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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER

15 Plaintiff,

16 v.

17 ASHLEY FURNITURE INDUSTRIES,  
18 INC., et al.

19 Defendants.

Case No. RG13673710

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

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT BLUMENTHAL  
DISTRIBUTING, 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 Blumenthal Distributing, Inc. (“Blumenthal”), with Englander and  
5 Blumenthal each 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            Blumenthal 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            Englander alleges that Blumenthal manufactured, imported, sold and/or distributed for sale  
16 in California, stools with vinyl upholstery containing di(2-ethylhexyl)phthalate (“DEHP”),  
17 upholstered furniture with foam padding containing tris(1,3-dichloro-2-propyl)phosphate  
18 (“TDCPP”), and upholstered furniture with foam padding containing tris(2-chloroethyl) (“TCEP”)  
19 without providing the clear and reasonable health hazard warnings required by Proposition 65.

20            **1.5 Listed Chemicals**

21            1.5.1 On April 1, 1992, California listed TCEP pursuant to Proposition 65, as a  
22 chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning”  
23 requirements of the act one year later on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b);  
24 Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges that TDCPP escapes from  
25 the foam padding components resulting in human exposures.

26            1.5.2 On October 24, 2003, California listed DEHP pursuant to Proposition 65, as  
27 a chemical known to cause reproductive harm or birth defects. DEHP became subject to the “clear  
28 and reasonable warning” requirements of the act one year later on October 24, 2004. Cal. Code

1 Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges  
2 that TDCPP escapes from the foam padding components resulting in human exposures.

3 1.5.3 On October 28, 2011, California listed TDCPP pursuant to Proposition 65, as  
4 a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning”  
5 requirements of the act one year later on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b);  
6 Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges that TDCPP escapes from  
7 the foam padding components resulting in human exposures.

### 8 1.6 Product Description

9 The categories of products that are covered by this Consent Judgment are: (a) upholstered  
10 furniture with foam padding containing TDCPP and/or TCEP (“Foam Padded Products”), and (b)  
11 stools with vinyl upholstery containing DEHP (“Vinyl Products” and, collectively with Foam  
12 Padded Products” the “Products”).

### 13 1.7 Notices of Violation

14 On January 8, 2013, February 25, 2013, and June 19, 2013, Englander served Blumenthal  
15 and certain requisite public enforcement agencies with three separate 60-Day Notices of Violation  
16 (“Notices”) alleging that Blumenthal violated Proposition 65 when it failed to warn its customers,  
17 consumers, and workers in California that the identified products expose users to TDCPP, TCEP  
18 and DEHP, respectively. To the best of the Parties’ knowledge, no public enforcer has commenced  
19 and is diligently prosecuting the allegations set forth in any of the Notices.

### 20 1.8 Complaint

21 On March 21, 2013, Englander commenced the instant action. Thereafter, on July 9, 2013,  
22 Englander filed a Second Amended Complaint (“Complaint”), the operative pleading in this action,  
23 naming Blumenthal as a defendant, and stating a cause of action for violations of Proposition 65  
24 relating to unwarned exposures to TDCPP and TCEP as alleged in the January 8, 2013 and  
25 February 25, 2013 Notices. At the time the Complaint was filed, Englander had not perfected  
26 standing to file an action for the alleged unwarned exposures to DEHP from the vinyl/PVC  
27 upholstered stools that are the subject of the June 19, 2013 60-day notice of violation. Upon the  
28 latter of the day that is seventy-one days from the date of issue of the DEHP notice, or Court

1 approval of this Consent Judgment, provided no public enforcer has elected to enforce the  
2 violations alleged in the June 19, 2013, notice of violation, the Complaint shall be deemed amended  
3 *nunc pro tunc* to include Englander's allegations against Blumenthal for unwarned exposures to  
4 DEHP from Vinyl Products sold in California.

5 **1.9 No Admission**

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

14 **1.10 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
16 jurisdiction over Blumenthal as to the allegations contained in the Complaint, that venue is proper  
17 in the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of  
18 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section  
19 664.6.

20 **2. DEFINITIONS**

21 **2.1 California Customer**

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

26 **2.2 No Detectable Amount**

27 "No Detectable Amount" shall mean no more than 25 parts per million ("ppm") (the  
28 equivalent of .0025%) of any one chemical in any material, component, or constituent of a subject

1 product, when analyzed by a domestic NVLAP (National Volunteer Laboratory Accreditation  
2 Program) or similarly accredited domestic laboratory pursuant to EPA testing methodologies 3545  
3 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the  
4 presence, or measure the amount, of TDCPP and/or TCEP in a solid substance.

5       **2.3 Effective Date**

6       “Effective Date” shall mean November 6, 2013.

7       **2.4 Reformulated Products**

8       “Reformulated Foam Padded Products” shall mean upholstered furniture with foam padding  
9 that contain No Detectable Amount of TDCPP or TCEP, and “Reformulated Vinyl Products” shall  
10 mean stools with vinyl upholstery containing no more than 1,000 ppm DEHP.

11       **2.6 Reformulation Standard**

12       The “Reformulation Standard for Foam Padding” shall mean upholstered furniture with  
13 foam padding with components containing no more than 25 ppm for each of TDCPP and TCEP,  
14 “Reformulation Standard for Vinyl Products” shall mean stools with a maximum of 1,000 ppm  
15 DEHP content in any vinyl/PVC upholstery.

16       **2.7 Retailer**

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

19       **2.8 The Listed Chemicals**

20       “Listed Chemicals” means TDCPP, TCEP, and DEHP.

21 **3. INJUNCTIVE RELIEF: REFORMULATION**

22       **3.1 Reformulation Commitment**

23       Commencing on March 31, 2014, and continuing thereafter, Blumenthal shall not  
24 manufacture or import for distribution or sale to California Customers, or cause to be manufactured  
25 or imported for distribution or sale to California Customers, any Foam Padded Products that do not  
26 meet the definition of Reformulated Foam Padded Products established by Section 2.5. With regard  
27 to Vinyl Products, Blumenthal agrees and commits that one-hundred percent of the Vinyl Products  
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1 manufactured or imported for distribution or sale to California Customers as of December 1, 2013,  
2 will comply with the DEHP content limits applicable to Reformulated Vinyl Products.

### 3 3.2 Vendor Notification/Certification

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

### 14 3.3 Foam Padded Products No Longer in Blumenthal's Control

15 No later than 45 days after the Effective Date, Blumenthal shall send a letter ("Notification  
16 Letter"), electronic or otherwise, to: (1) each California Customer and/or Retailer which it, after  
17 October 28, 2011, supplied the item for resale in California described as an exemplar in a notice of  
18 violation that Englander has alleged contains TDCPP or TCEP ("Exemplar Product"); and (2) any  
19 California Customer and/or Retailer that Blumenthal believes is reasonably likely to have had any  
20 inventory of an Exemplar Product for resale in California as of January 1, 2013. The Notification  
21 Letter shall advise the recipient that the Exemplar Product "contains TDCPP and/or TCEP,  
22 chemicals known to the State of California to cause cancer," and request that the recipient either:  
23 (a) label the Exemplar Products remaining in inventory prior to offering them for sale in California,  
24 or to California Customers, pursuant to Section 3.5; or (b) return, at Blumenthal's expense, all units  
25 of the Exemplar Product held for sale in California, or to California Customers, to Blumenthal or a  
26 party Blumenthal has otherwise designated. The Notification Letter shall require a response from  
27 the recipient within 15 days confirming whether the Exemplar Product will be labeled or returned.  
28 Blumenthal shall maintain records of all correspondence or other communications generated

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

3           **3.4 Current Inventory**

4           Any Foam Padded Products in, or manufactured and en route to, Blumenthal's inventory as  
5 of or after December 31, 2013, that do not qualify as Reformulated Foam Padded Products, and that  
6 Blumenthal has reason to believe may be sold or distributed for sale in California, shall contain a  
7 clear and reasonable warning as set forth 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 that are  
19   known to the state of California to cause  
   cancer.<sup>1</sup>

20           **3.5.2 Internet Website Warning.** A warning shall be given in conjunction with  
21 the sale of the Foam Padded Products into California, or to California Customers online via the  
22 internet. The warning shall appear on one or more web pages displayed to a purchaser prior to  
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24           <sup>1</sup> The regulatory safe harbor warning language specified in 27 Cal. Code Regs. § 25603.2  
25 may also be used if Blumenthal employed such warning prior to the Effective Date. If Blumenthal  
26 seeks to use alternative warning language, other than the language specified above or the safe  
27 harbor warning specified in 27 Cal. Code Regs. § 25603.2, or seeks to use an alternate method of  
28 transmission of the warning, it must obtain the Court's approval of its proposed alternative warning  
statement and/or method of transmission, 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 completing payment and/or during the “checkout” process. The following warning statement shall  
2 be used and shall: (a) appear adjacent to or immediately following the display, description, or price  
3 of the Foam Padded Product; (b) appear as a pop-up box for the Foam Padded Product; or (c)  
4 otherwise appear automatically to the consumer. The warning, text shall be the same type size or  
5 larger than the Foam Padded Product description text, and shall state:

6 **WARNING:** This product contains TDCPP and  
7 TCEP, flame retardant chemicals  
8 known to the State of California to  
cause cancer.<sup>2</sup>

9 **3.6 Alternatives to Interim Warnings**

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

20 **4. MONETARY PAYMENTS**

21 **4.1 Civil Penalties**

22 In settlement of all the claims referred to in this Consent Judgment, pursuant to Health and  
23 Safety Code section 25249.7(b), Blumenthal shall pay the civil penalties shown on Exhibit A. Each  
24 penalty payment will be allocated in accordance with California Health & Safety Code section  
25 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental  
26 Health Hazard Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group in  
27 Trust for Englander.” Each penalty payment shall be delivered within two business days of the date

28 \_\_\_\_\_  
<sup>2</sup> The preceding footnote applies in this context as well.



1 it is due at the addresses provided in Section 4.5. Blumenthal shall be liable for payment of simple  
2 interest at a rate of 10% for all amounts due and owing that are not received within two business  
3 days of the due date, if any.

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

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

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

14           **4.1.4 Reductions to Civil Penalty Amounts.** Blumenthal may reduce the amount  
15 of the second and/or third civil penalty payments identified on Exhibit A by providing Englander  
16 with certification of certain efforts undertaken to reformulate its Foam Padded Products or limit the  
17 ongoing sale of non-reformulated Foam Padded Products in California. The option to provide a  
18 written certification in lieu of making a portion of Blumenthal's second or third civil penalty  
19 payments constitutes a material term of this Consent Judgment, and with regard to such term, time  
20 is of the essence.

21                           **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of  
22                           Foam Padded Products Sold or Offered for Sale in California.**

23           If Blumenthal so Elects on Exhibit A, a portion of the second civil penalty shall be waived,  
24 if, as of November 1, 2013, and continuing thereafter, Blumenthal agrees that it will only  
25 manufacture or import for distribution or sale to California Customers or cause to be manufactured  
26 or imported for distribution or sale to California Customers, Reformulated Foam Padded Products.  
27 An officer or other authorized representative shall provide Englander with a written certification  
28 confirming compliance with such conditions, no later than December 15, 2013.

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4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation of Foam Padded Products.**

As set forth on Exhibit A, a portion of the third civil penalty shall be waived, if, as of March 15, 2014, and continuing thereafter, Blumenthal 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 California, Reformulated Foam Padded Products which also do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million (the equivalent of .0025%) in any material, component, or constituent of a subject product, when analyzed by a NVLAP or similarly accredited laboratory 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 November 15, 2014.

4.1.4(iii) **Partial Penalty Waiver for Withdrawal of Non-Reformulated Foam Padded 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 Blumenthal provides Englander with written certification, by December 15, 2013, confirming that each individual or establishment in California to which it supplied the Foam Padded Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to return all Foam Padded Exemplar Products held for sale in California or confirmed that it no longer has any Foam Padded Exemplar Products in its inventory.

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

As set forth on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of Blumenthal 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 Foam Padded Products.

1                                   **4.2     Representations Regarding Sales and Other Information**

2           Blumenthal represents that the sales data and other information concerning its size,  
3 knowledge of TDCPP/TCEP presence, and prior reformulation and/or warning efforts, provided to  
4 Englander is true and accurate based on its knowledge and are material factors upon which  
5 Englander relied to determine the amount of civil penalties assessed pursuant to Health and Safety  
6 Code section 25249.7(b). If, within nine months of the Effective Date, Englander discovers and  
7 presents to Blumenthal, evidence demonstrating that the preceding representations and warranties  
8 are materially inaccurate, then Blumenthal shall have 30 days to meet and confer regarding the  
9 Englander's contention. Should this 30 day period pass without any resolution between Englander  
10 and Blumenthal, Englander shall be entitled to file a formal legal claim including, but not limited  
11 to, a claim for damages for breach of contract.

12           Blumenthal further represents that in implementing the requirements set forth in Sections  
13 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve  
14 reformulation of its Foam Padded Products and Additional Products on a nationwide basis and not  
15 employ statements that will encourage a vendor to limit its compliance with the Reformulation  
16 Standard to goods intended for sale to California Consumers.

17                                   **4.3     Penalties for Certain Violations of the Reformulation Standard for**  
18                                   **Foam Padding.**

19           If Englander provides notice and appropriate supporting information to Blumenthal that  
20 levels of TDCPP or TCEP in excess of the Reformulation Standard for Foam Padding have been  
21 detected in one or more Foam Padded Products labeled or otherwise marked in an identifiable  
22 manner as manufactured or imported after a deadline for meeting the Reformulation Standard for  
23 Foam Padding under Sections 3.1 or 3.6 above, has commenced, then Blumenthal may elect to pay  
24 a stipulated penalty to relieve any further potential liability under Proposition 65 or sanction under  
25 this Consent Judgment as to Foam Padded Products sourced from the vendor in question.<sup>3</sup> The

26           <sup>3</sup> This Section shall not be applicable where the vendor in question had previously been  
27 found by Blumenthal to have provided unreliable certifications as to meeting the Reformulation  
28 Standard for Foam Padding in its Foam Padded Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by Blumenthal's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

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

#### 12 4.4 Reimbursement of Fees and Costs

13 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
14 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee  
15 issue to be resolved after the material terms of the agreement had been settled. Shortly after the  
16 other settlement terms had been finalized, Blumenthal expressed a desire to resolve Englander's  
17 outstanding fees and costs. Under general contract principles and the private attorney general  
18 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed  
19 through the mutual execution of this agreement, including the fees and costs incurred as a result of  
20 investigating, bringing this matter to Blumenthal's attention, negotiating a settlement in the public  
21 interest, and seeking court approval of the same. In addition, the negotiated fee and cost figure  
22 expressly includes the anticipated significant amount of time plaintiffs' counsel will incur to  
23 monitor various provisions in this agreement over the next two years, with the exception of  
24 additional fees that may be incurred pursuant to a Settling Defendant's election in Section 11.  
25 Blumenthal agrees to pay Englander, upon the Court's approval and entry of this Consent  
26 Judgment, the amount of fees and costs indicated on Exhibit A. Blumenthal further agrees to tender  
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28 <sup>4</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and  
remitted in the same manner as set forth in Section 4.1.

1 and shall tender its payment in full under this Section to Englander's counsel's trust account –  
2 payable to "The Chanler Group in Trust" – within two business days of the Effective Date. Such  
3 funds shall be disbursed upon the Court's approval and entry of this Consent Judgment.

4 **4.5 Payment Procedures**

5 **4.5.1 Payment Addresses.**

6 (a) All payments and tax documentation to be provided to Englander and  
7 his counsel under this Consent Judgment shall be delivered to the following address:

8 The Chanler Group  
9 Attn: Proposition 65 Controller  
10 2560 Ninth Street  
11 Parker Plaza, Suite 214  
12 Berkeley, CA 94710

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

16 For United States Postal Service Delivery:

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

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

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

28 **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 4.3.1(a).

**4.5.3 Tax Documentation.** Blumenthal shall provide a separate 1099 form for its  
payments to each of the following payees: (a) Peter Englander, whose address and tax  
identification number shall be furnished upon request after this Consent Judgment has been fully

1 executed by the Parties; (b) "California Office of Environmental Health Hazard Assessment" (EIN:  
2 68-0284486); and (c) "The Chanler Group" (EIN: 94-3171522).

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Englander's Release of Proposition 65 Claims**

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

20 **5.2 Englander's Individual Releases of Claims**

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

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

9           **5.3 Blumenthal' Release of Englander**

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

16           **6. COURT APPROVAL**

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

1 approve and enter the Consent Judgment within one year of the Effective Date, any monies that  
2 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 3,  
3 above, shall be refunded to the Blumenthal within 15 days.

4 **7. GOVERNING LAW**

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

12 **8. NOTICE**

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

17 To Blumenthal:

18 At the address shown on Exhibit A

To Englander:

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

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

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

27 This Consent Judgment may be executed in counterparts and by facsimile or portable  
28 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.



1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products identified on Exhibit A, on or before October 15, 2013,  
6 Blumenthal may provide Englander with additional information or representations necessary to  
7 enable him to issue a 60-day notice of violation and valid certificate of merit pursuant to Health &  
8 Safety Code section 25249.7 for "Additional Products" that contain TDCPP, TCEP, and/or other  
9 Proposition 65-listed chemicals ("Additional Products"). Polyurethane foam that is supplied,  
10 shaped or manufactured for use as a component of a product, such as upholstered furniture, is  
11 specifically excluded from the definition of Additional Products and shall not be identified by  
12 Blumenthal on Exhibit A as an Additional Product. Except as agreed upon by Englander,  
13 Blumenthal shall not include a product as an Additional Product that is the subject of an existing  
14 60-day notice, issued by Englander or any other private enforcer at the time Blumenthal elects to  
15 proceed under this Section.

16 After receipt of the required information, Englander agrees to issue a supplemental 60-day  
17 notice of violation of Health and Safety Code section 25249.6 in compliance with all statutory and  
18 regulatory requirements for the Additional Products identified by Blumenthal, if any. On or before  
19 October 1, 2014, Englander will prepare and file an amendment to this Consent Judgment to  
20 incorporate the Additional Products within the defined term "Products" and serve a copy thereof  
21 and its supporting papers (including the basis for supplemental stipulated penalties, if any) on the  
22 Office of the California Attorney General, upon the Court's approval and finding that the  
23 supplemental stipulated penalty amount, if any, is reasonable, the Additional Products shall become  
24 subject to Sections 5.1 and 5.2. Blumenthal shall, at the time it elects to proceed under this Section  
25 and tenders the additional information or representations regarding any Additional Products to  
26 Englander, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as  
27 stipulated penalties and attorneys' fees and costs incurred by Englander and his counsel in issuing  
28 the new notice of violation, and engaging in other reasonably related activities, which may be

1 released from the trust as awarded by the Court upon Englander's application for approval of the  
2 amendment to this Consent Judgment. Any fee award associated with the modification of the  
3 Consent Judgment to include Additional Products shall not offset any associated supplemental  
4 penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be refunded to  
5 Blumenthal within 15 days). Such payment shall be made to "in trust for The Chanler Group" and  
6 delivered as per Section 4.5.1(a) above.

7 11.2 Englander and Blumenthal agree to support the entry of this agreement as a Consent  
8 Judgment and to obtain approval of the Consent Judgment by the Court in a timely manner. The  
9 Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a  
10 noticed motion is required for judicial approval of this Consent Judgment, which motion Englander  
11 shall draft and file and Blumenthal shall support, appearing at the hearing if so requested. If any  
12 third-party objection to the motion is filed, Englander and Blumenthal agree to work together to file  
13 a reply and appear at any hearing. This provision is a material component of the Consent Judgment  
14 and shall be treated as such in the event of a breach.

15 **13. MODIFICATION**

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

19 **14. AUTHORIZATION**

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


23 **AGREED TO:**

24 Date: October 18, 2013

25  
26 By:   
27 **PETER ENGLANDER**

**AGREED TO:**

24 Date: 11/7/13

25  
26 By:   
27 **Richard Blumenthal, President**  
28 **BLUMENTHAL DISTRIBUTING, INC.**

**EXHIBIT A**

I. Settling Defendant: **Blumenthal Distributing, Inc.**

II. Names of Releases (Optional; May be Partial):

III. Types of Covered Products: Upholstered Furniture, Stools with Vinyl Upholstery (DEHP)

IV. Types of Additional Products: None

V. Settling Defendant's Required Settlement Payments:

A. Initial Civil Penalty Payment: \$60,000

1. Initial Civil Penalty: \$21,000
2. Attorneys' Fees and Costs: \$ 39,000

B. Second Civil Penalty Payment: \$25,000

1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: \$15,000
2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: \$10,000

C. Third Civil Penalty Payment: \$10,000

1. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: \$6,000
2. Section 4.1.4(iv) Partial Penalty Waiver, if applicable: \$4,000

VI. Persons to receive notice under Section 8:

Richard Blumenthal  
Blumenthal Distributing, Inc.  
1901 S. Archibald Ave.  
Ontario, California 91761  
Email: Richard.Blumenthal@officestar.net  
Fax: (909) 458-6033

With a copy to:

Michael J. Stiles, Esq.  
Stiles Law Group  
790 E. Green Street  
Pasadena, CA 91101  
Email: mstiles@stileslawgroup.com  
Fax: (626) 389-0599