

1 Clifford A. Chanler, State Bar No. 135534
2 THE CHANLER GROUP
3 81 Throckmorton Avenue, Suite 202
4 Mill Valley, CA 94941
5 Telephone: 415.388.0911

6 Attorneys for Plaintiff
7 PETER ENGLANDER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11 PETER ENGLANDER

12 Plaintiff,

13 vs.

14 ACME FURNITURE INDUSTRY, INC.,
15 BASSETT FURNITURE INDUSTRIES,
16 INCORPORATED, BEST CHAIRS
17 INCORPORATED, BUTLER SPECIALTY
18 COMPANY, COA, INC., FOREMOST
19 GROUPS, INC., IDEA NUOVA INC.,
20 MINSON CORPORATION, NAJARIAN
21 FURNITURE COMPANY, INC., P'KOLINO,
22 LLC, THE TJX COMPANIES, INC. and DOES
23 1-150,

24 Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS TO
DEFENDANT BUTLER SPECIALTY
COMPANY**

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

Filed: March 29, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Plaintiff”) and defendant Butler Specialty Company identified in Exhibit A (“Settling
5 Defendant” or “Butler”), with Plaintiff and the Settling Defendant collectively referred to as the
6 “Parties.”

7 **1.2 Plaintiff**

8 Plaintiff is an individual residing in the State of California who seeks to promote
9 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 Settling Defendant**

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

15 **1.4 General Allegations**

16 **1.4.1** Plaintiff alleges that Settling Defendant manufactured, imported, sold
17 and/or distributed for sale in California, products with foam cushioned components containing
18 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health
19 hazard 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.
23 Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

24 TDCPP is hereinafter collectively referred to as the “Listed Chemical.” Plaintiff alleges that the
25 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 Settling Defendant are
28 identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or

1 manufactured for use as a component of another product , such as upholstered furniture, but
2 which is not itself a finished furniture product, is specifically excluded from the definition of
3 Products.

4 **1.6 Notices of Violation**

5 On January 10, 2013, and March 18, 2013, Plaintiff served Settling Defendant and certain
6 requisite public enforcement agencies with “60-Day Notices of Violation” (“Notices”) that
7 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
8 failure to warn customers, consumers, and workers in California that the Products expose users
9 to one or more Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has
10 commenced or is diligently prosecuting the allegations set forth in the Notices.

11 **1.7 Complaint**

12 On April 10, 2013, Plaintiff filed a First Amended Complaint in the Superior Court in
13 and for the County of Alameda, Case No. RG13673678, against the Settling Defendant Butler,
14 other defendants and Does 1 through 150, alleging violations of Proposition 65, based in part on
15 the alleged unwarned exposures to TDCPP contained in the Products. In October of 2013,
16 Plaintiff also filed a Second Amended Complaint in the Superior Court in and for the County of
17 Alameda, Case No. RG13673678, augmenting and clarifying his allegations against certain
18 defendants and Does 1 through 150. On June 12, 2013, Englander filed a Complaint in the
19 Superior Court in and for the County of Alameda, Case No. RG13683321, against Defendant
20 Naturwood Home Furnishings Incorporated (“Naturwood”), other defendants and Does 1
21 through 150, alleging violations of Proposition 65, based in part on the alleged unwarned
22 exposures to TDCPP contained in the Products.

23 **1.8 No Admission**

24 The Settling Defendant denies the material factual and legal allegations contained in
25 Plaintiff’s Notices and Complaints and maintain that all products that they have manufactured,
26 imported, distributed, and/or sold in California, including the Products, have been and are in
27 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
28 by Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall

1 compliance with this Consent Judgment constitute or be construed as an admission by Settling
2 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this
3 section shall not diminish or otherwise affect Settling Defendant's obligations, responsibilities,
4 and duties under this Consent Judgment.

5 **1.9 Consent to Jurisdiction**

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

11 **2. DEFINITIONS**

12 **2.1 California Customers**

13 "California Customer" shall mean any customer that Settling Defendant reasonably
14 understands is located in California, has a California warehouse or distribution center,
15 maintains a retail outlet in California, or has made internet sales into California on or after
16 January 1, 2011.

17 **2.2 Detectable**

18 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the
19 equivalent of .0025%) of any one chemical in any material, component, or constituent of a
20 subject product, when analyzed by a laboratory certified by the State of California or accredited
21 by the State of California, a federal agency, the National Environmental Laboratory
22 Accreditation Program or similar nationally recognized accrediting organization to perform the
23 chemical analysis in question pursuant to EPA testing methodologies 3545 and 8270C, or
24 equivalent methodologies utilized by federal or state agencies to determine the presence, and
25 measure the quantity, of TDCPP and/or TCEP in a solid substance.

26 **2.3 Effective Date**

27 "Effective Date" shall mean November 29, 2013.

28 ///

1 Product is drop shipped to the ultimate customer outside of California and (4) promptly serve
2 plaintiff with a copy of all documentation confirming Butler's sale of any such product(s).

3 **3.2 Vendor Notification/Certification**

4 On or before the Effective Date, Butler shall provide written notice to all of its then-
5 current vendors of the Products, instructing each such vendor to use reasonable efforts to
6 provide only Reformulated Products. In addressing the obligation set forth in the preceding
7 sentence, Butler shall not employ statements that will encourage a vendor to delay compliance
8 with the Reformulation Standard. Butler shall subsequently obtain written certifications, no
9 later than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products
10 manufactured by such vendors are in compliance with the Reformulation Standard.
11 Certifications shall be held by Butler for at least two years after their receipt and shall be made
12 available to Plaintiff upon request.

13 **3.3 Products No Longer in a Settling Defendant's Control**

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

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

3 **3.4 Current Inventory**

4 Any Products ordered before the Effective Date and/or in, or manufactured and en
5 route to, a Settling Defendant's inventory as of or after December 31, 2013, that do not qualify as
6 Reformulated Products and that the Settling Defendant has reason to believe may be sold or
7 distributed for sale in California, shall contain a clear and reasonable warning as set forth in
8 Section 3.5 below unless Section 3.6 applies.¹

9 **3.5 Product Warnings**

10 **3.5.1 Product Labeling**

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

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

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

21 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to
22 be clear and reasonable for purposes of this Consent Judgment.³ Provided that the other

23 _____
24 ¹ This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants'
inventory as of December 31, 2013.

25 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling
26 Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning
27 language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, must obtain
the Court's approval of its alternative warning statement and provide all Parties and the Office of the Attorney General
28 with timely notice and the opportunity to comment or object before the Court acts on the request. The Parties agree that
the following hybrid warning language shall not be deemed to meet the requirements of 27 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."

1 requirements set forth in this Section are addressed, including as to the required warning
2 statement, if Settling Defendant elects not to utilize the template warnings remain free to
3 provide a warning in any other manner meeting the requirements of 27 CCR § 25603.1.

4 3.5.2 Internet Website Warning

5 A warning shall be given in conjunction with the sale of any non-
6 Reformulated Products via the Butler Specialty Co. home internet site, to California Customers,
7 which warning shall appear on one or more web pages displayed to a purchaser before or
8 during the checkout process. The following warning statement shall be used and shall: (a)
9 appear adjacent to or immediately following the display, description, or price of the Product; (b)
10 appear as a pop-up box or (c) otherwise appear automatically to the consumer. The warning
11 text shall be the same type size or larger than the Product description text:

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

14 3.6 Alternatives to Interim Warnings

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

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

⁴ Footnote 4, *supra*, applies in this context as well.

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, Settling Defendant
4 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.

5 Each penalty payment will be allocated in accordance with California Health & Safety Code
6 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of

7 Environmental Health Hazard Assessment (“OEHHA”) and 25% of the penalty remitted to
8 “The Chanler Group in Trust for Englander.” Each penalty payment shall be made within two
9 business days of the date it is due and be delivered to the addresses listed in Section 4.5 below.

10 A Settling Defendant shall be liable for payment of interest, at a rate of 10% simple interest, for
11 all amounts due and owing under this Section that are not received within two business days of
12 the due date.

13 4.1.1 Initial Civil Penalty. On or before November 29, 2013, Settling Defendant
14 shall make an initial civil penalty payment in the amount identified on the Settling Defendant’s
15 Exhibit A.

16 4.1.2 Second Civil Penalty. On or before January 15, 2014, Settling Defendant
17 shall make a second civil penalty payment in the amount identified on the Settling Defendant’s
18 Exhibit A. The amount of the second penalty may be reduced according to any penalty waiver
19 the Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

20 4.1.3 Third Civil Penalty. On or before November 30, 2014, Settling Defendant
21 shall make a third civil penalty payment in the amount identified on the Settling Defendant’s
22 Exhibit A. The amount of the third penalty may be reduced according to any penalty waiver
23 the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

24 4.1.4 Reductions to Civil Penalty Payment Amounts. Settling Defendant may
25 reduce the amount of the second and/or third civil penalty payments identified on the Settling
26 Defendant’s Exhibit A by providing Plaintiff with certification of certain efforts undertaken to
27 reformulate its Products or limit the ongoing sale of non-reformulated Products in California.
28 The options to provide a written certification in lieu of making a portion of Settling Defendant’s

1 civil penalty payment constitute material terms of this Consent Judgment, and with regard to
2 such terms, time is of the essence.

3 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
4 **Products Sold or Offered for Sale in California.**

5 As shown on an electing Settling Defendant's Exhibit A, a portion of the second civil
6 penalty shall be waived, to the extent that it has agreed that, as of November 29, 2013, and
7 with the exception of those Products identified in Paragraph 3.4, continuing into the future, it
8 shall only manufacture or import for distribution or sale to California Customers or cause to be
9 manufactured or imported for distribution or sale to California Customers, Reformulated
10 Products. An officer or other authorized representative of Settling Defendant that has
11 exercised this election shall provide Plaintiff with a written certification confirming compliance
12 with such conditions, which certification must be received by Plaintiff's counsel on or before
13 December 15, 2013.

14 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

15 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil
16 penalty shall be waived, to the extent that it has agreed that, as of March 15, 2014, and
17 continuing into the future, with the exception of those Products identified in Paragraph 3.4, it
18 shall only manufacture or import for distribution or sale in California or cause to be
19 manufactured or imported for distribution or sale in California, Reformulated Products that
20 also do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of
21 more than 25 parts per million ("ppm") (the equivalent of .0025%) in any foam material,
22 component, or constituent of a subject Product, when analyzed by a laboratory certified by the
23 State of California or accredited by the State of California, a federal agency, the National
24 Environmental Laboratory Accreditation Program or similar nationally recognized accrediting
25 organization to perform the chemical analysis in question pursuant to EPA testing
26 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state
27 agencies to determine the presence, and measure the quantity, of TDBPP in a solid substance.
28 An officer or other authorized representative of Settling Defendant that has exercised this

1 election shall provide Plaintiff with a written certification confirming compliance with such
2 conditions, which certification must be received by Plaintiff's counsel on or before November
3 15, 2014.

4 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
5 **Exemplar Products from the California Market.**

6 As shown on Settling Defendant's Exhibit A, a portion of the second civil penalty shall
7 be waived, if an officer or other authorized representative of Settling Defendant provides
8 Plaintiff with written certification, by December 15, 2013, confirming that each individual or
9 establishment in California to which it supplied the Exemplar Product after October 28, 2011,
10 has elected to return or has already sold all remaining Exemplar Products held for sale in
11 California.⁵

12 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
13 **California of Unreformulated Inventory.**

14 As shown on Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
15 waived, if an officer or other authorized representative of Settling Defendant provides Plaintiff
16 with written certification, on or before December 15, 2014, confirming that, as of July 1, 2014,
17 with the exception of those Products identified in Paragraph 3.4, it has and will continue to
18 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
19 Products.

20 **4.2 Representation**

21 Settling Defendant represents that the sales data and other information concerning its
22 size, knowledge of Listed Chemical, and prior reformulation and/or warning efforts, it
23 provided to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs
24 have relied to determine the amount of civil penalties assessed pursuant to Health & Safety
25 Code § 25249.7 in this Consent Judgment. If, within nine months of the Effective Date, Plaintiff
26

27 ⁵ For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs
28 have, prior to August 31, 2013, provided the Settling Defendants with test results from an appropriately accredited
laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm pursuant to EPA testing
methodologies 3545 or 8270C.

1 discover and present to a Settling Defendant, evidence demonstrating that the preceding
2 representation and warranty was materially inaccurate, then Settling Defendant shall have 30
3 days to meet and confer regarding the Plaintiff's contention. Should this 30 day period pass
4 without any such resolution between the Plaintiff and the Settling Defendant, Plaintiff shall be
5 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach
6 of contract.

7 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
8 **Standard.**

9 If Plaintiff provides notice and appropriate supporting information to Butler that levels
10 of a Listed Chemical in excess of the Reformulation Standard have been detected in one or more
11 Products labeled or otherwise marked in an identifiable manner as manufactured or imported
12 after a deadline for meeting the Reformulation Standard other than the products identified in
13 Section 3.4 has arisen for Butler under Sections 3.1 or 3.6 above, Butler may elect to pay a
14 stipulated penalty to relieve any further potential liability under Proposition 65 or sanction
15 under this Consent Judgment as to Products sourced from the vendor in question.⁶ The
16 stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the
17 violation level is between 100 ppm and 249 ppm, this being applicable for any amount in excess
18 of the Reformulation Standards but under 250 ppm.⁷ Plaintiff shall further be entitled to
19 reimbursement of their associated expense in an amount not to exceed \$5,000 regardless of the
20 stipulated penalty level. Under this Section, Butler must provide notice and appropriate
21 supporting information relating to the purchase (e.g. vendor name and contact information
22 including representative, purchase order, certification (if any) received from vendor for the
23 exemplar or subcategory of products), test results, and a letter from a company representative
24 or counsel attesting to the information provided, to Plaintiff within 30 calendar days of

25 _____
26 ⁶ This Section shall not be applicable where the vendor in question had previously been found by the Settling
27 Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more
28 than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling
29 Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

⁷ 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 receiving test results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be
2 subject to the full remedies provided pursuant to this Consent Judgment and at law.

3 **4.4 Reimbursement of Fees and Costs**

4 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
6 leaving this fee reimbursement issue to be resolved after the material terms of the agreement
7 had been settled. Shortly after the other settlement terms had been finalized, the Settling
8 Defendant expressed a desire to resolve the fee and cost issue. The Settling Defendant then
9 agreed to pay Plaintiff and his counsel under general contract principles and the private
10 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all
11 work performed through the mutual execution of this agreement, including the fees and costs
12 incurred as a result of investigating, bringing this matter to the Settling Defendant's attention,
13 negotiating a settlement in the public interest, and seeking court approval of the same. In
14 addition, the negotiated fee and cost figure expressly includes the anticipated significant
15 amount of time plaintiffs' counsel will incur to monitor various provisions in this agreement
16 over the next two years, with the exception of additional fees that may be incurred pursuant to
17 Settling Defendant's election in Section 11. Settling Defendant more specifically agreed, upon
18 the Court's approval and entry of this Consent Judgment, to pay Plaintiff's counsel the amount
19 of fees and costs indicated on the Settling Defendant's Exhibit A. Settling Defendant further
20 agreed to tender and shall tender its full required payment under this Section to a trust account
21 at The Chanler Group (made payable "In Trust for The Chanler Group") by November 29, 2013.
22 Such funds shall be released from the trust account upon the Court's approval and entry of this
23 Consent Judgment.

24 **4.5 Payment Procedures**

25 4.5.1 Issuance of Payments.

26 (a) All payments owed to Plaintiff and their counsel, pursuant to
27 Sections 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

28 The Chanler Group
Attn: Proposition 65 Controller

2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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

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

5. CLAIMS COVERED AND RELEASED

5.1 Plaintiff's Release of Proposition 65 Claims

Plaintiff, acting on his own behalf and in the public interest, releases Butler, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents and each entity to whom the Settling Defendant directly or indirectly distributes or sells Products,

1 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
2 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
3 violations of Proposition 65 through the Effective Date based on unwarned exposures to the
4 Listed Chemical in the Products, as set forth in the Notices. *Coordinated defendant Naturwood*
5 *shall also be considered a Releasee under this agreement to the extent, and only to the extent, of*
6 *Naturwood's sales of any Product supplied to it by Butler. This agreement shall not release or otherwise*
7 *relieve Naturwood of any legal liability or other obligation for Naturwood's sale of any padded furniture*
8 *other than the Product supplied to Naturwood by Butler. Compliance with the terms of this*
9 *Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the*
10 *Listed Chemical from the Products, as set forth in the Notices. The Parties further understand*
11 *and agree that this Section 5.1 release shall not extend upstream to any entities, other than*
12 *Settling Defendant, that manufactured the Products or any component parts thereof, or any*
13 *distributors or suppliers who sold the Products or any component parts thereof to Settling*
14 *Defendant, except that entities upstream of Settling Defendant that is a Retailer of a Private*
15 *Labeled Covered Product shall be released as to the Private Labeled Covered Products offered*
16 *for sale in California, or to California Customers, by the Retailer in question.*

17 **5.2 Plaintiff's Individual Releases of Claims**

18 Plaintiff, in his individual capacities only and *not* in his representative capacities,
19 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
20 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
21 claims, liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or
22 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
23 TDCPP and/or TDBPP in the Products (as delineated on a Settling Defendant's Exhibit A)
24 manufactured, imported, distributed, or sold by Settling Defendants prior to the Effective Date.
25 *Coordinated defendant Naturwood shall also receive the benefit of this individual release to the extent,*
26 *and only to the extent, of Naturwood's sales of any Product supplied to it by Butler. This agreement shall*
27 *not release or otherwise relieve Naturwood of any legal liability or other obligation for Naturwood's sale*
28 *of any padded furniture other than the Product supplied to Naturwood by Butler. The Parties further*

1 understand and agree that this Section 5.2 release shall not extend upstream from Butler to any
2 entities that manufactured the Products, or any component parts thereof, or any distributors or
3 suppliers who sold the Products, or any component parts thereof to Settling Defendant, except
4 that entities upstream of Settling Defendant that is a Retailer of a Private Labeled Covered
5 Product shall be released as to the Private Labeled Covered Products offered for sale in
6 California by the Retailer in question. Nothing in this Section affects Plaintiff's rights to
7 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
8 Settling Defendant's Products.

9 **5.3 Settling Defendant's Release of Plaintiff**

10 Settling Defendant, on behalf of itself, its past and current agents, representatives,
11 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his
12 attorneys and other representatives, for any and all actions taken or statements made (or those
13 that could have been taken or made) by Plaintiff and his attorneys and other representatives,
14 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
15 against it in this matter with respect to the 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
19 Court within one year after it has been fully executed by all Parties. If the Court does not
20 approve the Consent Judgment, the Parties shall meet and confer as to whether to modify the
21 language or appeal the ruling. If the Parties do not jointly agree on a course of action to take,
22 then the case shall proceed in its normal course on the Court's trial calendar. If the Court's
23 approval is ultimately overturned by an appellate court, the Parties shall meet and confer as to
24 whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a
25 course of action to take, then the case shall proceed in its normal course on the Court's trial
26 calendar. In the event that this Consent Judgment is entered by the Court and subsequently
27 overturned by any appellate court, any monies that have been provided to OEHHA, Plaintiff or
28 his counsel pursuant to Section 4, above, shall be refunded within 15 days of the appellate

1 decision becoming final. If the Court does not approve and enter the Consent Judgment within
2 one year of the Effective Date, any monies that have been provided to OEHHA or held in trust
3 for Plaintiff or his counsel pursuant to Section 4, above, shall be refunded to the associated
4 Settling Defendant within 15 days.

5 **7. GOVERNING LAW**

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

16 **8. NOTICES**

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

21 To Settling Defendant:

22 Lee N. Smith, Esq.
23 Weintraub Tobin
24 400 Capitol Mall, Suite 1100
25 Sacramento, CA 95814

To Plaintiff:

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

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

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

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

6 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

9 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

10 11.1 Plaintiff and Settling Defendant agree to support the entry of this agreement as a
11 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
12 manner. The Parties acknowledge that, pursuant to California Health & Safety Code section
13 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
14 which Plaintiff shall draft and file. If any third party objection to the noticed motion is filed,
15 Plaintiff and Settling Defendant shall work together to file a reply and appear at any hearing
16 before the Court. This provision is a material component of the Consent Judgment and shall be
17 treated as such in the event of a breach.

18 11.2 Within 10 days after the approval of the Consent Judgment by the Court Plaintiff
19 will file with the Court a dismissal with Prejudice of all of Plaintiff's claims in the action against
20 Naturwood filed in the Superior Court for the County of Alameda, Case No. RG13683321, with
21 Naturwood to bear its own costs.

22 **12. MODIFICATION**

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

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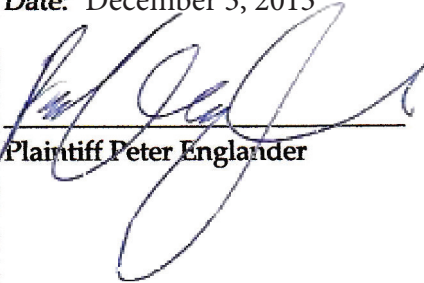
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1 **13. AUTHORIZATION**

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
4 this Consent Judgment.

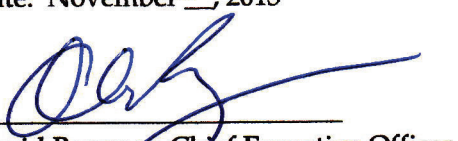
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6 **AGREED TO:**

7 **Date:** December 3, 2013

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9 
10 _____
11 **Plaintiff Peter Englander**

AGREED TO:

Date: November ²⁶, 2013

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14 _____
15 **David Bergman Chief Executive Officer**
16 **Settling Defendant Butler Specialty**
17 **Company**

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EXHIBIT A

BUTLER SPECIALTY COMPANY

Listed Chemical: TDCPP

Products:

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|--------------------------------|-------------------------------|
| 2947228 VANITY STOOL | 2902228 BNCH AO CC - FDX |
| 1218227 VANITY SEAT | 2903277 VNTY STL CC - FDX |
| 902024 BNCHG CTL OTTOMAN | 2953983 OTMNS BL CC - FDX |
| 1218265 VANITY SEAT | 2953984 STK OTMNS CC - FDX |
| 2900025 STOOL | 2953985 NSTG OTTMNS BL CC FDX |
| 1214146 MIRROR OTTOMAN | 2953986 NSTNG OTMNS CC FDX |
| 0284011 SETTEE CC - (UOS) LTL | 2956983 PRSNS CHR BL CC FDX |
| 0965083BENCH LTL | 2956984 PRSNS CHR BL CC FDX |
| 0965239 BENCH LTL | 2956985 PRSNS CHR BL CC FDX |
| 1155070 BENCH H CC LTL | 2956986 PRSNS CHR BL CC FDX |
| 1193260 OTTOMAN ME CC FDX | 3013024 BNCH PLA CC FDX |
| 1218104 STOOL CC - FDX | 3034146 BENCH MAS CC FDX |
| 1218221 STOOL CC - FDX | 4063260 OTTOMAN MOD CC FDX |
| 1236274 STRG BNCH BL CC FDX-OS | 4064260 OTTOMAN MOD CC FDX |
| 1236275 STRG BNCH BL CC FDX | 4074260 OTTOMAN |
| 1250024 STOOL PC CC FDX | 4070260 BENCH MOD CC LTL |
| 1253146 OTTOMAN CC-LTL | 4079220 OTTOMAN NP MOD CC LTL |
| 2135024 VANITYSTOOL CC FDX | 6070025 BENCH CC - LTL |
| 2135111 VANITY STOOL CC FDX | 9012103H LTHR KG HB MP LTL |
| 2254146 BENCH LTL | 9061105H LTHR QN HB AMBER LTL |
| 2882025 BENCH MW CC - FDX | 9062105H LTHR KG HB AMBER LTL |
| 2892025 STOOL MW CC - FDX | 0902024 Ottoman |

Penalty 1 (Section 4.1.1) (due December 6, 2013): \$13,500

Penalty 2 (Section 4.1.2) (due January 15, 2014): \$42,000

Penalty 3 (Section 4.1.3) (due November 30, 2014): \$24,000

Section 4.1.4(i) penalty waiver: \$25,000

Section 4.1.4(ii) penalty waiver: \$12,000

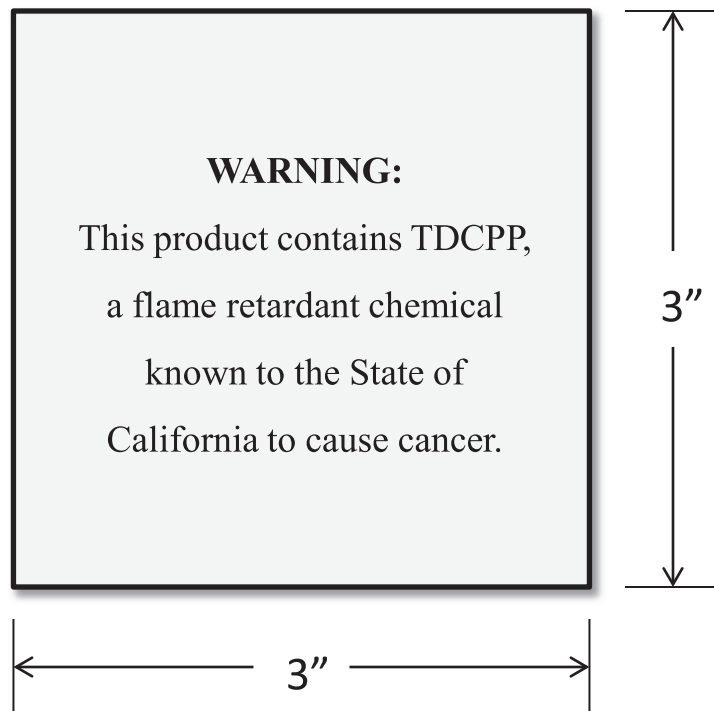
Section 4.1.4(iii) penalty waiver: \$17,000

Section 4.1.4(iv) penalty waiver: \$12,000

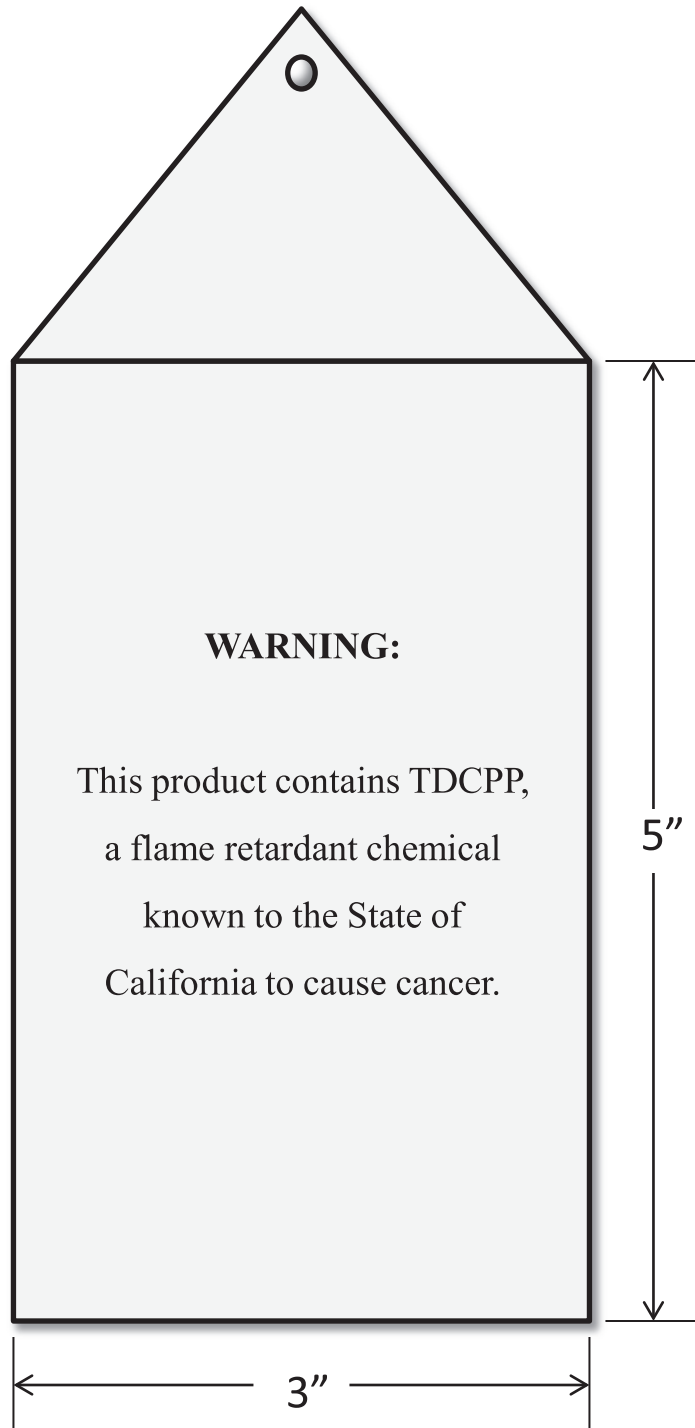
Section 4.4 fee and costs reimbursement (due December 6, 2013): \$40,000

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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 8.5"

chemical known to the State of California to
cause cancer.

11"

INSTRUCTIONS:

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