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6 PETER ENGLANDER

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

11 PETER ENGLANDER,)
12 Plaintiff,)
13 v.)
14 ASHLEY FURNITURE INDUSTRIES,)
INC.; *et al.*,)
15 Defendants.)
16)
17)
18)

Case No. RG 13672407
Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17
**[PROPOSED] CONSENT JUDGMENT AS
TO LIFESTYLE SOLUTIONS, INC.**

(Health & Safety Code § 25249.6 *et seq.*
Second Amended Complaint Filed: July 9, 2013)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendant Lifestyle Solutions, Inc. (“Lifestyle Solutions”) with Englander and
5 Lifestyle Solutions 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 Lifestyle Solutions, Inc.**

11 Lifestyle Solutions 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 Lifestyle Solutions manufactured, imported, sold
16 and/or distributed for sale in California, padded upholstered furniture including ottomans
17 containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65
18 health 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 1.4.3 Englander also alleges that Lifestyle Solutions manufactured, imported, sold
25 and/or distributed for sale in California, vinyl/PVC coffee tables containing di(2-
26 ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings.

1 1.4.5 Pursuant to Proposition 65, on October 24, 2003, California identified and
2 listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP
3 became subject to the “clear and reasonable warning” requirements of Proposition 65 one year
4 later on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8
5 and 25249.10(b).

6 TDCPP and DEHP shall hereinafter be referred to as the “Listed Chemicals.”

7 **1.5 Product Description**

8 The categories of products that are covered by this Consent Judgment as to Lifestyle
9 Solutions are identified on Exhibit A (hereinafter “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 Products and shall not be identified by Lifestyle
12 Solutions on Exhibit A as a Product.

13 **1.6 Notices of Violation**

14 On January 10, 2013, Englander served Lifestyle Solutions and certain requisite public
15 enforcement agencies with a “60-Day Notice of Violation” (“January 10, 2013, Notice”) that
16 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
17 failure to warn customers, consumers, and workers in California that certain Products expose users
18 to TDCPP.

19 Based on further investigation, Englander issued a “60-Day Notice of Violation” to
20 Lifestyle Solutions on April 11, 2013 (“April 11, 2013, Notice”), alleging that certain vinyl/PVC
21 coffee tables contain and expose Californians to DEHP (“Phthalate Products”). DEHP and other
22 phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are listed
23 under Proposition 65 as chemicals known to cause birth defects and other reproductive harm.

24 The January 10, 2013, Notice and April 11, 2013, Notice shall hereinafter collectively be
25 referred to as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has
26 commenced or is diligently prosecuting the allegations set forth in the Notices.

1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 "California Customer" shall mean any customer that Lifestyle Solutions reasonably
4 understands is located in California, has a California warehouse or distribution center, maintains a
5 retail outlet in California, or has made internet sales into California on or after March 4, 2011.

6 **2.2 Detectable**

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

13 **2.3 Effective Date**

14 "Effective Date" shall mean October 15, 2013.

15 **2.4 Private Label Covered Products**

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

19 **2.5 Reformulated Products**

20 "Reformulated Products" shall mean Products that contain no Detectable amount of
21 TDCPP or TCEP and Phthalate Products which contain no more than 1000 ppm each of, DEHP,
22 BBP, and DBP.

23 **2.6 Reformulation Standard**

24 The "Reformulation Standard" shall mean containing no more than 25 ppm for each of
25 TDCPP and TCEP, and for Phthalate Products, no more than 1000 ppm each of, DEHP, BBP, and
26 DBP.

1 contain TDCPP, a chemical known to the State of California to cause cancer and/or DEHP, a
2 chemical known to the State of California to cause birth defects and other reproductive harm, as
3 appropriate depending on the allegations on the Notices, and request that the recipient either: (a)
4 label the Exemplar Product(s) remaining in inventory for sale in California, or to California
5 Customers, pursuant to Section 3.5; or (b) return, at Lifestyle Solutions' sole expense, all units of
6 the Exemplar Product(s) held for sale in California, or to California Customers, to Lifestyle
7 Solutions or a party Lifestyle Solutions has otherwise designated. The Notification Letter shall
8 require a response from the recipient within 15 days confirming whether the Exemplar Product(s)
9 will be labeled or returned. Lifestyle Solutions shall maintain records of all correspondence or
10 other communications generated pursuant to this Section for two years after the Effective Date and
11 shall promptly produce copies of such records upon Englander's written request.

12 3.4 Current Inventory

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

17 3.5 Product Warnings

18 3.5.1 Product Labeling

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

25 A warning provided pursuant to this Consent Judgment shall state:
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1 **WARNING:** This product contains TDCPP, a
2 flame retardant chemical known to
3 the State of California to cause
4 cancer.

5 And, for Phthalate Products:

6 **WARNING:** This product contains DEHP, a
7 chemical known to the State of
8 California to cause birth defects and
9 other reproductive harm.¹

10 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
11 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
12 set forth in this Section are addressed, including as to the required warning statement and method
13 of transmission as set forth above, Lifestyle Solutions remains free not to utilize the template
14 warnings.

15 3.5.2 Internet Website Warning

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

21 The warning text shall be the same type size or larger than the Product description text: :

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

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.

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

6 And, for Phthalate Products:

7 **WARNING:** This product contains DEHP, a
8 chemical known to the State of
9 California to cause birth defects and
10 other reproductive harm.³

11 **3.6 Alternatives to Interim Warnings**

12 The obligations of Lifestyle Solutions under Section 3.3 shall be relieved provided
13 Lifestyle Solutions certifies on or before December 15, 2013, that only Exemplar Products meeting
14 the Reformulation Standard will be offered for sale in California, or to California Customers for
15 sale in California, after December 31, 2013. The obligations of Lifestyle Solutions under Section
16 3.4 shall be relieved provided Lifestyle Solutions certifies on or before December 15, 2013, that,
17 after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in,
18 California, or to California Customers for sale in California, Products (i.e., Products beyond the
19 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
20 Section are material terms and time is of the essence.

21 **4. MONETARY PAYMENTS**

22 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

23 In settlement of all the claims referred to in this Consent Judgment, Lifestyle
24 Solutions shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.
25 Each penalty payment will be allocated in accordance with California Health & Safety Code
26 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
27 Health Hazard Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group
28 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. Lifestyle Solutions shall be

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

1 liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing
2 under this Section that are not received within two business days of the due date.

3 4.1.1 Initial Civil Penalty. On or before the Effective Date, Lifestyle Solutions
4 shall make an initial civil penalty payment in the amount identified on Lifestyle Solutions' Exhibit
5 A.

6 4.1.2 Second Civil Penalty. On or before January 15, 2014, Lifestyle Solutions
7 shall make a second civil penalty payment in the amount identified on Lifestyle Solutions' Exhibit
8 A. The amount of the second penalty may be reduced according to any penalty waiver Lifestyle
9 Solutions is eligible for 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, Lifestyle Solutions
11 shall make a third civil penalty payment in the amount identified on Lifestyle Solutions' Exhibit A.
12 The amount of the third penalty may be reduced according to any penalty waiver Lifestyle
13 Solutions is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

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

23 If Lifestyle Solutions so elects on Exhibit A, a portion of the second civil penalty shall be
24 waived, to the extent that it has agreed that, as of November 1, 2013, and continuing into the
25 future, it shall only manufacture or import for distribution or sale to California Customers or cause
26 to be manufactured or imported for distribution or sale to California Customers, Reformulated
27 Products. An officer or other authorized representative of Lifestyle Solutions that has exercised
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1 this election shall provide Englander with a written certification confirming compliance with such
2 conditions, which certification must be received by Englander's counsel on or before December
3 15, 2013.

4 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

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

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

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

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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 Lifestyle Solutions with test results
28 from a NVLAP accredited laboratory showing the presence of the Listed Chemicals at a level in
excess of 250 ppm pursuant to EPA testing methodologies 3545 or 8270C.

1 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**

2 **Standard.**

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

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24 ⁵ This Section shall not be applicable where the vendor in question had previously been
25 found by Lifestyle Solutions to have provided unreliable certifications as to meeting the
26 Reformulation Standard in its Products on more than one occasion. Notwithstanding the
27 foregoing, a stipulated penalty for a second exceedance by Lifestyle Solutions' vendor at a level
28 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, Lifestyle Solutions expressed a
6 desire to resolve the fee and cost issue. Lifestyle Solutions then agreed to pay Englander and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
9 execution of this agreement, including the fees and costs incurred as a result of investigating,
10 bringing this matter to Lifestyle Solutions' attention, negotiating a settlement in the public interest,
11 and 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 Lifestyle Solution's election in Section 11. Lifestyle Solutions
15 more specifically agreed, upon the Court's approval and entry of this Consent Judgment, to pay
16 Englander's counsel the amount of fees and costs indicated on Lifestyle Solutions' Exhibit A.
17 Lifestyle Solutions further agreed to tender and shall tender its full required payment under this
18 Section to a trust account at The Chanler Group (made payable "In Trust for The Chanler Group")
19 within two business days of the Effective Date. Such funds shall be released from the trust
20 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. Lifestyle Solutions 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 Lifestyle Solutions,
its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
employees, attorneys, and each entity to whom Lifestyle Solutions directly or indirectly distribute

1 or sell Products, including, but not limited, to downstream distributors, wholesalers, customers,
2 retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all
3 claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to
4 the Listed Chemicals in the Products, as set forth in the Notices. Compliance with the terms of this
5 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the
6 Listed Chemicals from the Products, as set forth in the Notices. The Parties further understand and
7 agree that this Section 5.1 release shall not extend upstream to any entities, other than Lifestyle
8 Solutions, that manufactured the Products or any component parts thereof, or any distributors or
9 suppliers who sold the Products or any component parts thereof to Lifestyle Solutions, except that
10 an entity upstream of Lifestyle Solutions that is a Retailer of a Private Labeled Covered Product
11 shall be released as to the Private Labeled Covered Products offered for sale in California, or to
12 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, TDBPP, DEHP, DBP, and/or BBP in the Products or Additional Products (as
20 defined in Section 11.1 and delineated on Lifestyle Solution's Exhibit A) manufactured, imported,
21 distributed, or sold by Lifestyle Solutions prior to the Effective Date.⁷ The Parties further
22 understand and agree that this Section 5.2 release shall not extend upstream to any entities that
23 manufactured the Products or Additional Products, or any component parts thereof, or any
24 distributors or suppliers who sold the Products or Additional Products, or any component parts

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

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

7 **5.3 Lifestyle Solutions' Release of Englander**

8 Lifestyle Solutions, on behalf of itself, 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 or otherwise seeking to enforce Proposition 65 against it in
13 this matter 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
19 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case
20 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is
21 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to
22 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of
23 action to take, then the case shall proceed in its normal course on the Court's trial calendar In the
24 event that this Consent Judgment is entered by the Court and subsequently overturned by any
25 appellate court, any monies that have been provided to OEHHA, Englander or his counsel pursuant
26 to Section 4, above, shall be refunded within 15 days of the appellate decision becoming final. If
27 the Court does not approve and enter the Consent Judgment within one year of the Effective Date,
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1 any monies that have been provided to OEHHA or held in trust for Englander or his counsel
2 pursuant to Section 4, above, shall be refunded to Lifestyle Solutions 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 Lifestyle Solutions 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 Lifestyle
12 Solutions 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 Lifestyle Solutions:

19 At the address shown on Exhibit A

To Englander:

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

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

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 Lifestyle Solutions 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 Lifestyle Solutions 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 Lifestyle Solutions on Exhibit A as an Additional Product. Except as
18 agreed upon by Englander, Lifestyle Solutions 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 for
25 supplemental stipulated penalties, if any) on the Office of the California Attorney General upon the
26 Court's approval and finding that the supplemental stipulated penalty amount, if any, is reasonable,
27 the Additional Products shall become subject to Section 5.1 in addition to Section 5.2. Lifestyle
28

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

11 11.2 Englander and Lifestyle Solutions 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 Lifestyle
16 Solutions 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.

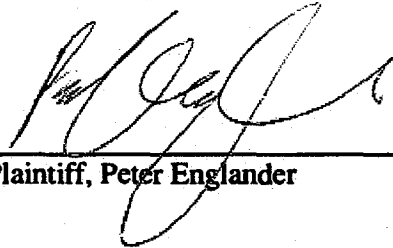
19 **12. MODIFICATION**

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.
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1 **13. AUTHORIZATION**

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

5
6 **AGREED TO:**

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

11 **Date: October __, 2013**

AGREED TO:

**Defendant
Lifestyle Solutions, Inc.**

By: _____
Name:
It's:

Date: October __, 2013

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13. AUTHORIZATION

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

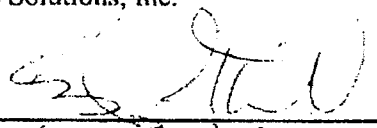
AGREED TO:

Plaintiff, Peter Englander

Date: September __, 2013

AGREED TO:

Defendant
Lifestyle Solutions, Inc.

By: 
Name: SEAN PATRICK
It's:

Date: September __, 2013 10/11/13

EXHIBIT A

I. Name of Settling Defendant: LIFESTYLE SOLUTIONS, INC.

II. Names of Releasees (optional/partial):

III. Types of Covered Products Applicable to the Settling Defendant:

a) Padded upholstered ottomans containing TDCPP;

b) Vinyl/PVC coffee tables containing DEHP.

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

V. Lifestyle Solutions, Inc.'s Required Settlement Payments

A. Penalties of \$43,000, as follows:

\$5,000 initial payment due on or before the Effective Date;

\$24,000 second payment due on or before January 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 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 Lifestyle Solutions, Inc.: \$28,000.

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

Kevin C. Mayer

Name

Attorney

Title

Company/Firm Name

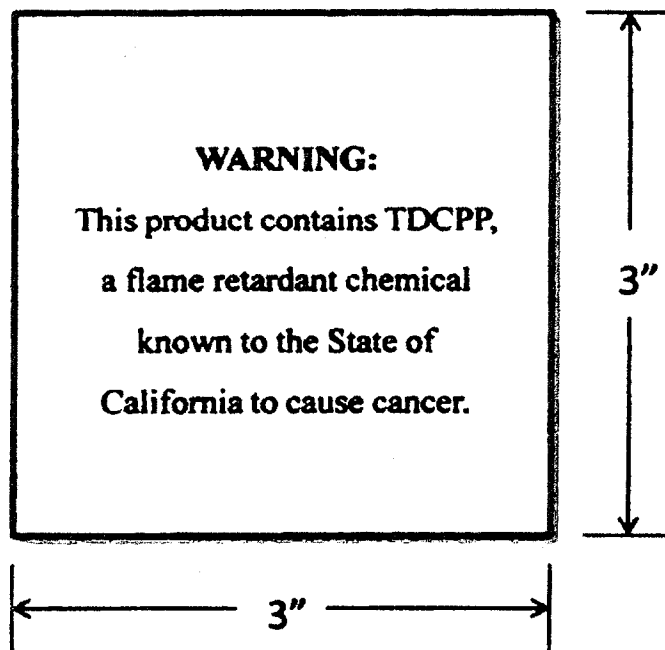
Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

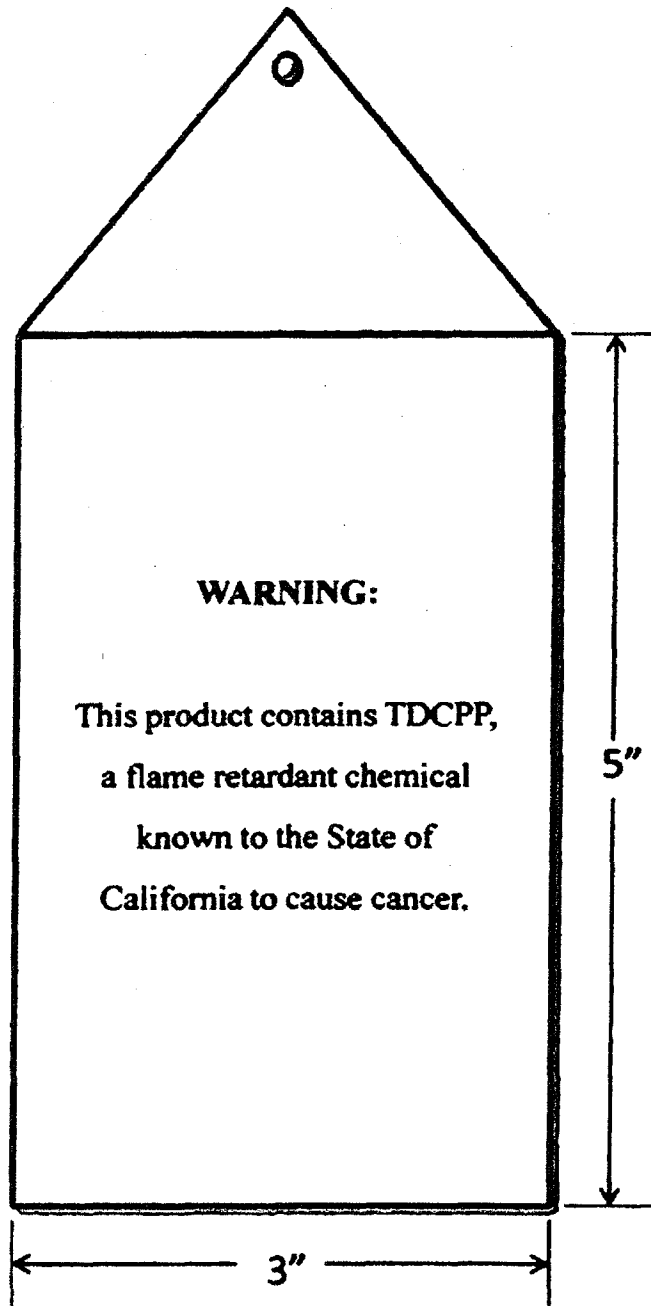
Los Angeles, CA 90071

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



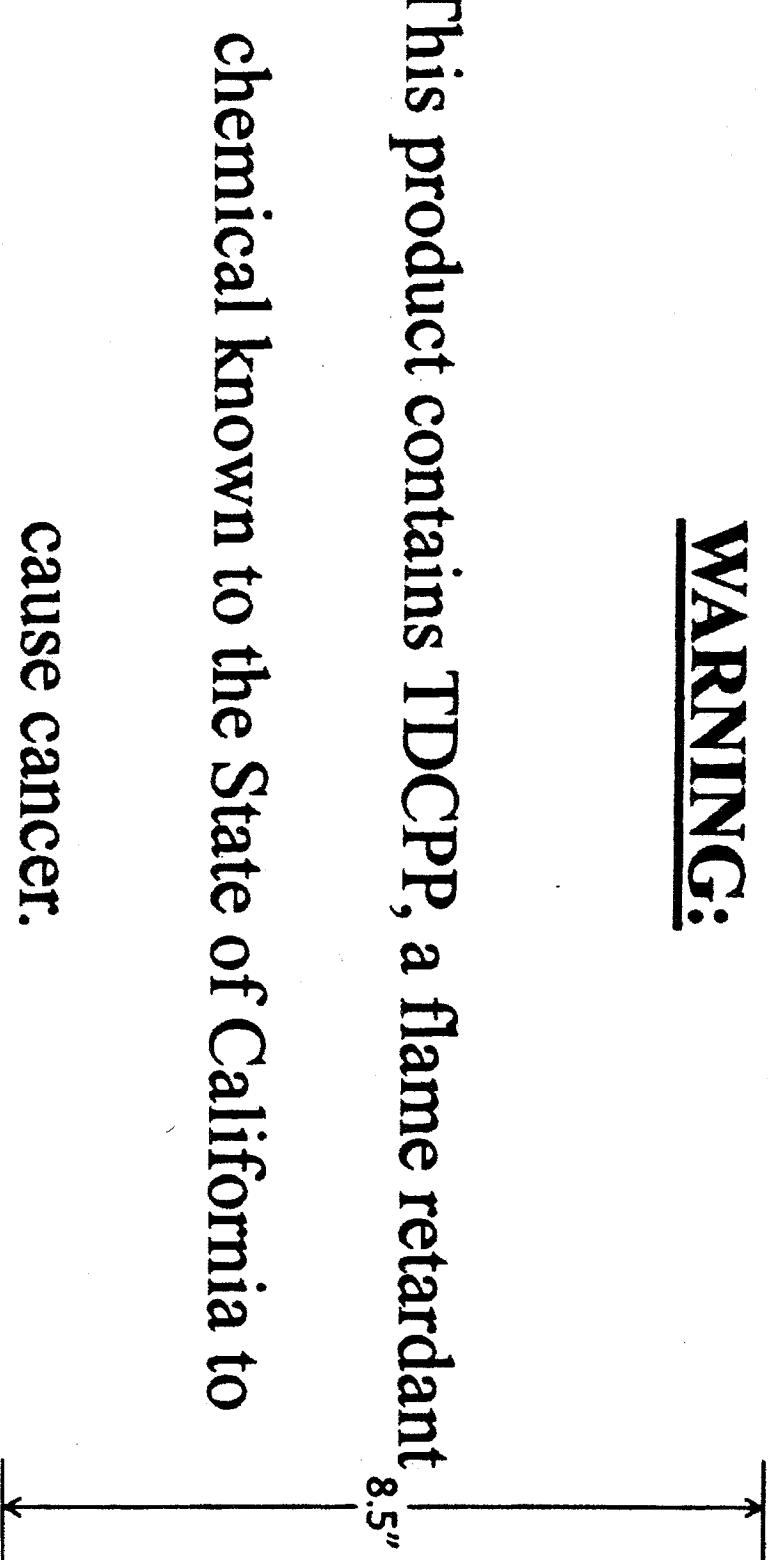
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



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

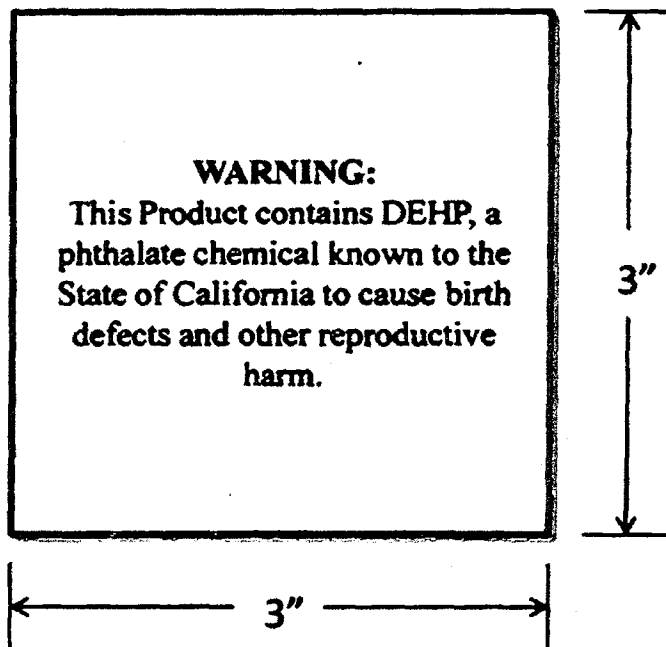
WARNING:

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

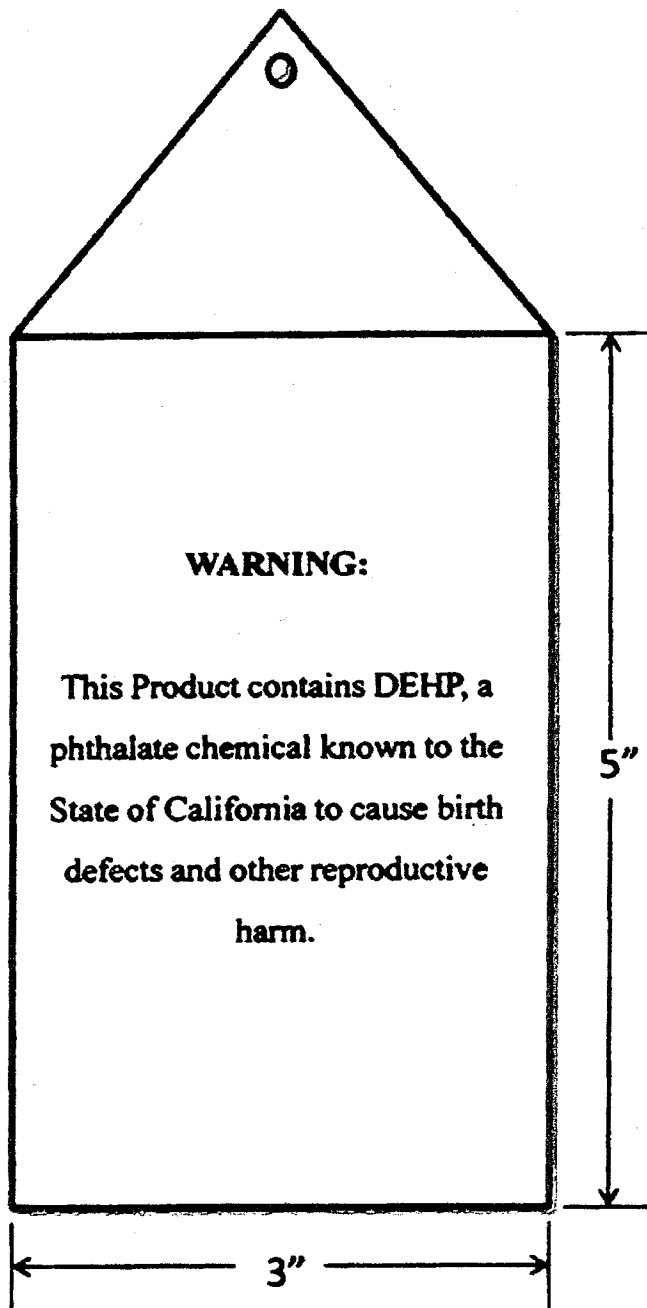


INSTRUCTIONS:

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



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 DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

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