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Attorneys for Plaintiff
PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

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

1. INTRODUCTION

1.1 Parties

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

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

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

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

1.5 Product Description

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

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

1.6 **Notice of Violation**

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

1.7 **Complaint**

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

1.8 **No Admission**

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

1.9 **Consent to Jurisdiction**

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

2. DEFINITIONS

2.1 California Customer

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

2.2 No Detectable Amount

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

2.3 Effective Date

"Effective Date" shall mean January 15, 2014.

2.4 Reformulated Products

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

2.5 Reformulation Standard

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

2.6 Retailer

"Retailer" means an individual or entity that offers a Product for sale to consumers in California.

3. INJUNCTIVE RELIEF: REFORMULATION

3.1 Reformulation Commitment

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

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

3.2 Vendor Notification/Certification

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

3.3 Products No Longer in Magnussen's Control

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

3.4 **Current Inventory**

Any Products in, or manufactured and en route to, 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."

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

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

> **WARNING:** This product contains TCEP, a flame retardant chemical known to the State of California to cause cancer.[3]

3.6 **Alternatives to Interim Warnings**

Magnussen's obligation under Section 3.3 shall be relieved if it provides Englander with written notice on or before January 15, 2014 certifying 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 Magnussen under Section 3.4 shall be relieved upon Englander's receipt of Magnussen's written certification on or before January 15, 2014, that, as of June 30, 2014, it will only distribute or cause to be distributed for sale, 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.

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[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.

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

4. MONETARY PAYMENTS

4.1 Civil Penalties

In settlement of all the claims referred to in this Consent Judgment, pursuant to Health and Safety Code section 25249.7(b), Magnussen shall pay the civil penalties shown on Exhibit A. Each penalty payment will be allocated in accordance with California Health & Safety Code section 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 delivered within two business days of the date it is due at the addresses provided in Section 4.5. Magnussen shall be liable for payment of simple interest at a rate of 10% for all amounts due and owing that are not received within two business days of the due date, if any.

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

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

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

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

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.

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

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.[4] 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.[5] Englander shall further be entitled to reimbursement of his associated expenses in an amount not to exceed $5,000 regardless of the stipulated penalty level. If the Parties proceed under this Section, Magnussen 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.

4.4 **Reimbursement of Fees and Costs**

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

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[4] This Section shall not be applicable where the vendor in question had previously been found by Magnussen to have provided unreliable certifications as to meeting the Reformulation 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.

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

4.5 **Payment Procedures**

4.5.1 **Payment Addresses.**

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

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

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery or Courier:

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

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

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

5. CLAIMS COVERED AND RELEASED

5.1 Englander's Release of Proposition 65 Claims

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

5.2 Englander's Individual Releases of Claims

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

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

5.3 **Magnussen's Release of Englander**

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

6. COURT APPROVAL

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

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

7. GOVERNING LAW

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

8. NOTICE

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

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

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

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.

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:

Date: Januray 15, 2014

By: _____
PETER ENGLANDER

Date: January 15, 2014

AGREED TO:

Date: JANUARY 10, 2014

By: _____
MAGNUSSEN HOME FURNISHINGS, INC.

Date: January 10, 2014

AGREED TO:

Date: JANUARY 10, 2014

By: _____
MAGNUSSEN HOLDINGS INC.

Date: January 10, 2014

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 Home Furnishings, Inc. and Magnussen Holdings Inc. Elects to Address (if any):

V. Magnussen's Required Settlement Payments

A. Penalties of $87,000, 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 Home Furnishings, Inc. and Magnussen Holdings Inc.: $44,000.

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

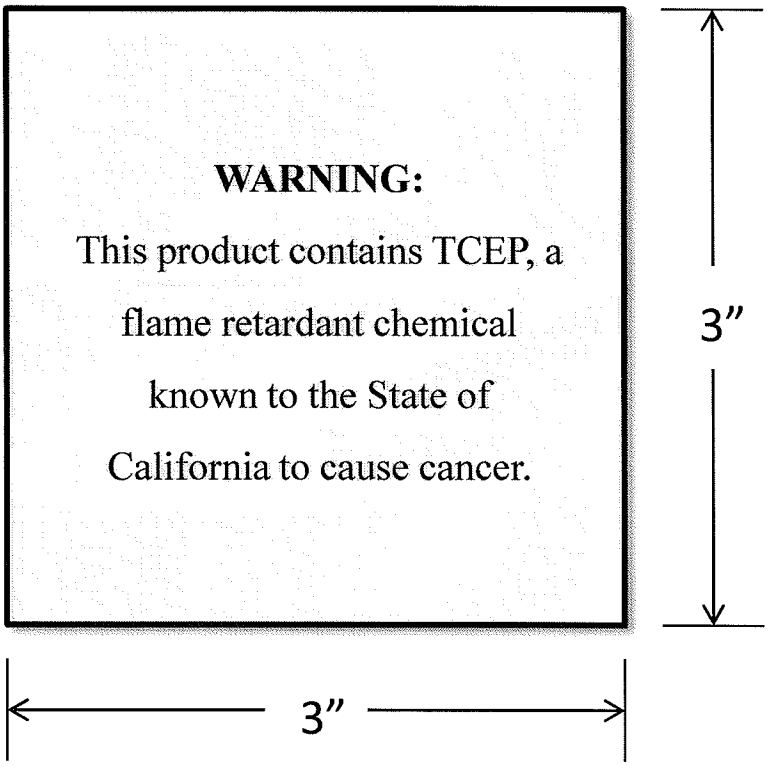
Kent MacFarlane
CFO
Magnussen Home Furnishings Ltd.
66 Hincks Street, Unit 1
New Hamburg, Ontario
N3A 2A3
Canada

With a copy to:

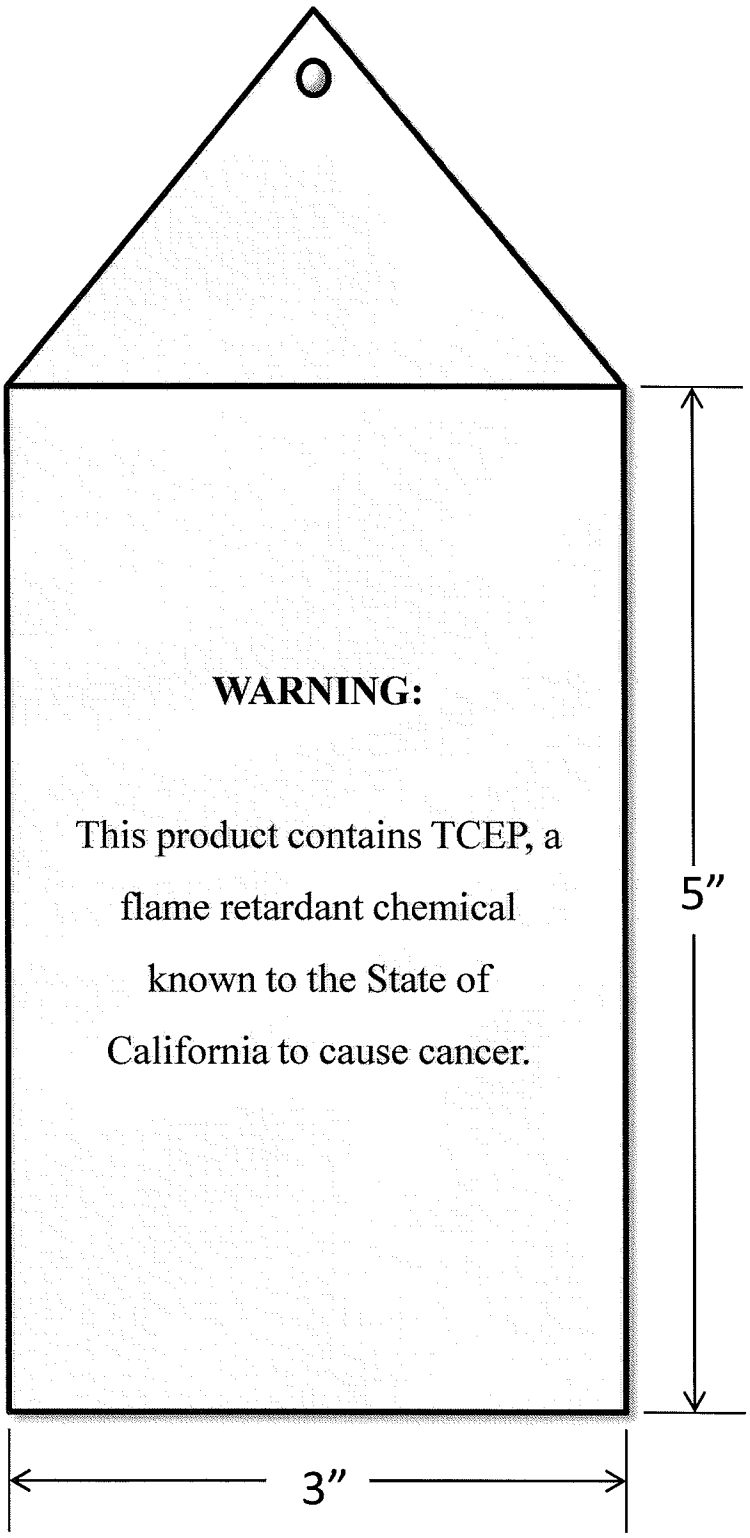
Jeffrey B. Margulies
Norton Rose Fulbright
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

EXHIBIT B

(ILLUSTRATIVE WARNINGS)



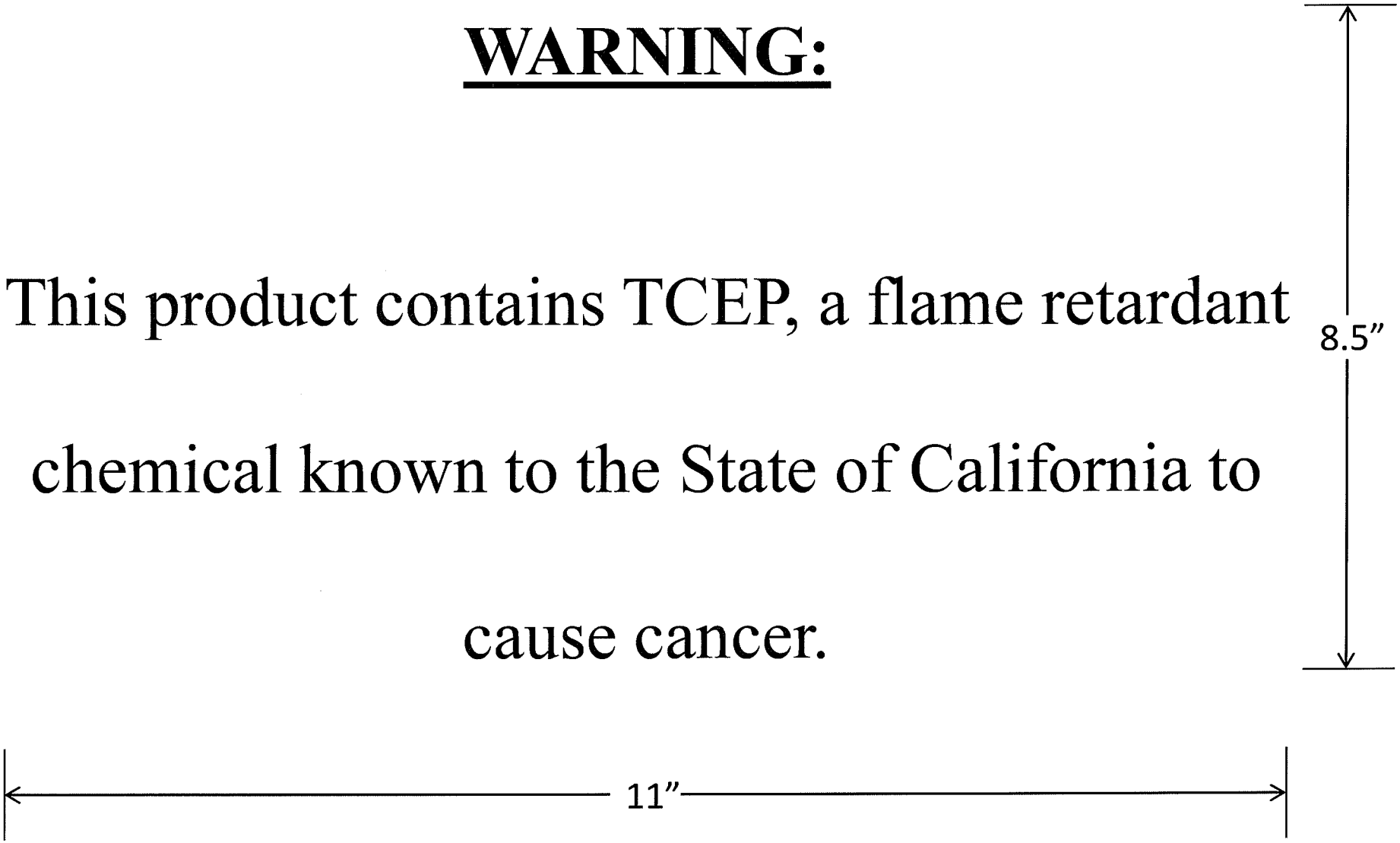
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



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.