"; and (b) "cancer, birth defects or other reproductive harm."

28 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag
 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
 8.5" x. 11", with no less that 32 point font, with the warning language printed on each side, which
 shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a
 yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed
 directly to the Product packaging.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

3.6 Alternatives to Interim Warnings

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

4. MONETARY PAYMENTS

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

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

³ Footnote 1, *supra*, applies in this context as well.

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

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

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

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

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

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

1 conditions, which certification must be received by Englander's counsel on or before December
2 15, 2013.

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

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

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

18 As shown on Theodore Alexander's Exhibit A, a portion of the second civil penalty shall
19 be waived, if an officer or other authorized representative of Theodore Alexander provides
20 Englander with written certification, by December 15, 2013, confirming that each individual or
21 establishment in California to which it supplied the Exemplar Product after October 28, 2011, has
22 elected to return all remaining Exemplar Products held for sale in California.⁴

23
24
25
26 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products
27 for which Englander has, prior to August 31, 2013, provided Theodore Alexander with test results
28 from a NVLAP accredited laboratory showing the presence of the Listed Chemical at a level in
excess of 250 ppm pursuant to EPA testing methodologies 3545 or 8270C.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

4.2 Representations

Theodore Alexander represents that the sales data and other information concerning its size, knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Englander was truthful to its knowledge and a material factor upon which Englander has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment.

If, within nine months of the Effective Date, Englander discovers and presents to Theodore Alexander, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Theodore Alexander shall have 30 days to meet and confer regarding the Englander’s contention. Should this 30 day period pass without any such resolution between the Englander and Theodore Alexander, Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.

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

⁵ This Section shall not be applicable where the vendor in question had previously been found by Theodore Alexander to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by Theodore Alexander's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

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

1 **4.4 Reimbursement of Fees and Costs**

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

21 **4.5 Payment Procedures**

22 **4.5.1 Issuance of Payments.**

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

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

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

4 For United States Postal Service Delivery:

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

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
17 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
18 in Section 4.5.1(a) above, as proof of payment to OEHHA.

19 4.5.3 Tax Documentation. Theodore Alexander shall issue a separate 1099 form
20 for each payment required by this Section to: (a) Peter Englander, whose address and tax
21 identification number shall be furnished upon request after this Consent Judgment has been
22 fully executed by the Parties; (b) OEHHA, who shall be identified as "California Office of
23 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be
24 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
25 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

26 **5. CLAIMS COVERED AND RELEASED**

27 **5.1 Englander's Release of Proposition 65 Claims**

28 Englander, acting on his own behalf and in the public interest, releases Theodore
Alexander, its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
agents employees, attorneys, and each entity to whom Theodore Alexander directly or indirectly

1 distribute or sell Products, including, but not limited, to downstream distributors, wholesalers,
2 customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"),
3 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
4 exposures to the Listed Chemical in the Products, as set forth in the Notice. Compliance with the
5 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
6 exposures to the Listed Chemical from the Products, as set forth in the Notice. The Parties further
7 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other
8 than Theodore Alexander, that manufactured the Products or any component parts thereof, or any
9 distributors or suppliers who sold the Products or any component parts thereof to Theodore
10 Alexander, except that an entity upstream of Theodore Alexander that is a Retailer of a Private
11 Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for
12 sale in California, or to California Customers, by the Retailer in question.

13 5.2 Englander's Individual Releases of Claims

14 Englander, in his individual capacity only and *not* in his representative capacity, provides a
15 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
16 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
17 liabilities, and demands of Englander of any nature, character, or kind, whether known or
18 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
19 TDCPP, TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1
20 and delineated on Theodore Alexander's Exhibit A) manufactured, imported, distributed, or sold
21 by Theodore Alexander prior to the Effective Date.⁷ The Parties further understand and agree that
22 this Section 5.2 release shall not extend upstream to any entities that manufactured the Products or
23 Additional Products, or any component parts thereof, or any distributors or suppliers who sold the
24 Products Additional Products, or any component parts thereof to Theodore Alexander, except that
25

26 ⁷ The injunctive relief requirements of Section 3 shall apply to Additional Products as
27 otherwise specified.

1 an entity upstream of Theodore Alexander that is a Retailer of a Private Labeled Covered (or
2 Additional) Product shall be released as to the Private Labeled Covered (or Additional) Products
3 offered for sale in California by the Retailer in question. Nothing in this Section affects
4 Englander's right to commence or prosecute an action under Proposition 65 against a Releasee that
5 does not involve Theodore Alexander's Products or Additional Products.

6 **5.3 Theodore Alexander's Release of Englander**

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

13 **6. COURT APPROVAL**

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

1 Effective Date, any monies that have been provided to OEHHA or held in trust for Englander or
2 his counsel pursuant to Section 4, above, shall be refunded to Theodore Alexander within 15 days.

3 **7. GOVERNING LAW**

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

13 **8. NOTICES**

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

18 To Theodore Alexander:

19 At the address shown on Exhibit A

To Englander:

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

25 Any Party, from time to time, may specify in writing to the other Party a change of address to
26 which all notices and other communications shall be sent.
27
28

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 § 25249.7(f)**

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 In addition to the Products, where Theodore Alexander has identified on Exhibit A
10 additional products that contain TDCPP and that are sold or offered for sale by it in California, or
11 to California Customers, ("Additional Products"), then by no later than October 15, 2013,
12 Theodore Alexander may provide Englander with additional information or representations
13 necessary to enable him to issue a 60-Day Notice of Violation and valid Certificate of Merit
14 therefore, pursuant to Health & Safety Code § 25249.7, that includes the Additional Products.
15 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
16 such as upholstered furniture, is specifically excluded from the definition of Additional Products
17 and shall not be identified by Theodore Alexander on Exhibit A as an Additional Product. Except
18 as agreed upon by Englander, Theodore Alexander shall not include a product, as an Additional
19 Product, that is the subject of an existing 60-day notice issued by Englander or any other private
20 enforcer at the time of execution. After receipt of the required information, Englander agrees to
21 issue a supplemental 60-day notice in compliance with all statutory and regulatory requirements
22 for the Additional Products. Englander will, and in no event later than October 1, 2014, prepare
23 and file an amendment to this Consent Judgment to incorporate the Additional Products within the
24 defined term "Products" and, serve a copy thereof and its supporting papers (including the basis
25 for supplemental stipulated penalties, if any) on the Office of the California Attorney General upon
26 the Court's approval, and finding that the supplemental stipulated penalty amount, if any, is
27 reasonable, the Additional Products shall become subject to Section 5.1 in addition to Section 5.2.

1 Theodore Alexander shall, at the time it elects to utilize this Section and tenders the additional
2 information or representations regarding the Additional Products to Englander, tender to The
3 Chanler Group's trust account an amount not to exceed \$8,750 as stipulated penalties and
4 attorneys' fees and costs incurred by Englander in issuing the new notice and engaging in other
5 reasonably related activities, which may be released from the trust as awarded by the Court upon
6 Englander's application. Any fee award associated with the modification of the Consent Judgment
7 to include Additional Products shall not offset any associated supplemental penalty award, if any
8 (Any tendered funds remaining in the trust thereafter shall be refunded to Theodore Alexander
9 within 15 days). Such payment shall be made to "in trust for The Chanler Group" and delivered as
10 per Section 4.5.1(a) above.

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


19 **12. MODIFICATION**

20 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
21 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
22 of any party and entry of a modified Consent Judgment by the Court.
23
24
25
26
27
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
6 **AGREED TO:**

7
8 
9 _____
10 **Plaintiff, Peter Englander**

11 **Date: October 14, 2013**

AGREED TO:

**Settling Defendant:
Theodore Alexander USA, Inc.**

By: _____
Name:
It's:

Date: October __, 2013

1 **13. AUTHORIZATION**

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

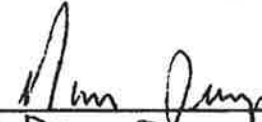
5
6 AGREED TO:

7
8
9 _____
10 Plaintiff, Peter Englander

11 Date: September __, 2013

AGREED TO:

Settling Defendant:
Theodore Alexander USA, Inc.

By: 
11 Name: Doug Jermy
12 It's: Vice President

13 Date: September 30, 2013

EXHIBIT A

I. Name of Settling Defendant: THEODORE ALEXANDER USA, INC.

II. Names of Releasees (optional/partial):

III. Types of Covered Products Applicable to Theodore Alexander:

Padded upholstered furniture including chairs containing TDCPP

IV. Types of Additional Products Theodore Alexander Elects to Address (if any):

V. Theodore Alexander's Required Settlement Payments

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

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

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

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

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs attributable to Theodore Alexander USA, Inc.: \$40,000.

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

Kevin C. Mayer

Name

Attorney

Title

Company/Firm Name

Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

Los Angeles, CA 90071

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B
(ILLUSTRATIVE WARNINGS)

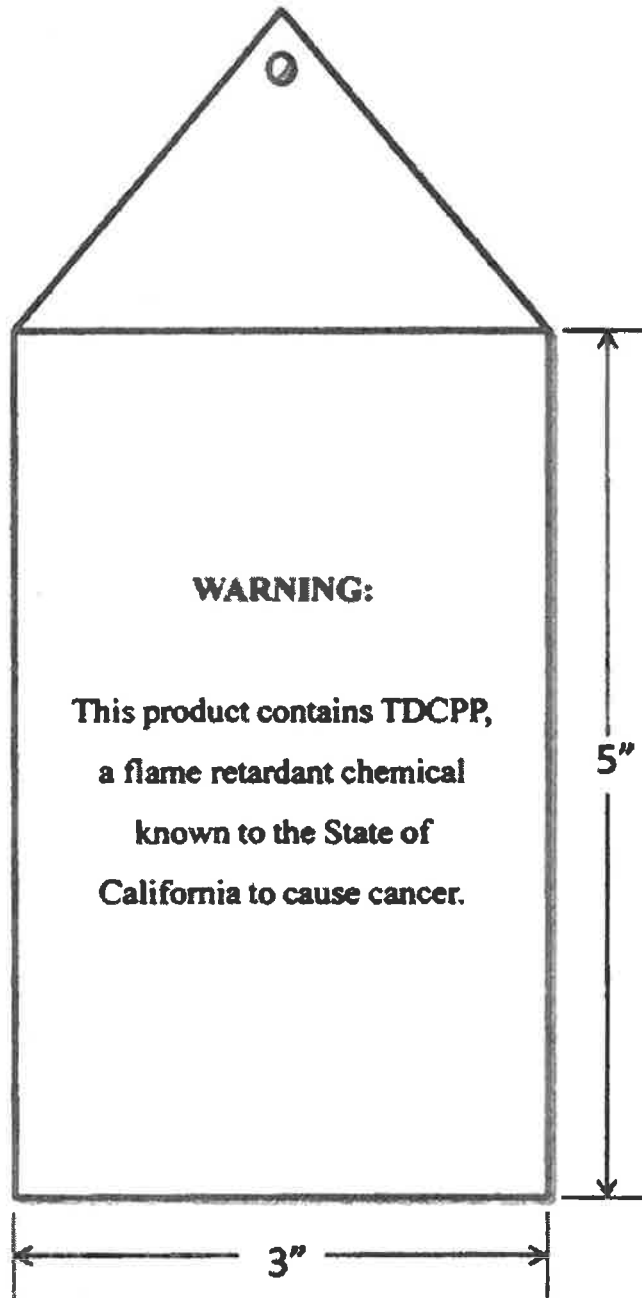
WARNING:

This product contains TDCPP, a flame retardant 8.5"

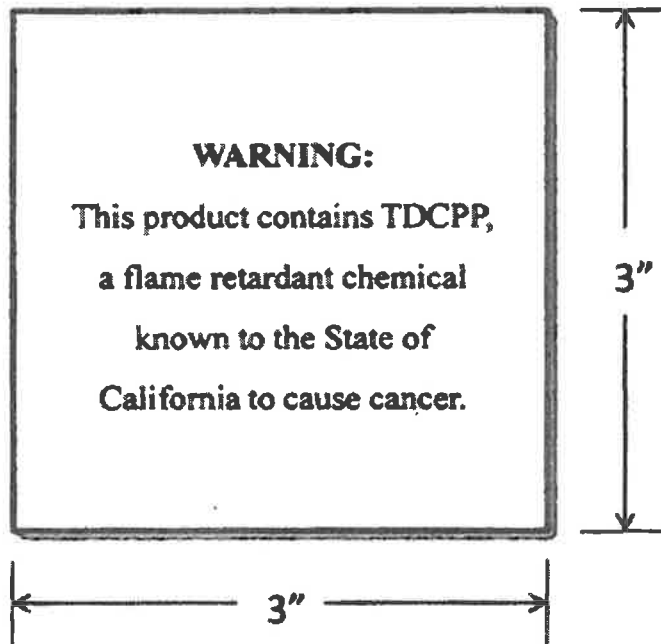
chemical known to the State of California to
cause cancer.



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



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



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