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THE CHANLER GROUP
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Attorneys for Plaintiff
PETER ENGLANDER

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

PETER ENGLANDER

Plaintiff,

vs.

ACME FURNITURE INDUSTRY, INC.,
BASSETT FURNITURE INDUSTRIES,
INCORPORATED, BEST CHAIRS
INCORPORATED, BUTLER SPECIALTY
COMPANY, COA, INC., FOREMOST
GROUPS, INC., IDEA NUOVA INC., MINSON
CORPORATION, NAJARIAN FURNITURE
COMPANY, INC., P'KOLINO, LLC, THE TJX
COMPANIES, INC. and DOES 1-150,

Defendants.

Case No. R13673678

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**CONSENT TO JUDGMENT AS TO
IDEA NUOVA, INC.**

(Health & Safety Code § 25249.6 *et seq.*)

Complaint Filed: March 29, 2013

1
2 **1. INTRODUCTION**

3 **1.1 Parties**

4 This Consent Judgment is entered into by and between plaintiff Peter Englander
5 (“Englander” or “Plaintiff”) and Idea Nuova, Inc. (“IDN”), with Plaintiff and IDN collectively
6 referred to as the “Parties.”

7 **1.2 Peter Englander**

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

11 **1.3 IDN**

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

15 **1.4 General Allegations**

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

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

24 1.4.4 TDCPP is hereinafter referred to as the “Listed Chemical.” Englander alleges
25 that the Listed Chemical escapes from foam padding, leading to human exposures.

26 **1.5 Product Description**

27 The Products that are covered by this Consent Judgment as to IDN is identified on Exhibit A
28 (hereinafter “Products”). Polyurethane foam that is supplied, shaped or manufactured for use as a

1 component of another product, such as upholstered furniture, but which is not itself a finished
2 product, is specifically excluded from the definition of Products and shall not be identified on
3 Exhibit A as a Product.

4 1.6 **Notice of Violation**

5 On January 10, 2013, Englander served IDN and certain requisite public enforcement
6 agencies with a Proposition 65 60-Day Notice of Violation (“Notice”) that provided the recipients
7 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
8 consumers, workers and other individuals that the Products exposed users in California to the
9 Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced or is
10 diligently prosecuting the allegations set forth in the Notice.

11 1.6 **Complaint**

12 On March 29, 2013, Englander filed a Complaint in the Superior Court in and for the County
13 of Alameda, *Peter Englander v. Bassett Furniture Industries, Inc., et al.*, Case No. RG13673678, alleging
14 violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained
15 in the Products. On April 19, 2013, Englander filed a First Amended Complaint in the Superior
16 Court in and for the County of Alameda, *Peter Englander v. Acme Furniture Industries, Inc., et al.*, Case
17 No. RG13673678, alleging additional violations, against additional defendants, of Proposition 65,
18 based in part on the alleged unwarned exposures to TDCPP. In October of 2013, Englander filed a
19 Second Amended Complaint in the Superior Court in and for the County of Alameda, *Peter*
20 *Englander v. Acme Furniture Industries, Inc., et al.*, Case No. RG13673678, alleging additional
21 violations, against additional defendants, of Proposition 65, based in part on the alleged unwarned
22 exposures to TDCPP, tris(2-chloroethyl) phosphate (“TCEP”) and di (2 ethylhexyl) phthalate
23 (“DEHP”). The Complaint, First Amended Complaint and Second Amended Complaint shall
24 hereinafter be collectively referred to as “Complaint”.

25 1.7 **No Admission**

26 IDN denies the material factual and legal allegations contained in Englander’s Notice and
27 Complaint and maintain that all products that they have manufactured, imported, distributed,
28 and/or sold in California, including the Products, have been and are in compliance with all laws.

1 Nothing in this Consent Judgment shall be construed as an admission by IDN of any fact, finding,
2 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
3 constitute or be construed as an admission by IDN of any fact, finding, conclusion, issue of law, or
4 violation of law. However, this section shall not diminish or otherwise affect IDN's obligations,
5 responsibilities, and duties under this Consent Judgment.

6 1.8 **Consent to Jurisdiction**

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

11 **2. DEFINITIONS**

12 2.1 **California Customers**

13 "California Customer" shall mean any customer that IDN reasonably understands is located
14 in California, has a California warehouse or distribution center, maintains a retail outlet in
15 California or has made any internet sales into California after January 1, 2010.

16 2.2 **no Detectable**

17 "no Detectable" shall mean containing not more than 25 parts per million ("ppm") (the
18 equivalent of .0025%) of any one chemical in any material, component or constituent part of a
19 subject product, when analyzed by a laboratory certified by the State of California or accredited by
20 the State of California, a federal agency, the National Environmental Laboratory Accreditation
21 Program or similar nationally recognized accrediting organization to perform the chemical analysis
22 in question pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies
23 utilized by federal or state agencies to determine the presence, and measure the quantity, of
24 TDCPP, TCEP and/or DEHP in a solid substance. The parties agree that 25 ppm is a reasonable
25 detection limit. Englander may ask the Court to amend the definition of "detectable" in 2018 if
26 Englander provides reasonable evidence that laboratory detection limits for either of the Listed
27 Chemicals have been reduced to 10 ppm or less.
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2.3 **Effective Date**

“Effective Date” shall mean November 15, 2013.

2.4 **Products**

“Products” shall mean the products covered by this Consent Judgment, including Noticed Product and Exemplar Product, as identified on Exhibit A for IDN.

2.5 **Exemplar Products**

“Exemplar Products” shall mean the specific product covered by this Consent to Judgment as identified on Exhibit A for IDN.

2.6 **Reformulated Products**

“Reformulated Products” shall mean Products that contain no Detectable TDCPP.

2.7 **Reformulation Standard**

The “Reformulation Standard” shall mean each material, component or constituent part of a Product contains not more than 25 ppm of TDCPP.

2.8 **Retailer**

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

3. **INJUNCTIVE RELIEF: REFORMULATION**

3.1 **Reformulation Commitment**

Commencing on February 1, 2014, IDN shall not distribute or sell, or manufacture or import for distribution or sale, or cause to be manufactured or imported for distribution or sale, any Products that are not Reformulated Products.

3.2 **Vendor Notification/Certification**

On or before the Effective Date, IDN shall provide written notice, to all of its then-current vendors of Products, instructing each such vendor to provide IDN with only Reformulated Products. In addressing the obligation set forth in the preceding sentence, IDN shall not employ or imply statements or other communication that will or reasonably likely may encourage a vendor to

1 delay compliance with the Reformulation Standard. For each vendor and for each Product, IDN
2 shall demand and obtain written certification, no later than April 1, 2014, from such vendors of
3 Products and any newly engaged vendors of Products, along with copies of test result reports from
4 a laboratory accredited and/or certified by a United States federal agency, California State agency
5 and/or nationally recognized accrediting organization, of the date that the Products manufactured
6 by such vendors are in compliance with the Reformulation Standard. Certifications and test result
7 reports shall be held by IDN for at least two years after their receipt and shall be made available to
8 Englander upon request.

9 3.3 **Products No Longer in a Settling Defendant’s Control**

10 No later than the Effective Date, IDN shall send a letter, electronic or otherwise
11 (“Notification Letter”) to: (1) each California Customer and/or Retailer to which it supplied, after
12 October 28, 2011, any Exemplar Product and (2) any California Customer or Retailer that IDN
13 reasonably understands or believes had any inventory of Exemplar Products available for sale in
14 California as of the Notice’s date. The Notification Letter shall advise the recipient that the
15 Exemplar Product “contains TDCPP, a chemical known to the State of California to cause cancer,”
16 and request that the recipient either: (a) label the Exemplar Products remaining in inventory for
17 sale in California or to California Customers pursuant to Section 3.5; (b) return or destroy, at IDN’s
18 sole expense, all units of the Exemplar Product held for sale in or to California, or a California
19 Customer, to IDN or a party IDN has otherwise designated; or (c) confirm in writing that the
20 California Customer or Retailer no longer has any inventory of the Exemplar Product for sale in
21 California. The Notification Letter shall require a response from the recipient within 15 days
22 confirming whether the Exemplar Product will be labeled or returned or destroyed, or is no longer
23 in stock. IDN shall maintain records of all correspondence or other communications generated
24 pursuant to this Section for two years after the Effective Date and shall promptly produce copies of
25 such records upon Englander’s written request.

26 3.4 **Current Inventory**

1 As of the Effective Date, IDN shall not sell or otherwise distribute any Exemplar Product in
2 California or to a California Customer unless such product is certified by the vendor to be a
3 Reformulated Product or contains a clear and reasonable warning as set forth in Section 3.5 below.

4 3.5 **Product Warnings**

5 3.5.1 **Product Labeling**

6 Any warning provided under this Agreement shall be (1) affixed to any invoice or
7 shipping document delivered with the Product, (2) affixed to the exterior packaging of such
8 product and (3) affixed to the Product itself in immediate proximity to any marketing, ownership or
9 pricing tags or labels or, if none, to a surface of the product that would be immediately visible to a
10 Product purchaser or user upon inspection or use. Each warning shall be of such size, color and
11 font and shall be prominently placed with such conspicuousness as compared with other words,
12 statements, designs, or devices as to render it likely to be read and understood by an ordinary
13 individual under customary conditions before purchase. Each warning shall be provided in a
14 manner such that the consumer or user understands to which specific Product the warning applies,
15 so as to minimize the risk of consumer confusion.

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

17 **WARNING:** This product contains TDCPP, a flame retardant chemical known to
18 the State of California to cause cancer.¹

19 The warning shall be attached as further described in attached Exhibit B which also contains
20 illustrations of other warning characteristics constituting the minimum acceptable warning
21 requirements of this Consent Judgment.²
22

23 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling
24 Defendant had begun to use it to provide interim warnings prior to the execution of this Consent Judgment. A Settling
25 Defendant that seeks to use alternative warning language, other than the language specified above or the safe harbor
26 warning specified in 27 CCR § 25603.2, must obtain the Court's approval of its alternative warning statement and
27 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 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."

28 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no less than 12
point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to the Product;
(b) a yellow warning sign measuring 8.5" x 11", with no less than 32 point font, with the warning language printed on

1 undelivered payment(s) until delivery.

2 **4.1.1 Penalty Waiver for Accelerated Reformulation of Exemplar Products.**

3 As shown on IDN's Exhibit A, a portion of the Penalty 2 civil penalty shall be
4 waived, to the extent that it has agreed that, as of November 29, 2013, and continuing into the
5 future, it shall only distribute or sell to California Customers, manufacture or import for
6 distribution or sale to California Customers or cause to be manufactured or imported for
7 distribution or sale to California Customers Exemplar Products that are certified by the vendor to
8 be Reformulated Products. An officer of IDN that has exercised this election shall provide Plaintiff
9 with a written certification confirming compliance with such conditions, which certification must
10 be received by Plaintiff's counsel on or before November 22, 2013. Time is of the essence and any
11 such certification received by Plaintiff's counsel after November 22, 2013, regardless of the reason,
12 shall be ineffective in securing this penalty waiver.

13 **4.1.2 Penalty Waiver for Accelerated Reformulation of All Products.**

14 As shown on IDN's Exhibit A, a portion of the Penalty 2 civil penalty shall be
15 waived, to the extent that it has agreed that, as of November 29, 2013, and continuing into the
16 future, it shall only distribute or sell to California Customers, manufacture or import for
17 distribution or sale to California Customers or cause to be manufactured or imported for
18 distribution or sale to California Customers Products that are certified by the vendor to be
19 Reformulated Products. An officer of a Settling Defendant that has exercised this election shall
20 provide Plaintiffs with a written certification confirming compliance with such conditions, which
21 certification must be received by Plaintiffs' counsel on or before November 22, 2013. Time is of the
22 essence and any such certification received by Plaintiff's counsel after November 22, 2013,
23 regardless of the reason, shall be ineffective in securing this penalty waiver.

24 **4.1.3 Partial Penalty Waiver for Withdrawal of Unreformulated Exemplar
25 Products from the California Market.**

26 As shown on IDN's Exhibit A, a portion of the Penalty 2 civil penalty shall be
27 waived, if an officer of IDN provides Plaintiff with written certification, by November 22, 2013,
28 confirming that each California Customer and/or Retailer to which it supplied the Exemplar

1 Product after October 28, 2011, has either confirmed, in writing, that it no longer has any inventory
2 of the Exemplar Product or has agreed, pursuant to Section 3.3, to return all Exemplar Products.
3 Time is of the essence and any such certification received by Plaintiff's counsel after November 22,
4 2013, regardless of the reason, shall be ineffective in securing this penalty waiver.

5 **4.1.4 Stipulated Penalties for Minor Exceedances of the Reformulation Standard.**

6 If Plaintiff provides notice and appropriate supporting information to IDN that
7 levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one or
8 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported
9 after a deadline for meeting the Reformulation Standard has arisen for IDN under Sections 3.1, 3.2,
10 4.1.1 or 4.1.2 above, IDN may elect to pay a stipulated penalty to relieve any further potential
11 liability under Proposition 65 or sanction under this Consent Judgment as to Products sourced from
12 the vendor in question.⁴ The stipulated penalty shall be comprised of any waived penalty amount
13 for early reformulation plus \$1,500 if the exceedance level is below 100 ppm and \$3,000 if the
14 exceedance level is between 100 ppm and 249 ppm.⁵ Plaintiff shall further be entitled to
15 reimbursement of his associated fee and cost expense in an amount not to exceed \$10,000 regardless
16 of the stipulated penalty level. If IDN elects to utilize this Section, prior to securing any benefit
17 from this Section, it must provide Plaintiff's counsel with information relating to the purchase of
18 each identified product (e.g. vendor name and contact information including representative name,
19 phone number and address, purchase order for any product in question, certification and test
20 results (if any) received from vendor for any product in question) within 30 calendar days of
21 receiving test results from Plaintiff's counsel.

22 **4.1.5 Additional Penalties For Unreasonably Incorrect Representations Of Sales**
23 **Data**

24
25 _____
26 ⁴ This Section shall not be applicable where the vendor in question had previously been found by IDN to have provided
27 unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion.
28 Notwithstanding the foregoing, a stipulated penalty for a second exceedance by IDN's vendor at a level between 100 and
29 249 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
set forth in Sections 4.1 and 0 respectively.

1 IDN, and any other entity released by this Consent Judgment, understands that the
2 sales data it provided to Englander was a material factor upon which Englander has relied to
3 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
4 Consent Judgment. IDN represents, to the best of its knowledge, that the sales data provided by it
5 to Englander is full and complete, and is a true and accurate reflection of any and all sales of the
6 Products in California during the relevant period.

7 If, within nine months of the Effective Date, Englander discovers and presents to IDN
8 evidence that prior to execution of this Consent Judgment the Product has been distributed by IDN
9 in sales volumes materially different than those identified by it prior to execution of this Consent
10 Judgment, then such Settling Defendant shall be liable for an additional penalty amount as well as
11 reasonable additional attorney fees expended by Englander in the public interest. In the event
12 Englander believes there is evidence that the Product has been distributed by any Settling
13 Defendant in sales volumes materially different than those identified by that Settling Defendant,
14 Englander shall provide IDN with a written demand for additional penalties and attorney fees
15 under this Section. After service of such demand, IDN shall have 30 days to meet and confer
16 regarding the demand and submit such payment to Englander in accordance with the method of
17 payment of penalties identified in this Section 4. Should this 30 day period pass without any such
18 resolution between the Parties and payment of such additional penalties and fees, Englander shall
19 be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach
20 of this contract, and the prevailing party shall be entitled to all reasonable attorney fees and costs
21 relating to that action.

22 4.2 **Reimbursement of Fees and Costs**

23 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
25 this fee reimbursement issue to be resolved after the material terms of the agreement had been
26 settled. Shortly after the other settlement terms had been finalized, some Settling Defendants
27 expressed a desire to resolve the fee and cost issue. IDN and Plaintiff then attempted to and did
28 reach an accord on the compensation due Plaintiff under the principles of Code of Civil Procedure

1 Section 1021.5. IDN agrees to pay attorney’s fees and costs incurred as a result of investigating,
2 bringing this matter to IDN’s attention, negotiating a settlement in the public interest, and seeking
3 court approval in the amount shown on Exhibit A as to IDN. Though the attorney fees recovered
4 pursuant to this agreement are discounted from the lodestar, the negotiated fee and cost figure also
5 includes certain significant, anticipated time Plaintiff’s counsel will incur to monitor various
6 provisions in this agreement over the next two years. IDN further agrees that it shall not oppose
7 Plaintiff’s application to the court for approval of such fees.

8 All attorney fee and cost reimbursement payments shall be made as set forth in IDN’s
9 Exhibit A and delivered to the addresses listed in Section 4.3 below. Any failure by IDN to deliver
10 the required attorney fee and cost reimbursement payment to The Chanler Group (made payable
11 “In Trust for The Chanler Group”) within two days of the required date shall result in imposition of
12 a 10% simple interest assessment on the undelivered payment(s) until delivery. Such payments
13 shall be deemed earned and released from the trust account upon approval of this settlement and
14 entry of Judgment based upon this settlement.

15 **4.3 Payment Procedures**

16 **4.3.1 Issuance of Payments**

17 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
18 4.1 and 4.2 shall be delivered to the following payment address:

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

22 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section
23 4.1, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the
24 following addresses, as appropriate:

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
28 P.O. Box 4010

Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

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

4.3.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 4.3.1(a) above, as proof of payment to OEHHA.

4.3.3 **Tax Documentation.** IDN 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 4.3.1(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 IDN, its parents, subsidiaries, directors, officers, attorneys, and each entity to whom IDN directly or indirectly distributed or sold Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed Chemical in the Products, as set forth in the Notice and Complaint. As part of this release, Englander expressly includes The TJX Companies, Inc. as a Releasee under this section but only to the extent of The TJX Companies, Inc.'s distribution or sale of the Exemplar Product identified for IDN on Exhibit A. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical from

1 the Products, as set forth in the Notice. The Parties further understand and agree that this Section
2 5.1 release shall not extend upstream to any entities, other than IDN.

3 5.2 **Englander’s Individual Releases of Claims**

4 Englander, in his individual capacity only and *not* in his representative capacity, provides a
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
7 liabilities, and demands of Englander of any nature, character, or kind, whether known or
8 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
9 TDCPP, TCEP, and/or TDBPP in the Exemplar Products (as delineated on Exhibit A for IDN)
10 manufactured, imported, distributed, or sold by IDN prior to the Effective Date. The Parties
11 further understand and agree that this Section 5.2 release shall not extend upstream to any entities
12 that manufactured the Products or any component parts thereof, or any distributors or suppliers
13 who sold the Products or any component parts thereof to IDN. Nothing in this Section affects
14 Plaintiff’s rights to commence or prosecute an action under Proposition 65 against a Releasee that
15 does not involve IDN’s Products.

16 5.3 **IDN’s Release of Englander**

17 IDN, and each other expressly named Releasee, on behalf of itself, its past and
18 current agents, representatives, attorneys, successors, and assignees, hereby waives any and all
19 claims against Englander and his attorneys and other representatives, for any and all actions taken
20 or statements made (or those that could have been taken or made) by Englander and his attorneys
21 and other representatives, whether in the course of investigating claims or otherwise seeking to
22 enforce Proposition 65 against it in this matter with respect to the Products.

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and
25 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
26 within one year after it has been fully executed by all Parties. If the Court does not approve the
27 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or
28 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall

1 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately
2 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the
3 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,
4 then the case shall proceed in its normal course on the Court's trial calendar. In the event that this
5 Consent Judgment is entered by the Court and subsequently overturned by any appellate court,
6 any monies that have been provided to OEHHA, Plaintiffs or their counsel pursuant to Section 4,
7 above, shall be refunded within 15 days of the appellate decision becoming final. If the Court does
8 not approve and enter the Consent Judgment within one year of the Effective Date, any monies that
9 have been provided to OEHHA or held in trust for Plaintiffs or their counsel pursuant to Section 4,
10 above, shall be refunded to IDN within 15 days.

11 **7. SEVERABILITY**

12 If, subsequent to the Court's approval and entry of this Consent Judgment, any of the
13 provisions of this Consent Judgment are held by a court to be unenforceable, IDN shall not be
14 relieved from the obligations of such provision until such time as IDN provides formal notice of
15 such court holding to Plaintiff. If, subsequent to the Court's approval and entry of this Consent
16 Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable,
17 the validity of the enforceable provisions remaining shall not be adversely affected.

18 **8. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California.
20 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
21 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
22 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
23 inapplicable by reason of law generally as to the Products, then IDN may make a formally noticed
24 motion to this Court for relief from this Agreement or provisions of this Agreement, with the
25 requisite written notice to Plaintiff, and shall have no further obligations pursuant to this Consent
26 Judgment to the extent of any Court order so excusing or eliminating such obligation. Nothing in
27 this Consent Judgment shall be interpreted to relieve IDN from any obligation to comply with any
28 pertinent state or federal law or regulation.

1 **9. NOTICES**

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

6
7 To IDN:

To Englander:

8
9 At the address shown on Exhibit A

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

10
11
12 Any Party, from time to time, may specify in writing to the other Party a change of address to
13 which all notices and other communications shall be sent.

14 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

18 **11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

21 **12. POST EXECUTION ACTIVITIES**

22 Englander and IDN agree to mutually employ their best efforts to support the entry of this
23 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
24 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code section
25 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
26 Englander shall draft and file, and IDN shall join. If any third party objection to the noticed motion
27 is filed, Englander and IDN shall work together to file a joint reply and appear at any hearing
28

1 before the Court. This provision is a material component of the Consent Judgment and shall be
2 treated as such in the event of a breach.

3 **13. MODIFICATION**

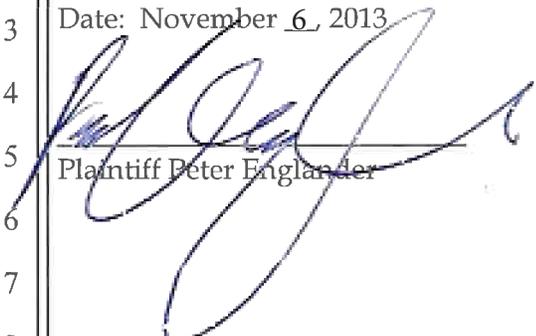
4 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
5 **upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion**
6 of any party and entry of a modified Consent Judgment by the Court.

7 **14. AUTHORIZATION**

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

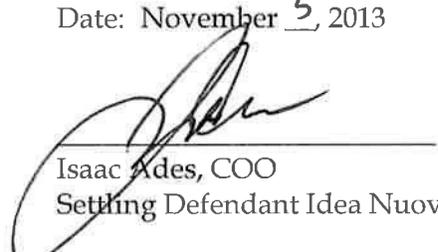
11 AGREED TO:

12 Date: November 6, 2013

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15 Plaintiff Peter Englander

11 AGREED TO:

12 Date: November 5, 2013

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15 Isaac Ades, COO
16 Settling Defendant Idea Nuova, Inc.

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EXHIBIT A
SETTLING DEFENDANT

IDEA NUOVA INC.

Noticed Product: padded, upholstered ottomans

Exemplar Product: Storehouse Eyelet Ottoman

Additional Product: none

Penalty 1: \$19,000

Penalty 2: \$39,000

Section 4.1.1 penalty waiver: \$13,000

Section 4.1.2 penalty waiver: \$13,000

Section 4.1.3 penalty waiver: \$13,000

Section 4.2 base fee and costs reimbursement: \$38,000

Additional Releasee: The TJX Companies, Inc. (as to Storehouse Eyelet Ottoman only)

Section 4.2 supplemental fee and costs reimbursement: \$8,000

Timing of Penalty and Fee/Cost Reimbursement Payments:

November 15, 2013 - \$14,250 paid to OEHHA per Section 4 (75% share of total Penalty 1)

December 1, 2013 - \$4,750 paid to TCG per Section 4 (25% share of total Penalty 1)

December 1, 2013 - \$10,000 paid to TCG per Section 4 (1 of 4 fee/cost reimbursement)

January 1, 2014 - \$12,000 paid to TCG per Section 4 (2 of 4 fee/cost reimbursement)

February 1, 2014 - \$12,000 paid to TCG per Section 4 (3 of 4 fee/cost reimbursement)

March 1, 2014 - \$12,000 paid to TCG per Section 4 (4 of 4 fee/cost reimbursement)

April 1, 2014 (*unless waived*) - \$29,250 paid to OEHHA per Section 4 (75% share of Penalty 2)

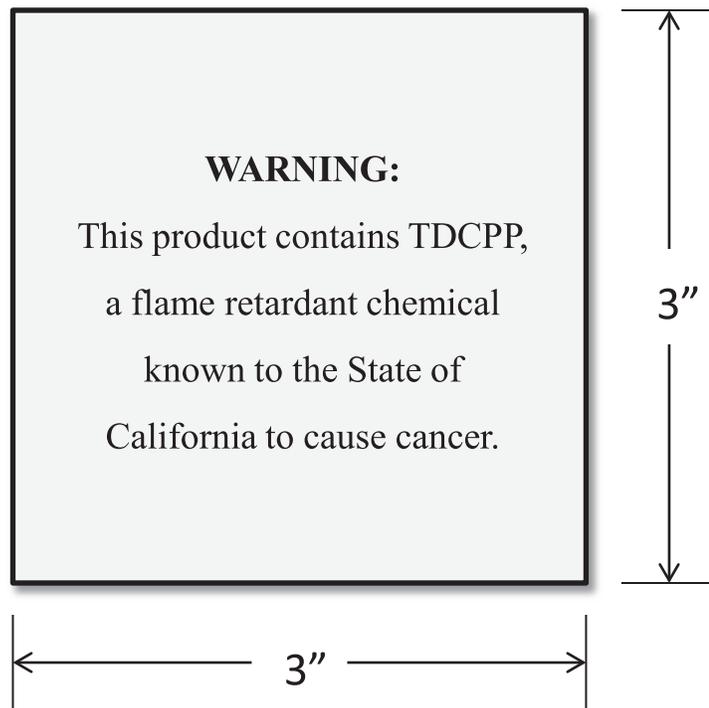
April 1, 2014 (*unless waived*) - \$9,750 paid to TCG per Section 4 (25% share of Penalty 2)

Person(s) to receive Notices pursuant to Section 9

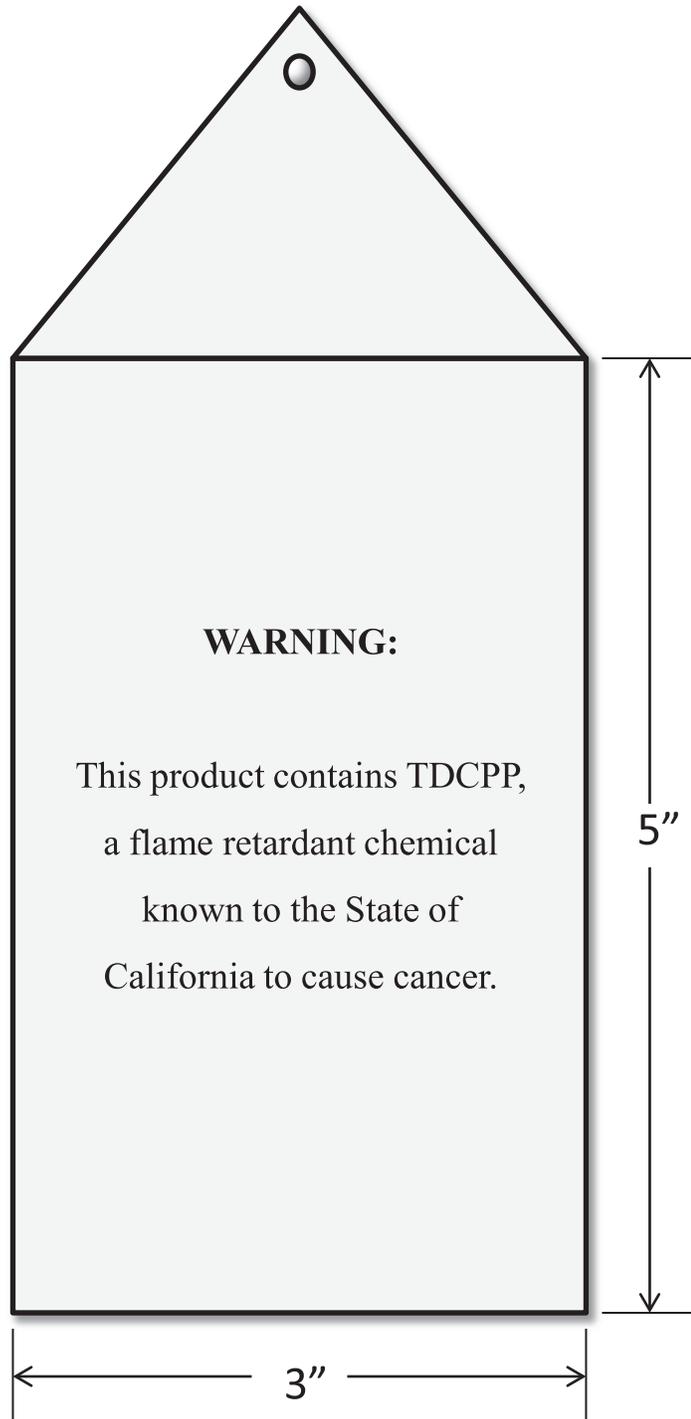
Margaux E. Levy, Esq.
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Idea Nuova, Inc.
302 Fifth Avenue
New York, New York 10001
Tel: 212-643-0680; 718-855-0617
Fax: 212-947-7977
e-mail: margaux@ideanuova.com

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EXHIBIT B
MINIMUM WARNING REQUIREMENTS



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

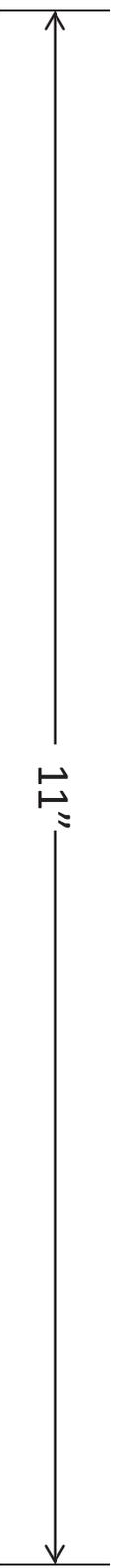


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to
cause cancer.



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