

1 Clifford A. Chanler, State Bar No. 135534  
2 Gregory M. Sheffer, State Bar No. 173124  
3 THE CHANLER GROUP  
4 81 Throckmorton Avenue, Suite 202  
5 Mill Valley, CA 94941  
6 Telephone: 415.388.0911  
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff  
9 PETER ENGLANDER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 UNLIMITED JURISDICTION

13 PETER ENGLANDER

14 Plaintiff,

15 vs.

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

25 Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS TO  
DEFENDANT BASSETT FURNITURE  
INDUSTRIES, INCORPORATED**

(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 the defendant identified in Exhibit A (“Settling Defendant”), with Plaintiff and  
5 the Settling Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Settling Defendant**

11 The Settling Defendant 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 Plaintiff alleges that the Settling Defendant manufactured, imported, sold  
16 and/or distributed for sale in California, products with foam cushioned components containing  
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”)   
18 without the requisite Proposition 65 health hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed  
20 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable  
21 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §  
22 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and  
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
25 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code  
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

27  
28

1 TDCPP and TCEP are hereinafter collectively referred to as the "Listed Chemicals." Plaintiff  
2 alleges that the Listed Chemicals escape from foam padding, leading to human exposures.

3 **1.5 Product Description**

4 The categories of products that are covered by this Consent Judgment as to the Settling  
5 Defendant are identified on Exhibit A (hereinafter "Products"). Polyurethane foam that is  
6 supplied, shaped or manufactured for use as a component of another product, such as upholstered  
7 furniture, but which is not itself a finished product, is specifically excluded from the definition of  
8 Products and shall not be identified by the Settling Defendant on Exhibit A as a Product.

9 **1.6 Notices of Violation**

10 On January 10, 2013, and March 20, 2013, Plaintiff served Settling Defendant and certain  
11 requisite public enforcement agencies with "60-Day Notices of Violation" ("Notices") that  
12 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged  
13 failure to warn customers, consumers, and workers in California that the Products expose users to  
14 one or more Listed Chemicals.<sup>1</sup> To the best of the Parties' knowledge, no public enforcer has  
15 commenced or is diligently prosecuting the allegations set forth in the Notices.

16 **1.7 Complaint**

17 On April 10, 2013, Plaintiff filed a First Amended Complaint in the Superior Court in and  
18 for the County of Alameda against the Settling Defendant, other defendants and Does 1 through  
19 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to  
20 TDCPP contained in the Products.

21 **1.8 No Admission**

22 The Settling Defendant denies the material factual and legal allegations contained in  
23 Plaintiff's Notices and Complaints and maintain that all products that they have manufactured,  
24 imported, distributed, and/or sold in California, including the Products, have been and are in  
25 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission

26  
27 <sup>1</sup> Based on their further investigation, Plaintiff has also issued supplemental 60-day notices to some of the other defendants  
28 alleging that the Products contain and expose Californians to di(2-ethylhexyl)phthalate ("DEHP"). DEHP and other phthalates  
including butyl benzyl phthalate ("BBP") and Di-n-butyl phthalate ("DBP") are listed under Proposition 65 as chemicals known to  
cause birth defects and other reproductive harm.

1 by the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor  
2 shall compliance with this Consent Judgment constitute or be construed as an admission by the  
3 Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this  
4 section shall not diminish or otherwise affect the Settling Defendant's obligations, responsibilities,  
5 and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

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

12 **2. DEFINITIONS**

13 **2.1 California Customers**

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

17 **2.2 Detectable**

18 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent  
19 of .0025%) of any one chemical in any material, component, or constituent of a  
20 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing  
21 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies  
22 to determine the presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

23 **2.3 Effective Date**

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

25 **2.4 Private Label Covered Products**

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

1                   2.5     **Reformulated Products**

2                   “Reformulated Products” shall mean Products that contain no Detectable amount of  
3 TDCPP or TCEP.<sup>2</sup>

4                   2.6     **Reformulation Standard**

5                   The “Reformulation Standard” shall mean containing no more than 25 ppm for each of  
6 TDCPP and TCEP.

7                   2.7     **Retailer**

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

10                  **3.     INJUNCTIVE RELIEF: REFORMULATION**

11                  3.1     **Reformulation Commitment**

12                  Commencing on March 31, 2014, the Settling Defendant shall not manufacture or import, or  
13 cause to be manufactured or imported, any Products that are not Reformulated Products.

14                  3.2     **Vendor Notification/Certification**

15                  On or before the Effective Date, the Settling Defendant shall provide written notice to all of  
16 its then-current vendors of the Products, instructing each such vendor to use reasonable efforts to  
17 provide it with only Reformulated Products. In addressing the obligation set forth in the  
18 preceding sentence, the Settling Defendant shall not employ statements that will encourage a  
19 vendor to delay compliance with the Reformulation Standard. The Settling Defendant shall  
20 subsequently obtain written certifications, no later than April 1, 2014, from such vendors, and any  
21 newly engaged vendors, that the Products manufactured by such vendors are in compliance with  
22 the Reformulation Standard. Certifications shall be held by the Settling Defendant for at least two  
23 years after their receipt and shall be made available to Plaintiff upon request.

24                  3.3     **Products No Longer in The Settling Defendant’s Control**

25                  No later than 45 days after the Effective Date, the Settling Defendant shall send a letter,  
26 electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer

27                  <sup>2</sup> As to the defendants who received supplemental Notices concerning DEHP, the term “Reformulated Products” further  
28 requires that the Products for which claims concerning DEHP were noticed (the “Phthalate Products”) contain no more than 1000 ppm  
each of DEHP, BBP, and DBP.

1 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar  
2 in the Notice(s) the Settling Defendant received from Plaintiff ("Exemplar Product"); and (2) any  
3 California Customer and/or Retailer that the Settling Defendant reasonably understands or  
4 believes had any inventory for resale in California of Exemplar Products as of the relevant Notice's  
5 dates. The Notification Letter shall advise the recipient that the Exemplar Product "contains  
6 TDCPP and/or TCEP, chemicals known to the State of California to cause cancer," and request  
7 that the recipient either: (a) label the Exemplar Products remaining in inventory for sale in  
8 California, or to California Customers, pursuant to Section 3.5; or (b) return, at the Settling  
9 Defendant's sole expense, all units of the Exemplar Product held for sale in California, or to  
10 California Customers, to the Settling Defendant or a party the Settling Defendant has otherwise  
11 designated. The Notification Letter shall require a response from the recipient within 15 days  
12 confirming whether the Exemplar Product will be labeled or returned. The Settling Defendant  
13 shall maintain records of all correspondence or other communications generated pursuant to this  
14 Section for two years after the Effective Date and shall promptly produce copies of such records  
15 upon Plaintiff's written request.

### 16 3.4 Current Inventory

17 Any Products in, or manufactured and en route to, the Settling Defendant's inventory as of  
18 or after December 31, 2013, that do not qualify as Reformulated Products and that the Settling  
19 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a  
20 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.<sup>3</sup>

### 21 3.5 Product Warnings

#### 22 3.5.1 Product Labeling

23 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,  
24 labeling, or directly on each Product. Each warning shall be prominently placed with such  
25 conspicuousness as compared with other words, statements, designs, or devices as to render it  
26 likely to be read and understood by an ordinary individual under customary conditions before

27 \_\_\_\_\_  
28 <sup>3</sup> This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants' inventory as of December 31, 2013.

1 purchase. Each warning shall be provided in a manner such that the consumer or user  
2 understands to which specific Product the warning applies, so as to minimize the risk of consumer  
3 confusion.

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

5 **WARNING:** This product contains TDCPP, a flame  
6 retardant chemical known to the State  
7 of California to cause cancer.<sup>4</sup>

8 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be  
9 clear and reasonable for purposes of this Consent Judgment.<sup>5</sup> Provided that the other  
10 requirements set forth in this Section are addressed, including as to the required warning  
11 statement and method of transmission as set forth above, the Settling Defendant remains free not  
12 to utilize the template warnings.

### 13 3.5.2 Internet Website Warning

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

---

21 <sup>4</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 *et seq.* may also be used if the Settling Defendant  
22 had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning language, other than the  
23 language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks to use an alternate method of  
24 transmission of the warning, must obtain the Court's approval of its alternative and provide all Parties and the Office of the Attorney  
25 General with timely notice and the opportunity to comment or object before the Court acts on the request. The Parties agree that the  
26 following warning language shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to  
27 this Consent Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth defects or other reproductive  
28 harm."

<sup>5</sup> 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 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.

**WARNING:** This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.<sup>6</sup>

1  
2           **3.6 Alternatives to Interim Warnings**

3           The obligations of the Settling Defendant under Section 3.3 shall be relieved provided the  
4 Settling Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting  
5 the Reformulation Standard will be offered for sale in California, or to California Customers for  
6 sale in California, after December 31, 2013. The obligations of the Settling Defendant under  
7 Section 3.4 shall be relieved provided the Settling Defendant certifies on or before December 15,  
8 2013 that, after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in,  
9 California, or to California Customers for sale in California, Products (i.e., Products beyond the  
10 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this  
11 Section are material terms and time is of the essence.

12           **4. MONETARY PAYMENTS**

13           **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

14           In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant  
15 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.<sup>7</sup>  
16 Each penalty payment will be allocated in accordance with California Health & Safety Code  
17 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental  
18 Health Hazard Assessment (“OEHHA”) and 25% of the penalty remitted to “The Chanler Group  
19 in Trust for Englander.” Each penalty payment shall be made within two business days of the date  
20 it is due and be delivered to the addresses listed in Section 4.5 below. The Settling Defendant shall  
21 be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing  
22 under this Section that are not received within two business days of the due date.  
23  
24  
25

26           <sup>6</sup> Footnote 4, *supra*, applies in this context as well.

27           <sup>7</sup> For settling defendants that received supplemental Notices alleging violations of Proposition 65 concerning DEHP in  
28 Phthalate Products, the penalty amount shown on Exhibit A includes an additional component to address the resolution of those additional claims.



1                   4.1.1 Initial Civil Penalty. On or before the Effective Date, the Settling Defendant  
2 shall make an initial civil penalty payment in the amount identified on the Settling Defendant's  
3 Exhibit A.

4                   4.1.2 Second Civil Penalty. On or before January 15, 2014, the Settling Defendant  
5 shall make a second civil penalty payment in the amount identified on the Settling Defendant's  
6 Exhibit A. The amount of the second penalty may be reduced according to any penalty waiver the  
7 Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

8                   4.1.3 Third Civil Penalty. On or before November 30, 2014, the Settling  
9 Defendant shall make a third civil penalty payment in the amount identified on the Settling  
10 Defendant's Exhibit A. The amount of the third penalty may be reduced according to any penalty  
11 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

12                   4.1.4 Reductions to Civil Penalty Payment Amounts. The Settling Defendant may  
13 reduce the amount of the second and/or third civil penalty payments identified on the Settling  
14 Defendant's Exhibit A by providing Plaintiff with certification of certain efforts undertaken to  
15 reformulate their Products or limit the ongoing sale of non-reformulated Products in California.  
16 The options to provide a written certification in lieu of making a portion of the Settling  
17 Defendant's civil penalty payment constitute material terms of this Consent Judgment, and with  
18 regard to such terms, time is of the essence.

19                   4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**  
20 **Products Sold or Offered for Sale in California.**

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff with written certification, by December 15, 2013, confirming that each individual or establishment in California to which it supplied the Exemplar Product after October 28, 2011, has either elected to return all remaining Exemplar Products held for sale in California or has confirmed in writing that such individual or establishment no longer has any inventory of the Exemplar Product.<sup>8</sup>

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

As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff

---

<sup>8</sup> For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs have, prior to August 31, 2013, provided the Settling Defendants with test results from a NVLAP 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 with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it has  
2 and will continue to distribute, offer for sale, or sell in California, or to California Customers, only  
3 Reformulated Products.

#### 4 **4.2 Representations**

5 The Settling Defendant represents that the sales data and other information concerning its  
6 size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided  
7 to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs have relied to  
8 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in  
9 this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discover and present  
10 to the Settling Defendant, evidence demonstrating that the preceding representation and warranty  
11 was materially inaccurate, then the Settling Defendant shall have 30 days to meet and confer  
12 regarding the Plaintiff's contention. Should this 30 day period pass without any such resolution  
13 between the Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal  
14 claim including, but not limited to, a claim for damages for breach of contract.

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

#### 20 **4.3 Stipulated Penalties for Certain Violations of the Reformulation 21 Standard.**

22 If Plaintiff provides notice and appropriate supporting information to the Settling  
23 Defendant that levels of a Listed Chemical in excess of the Reformulation Standard have been  
24 detected in one or more Products labeled or otherwise marked in an identifiable manner as  
25 manufactured or imported after a deadline for meeting the Reformulation Standard has arisen for  
26 the Settling Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a  
27 stipulated penalty to relieve any further potential liability under Proposition 65 or sanction under  
28

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

#### 13 4.4 Reimbursement of Fees and Costs

14 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute  
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
16 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
17 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant  
18 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay  
19 Plaintiff and his counsel under general contract principles and the private attorney general  
20 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed  
21 through the mutual execution of this agreement, including the fees and costs incurred as a result of  
22 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in  
23 the public interest, and seeking court approval of the same. In addition, the negotiated fee and  
24 cost figure expressly includes the anticipated significant amount of time plaintiffs' counsel will

25 <sup>9</sup> This Section shall not be applicable where the vendor in question had previously been found by the Settling Defendant to  
26 have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion.  
27 Notwithstanding the foregoing, a stipulated penalty for a second exceedance by the Settling Defendant's vendor at a level between 100  
28 and 249 ppm shall not be available after July 1, 2015.

<sup>10</sup> 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 incur to monitor various provisions in this agreement over the next two years, with the exception  
2 of additional fees that may be incurred pursuant to the Settling Defendant's election in Section 11.  
3 The Settling Defendant more specifically agreed, upon the Court's approval and entry of this  
4 Consent Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on the Settling  
5 Defendant's Exhibit A. The Settling Defendant further agreed to tender and shall tender its full  
6 required payment under this Section to a trust account at The Chanler Group (made payable "In  
7 Trust for The Chanler Group") within two business days of the Effective Date. Such funds shall be  
8 released from the trust account upon the Court's approval and entry of this Consent Judgment.

9 **4.5 Payment Procedures**

10 **4.5.1 Issuance of Payments.**

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

13 The Chanler Group  
14 Attn: Proposition 65 Controller  
15 2560 Ninth Street  
16 Parker Plaza, Suite 214  
17 Berkeley, CA 94710

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

21 For United States Postal Service Delivery:

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

27 For Non-United States Postal Service Delivery:

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

1                   4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA  
2 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in  
3 Section 4.5.1(a) above, as proof of payment to OEHHA.

4                   4.5.3 Tax Documentation. The Settling Defendant shall issue a separate 1099 form  
5 for each payment required by this Section to: (a) Peter Englander, whose address and tax  
6 identification number shall be furnished upon request after this Consent Judgment has been fully  
7 executed by the Parties; (b) OEHHA, who shall be identified as "California Office of  
8 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered  
9 directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-  
10 3171522) to the address set forth in Section 4.5.1(a) above.

11 **5. CLAIMS COVERED AND RELEASED**

12 **5.1 Plaintiff's Release of Proposition 65 Claims**

13 Plaintiff, acting on his own behalf and in the public interest, releases the Settling  
14 Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors,  
15 officers, agents employees, attorneys, and each entity to whom the Settling Defendant directly or  
16 indirectly distribute or sell Products, including, but not limited, to downstream distributors,  
17 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively,  
18 "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on  
19 unwarned exposures to the Listed Chemicals in the Products, as set forth in the Notices. *As part of*  
20 *this settlement, consolidated defendant Buy, Buy Baby, Inc. is considered a Releasee but only to the extent of*  
21 *Buy Buy Baby's sale or other distribution of the Bassettbaby Premier chair and ottoman sold or supplied to*  
22 *Buy Buy Baby, Inc. by Bassett Furniture Industries, Inc.* Compliance with the terms of this Consent  
23 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed  
24 Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree  
25 that this Section 5.1 release shall not extend upstream to any entities, other than the Settling  
26 Defendant, that manufactured the Products or any component parts thereof, or any distributors or  
27 suppliers who sold the Products or any component parts thereof to the Settling Defendant, except  
28 that entities upstream of the Settling Defendant that is a Retailer of a Private Labeled Covered

1 Product shall be released as to the Private Labeled Covered Products offered for sale in California,  
2 or to California Customers, by the Retailer in question.<sup>11</sup>

3 **5.2 Plaintiff's Individual Releases of Claims**

4 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides  
5 a 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 Plaintiff of any nature, character, or kind, whether known or unknown,  
8 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP  
9 and/or TCEP in the Products or Additional Products (as defined in Section 11.1 and delineated on  
10 the Settling Defendant's Exhibit A) manufactured, imported, distributed, or sold by the Settling  
11 Defendant prior to the Effective Date.<sup>12</sup> The Parties further understand and agree that this Section  
12 5.2 release shall not extend upstream to any entities that manufactured the Products or Additional  
13 Products, or any component parts thereof, or any distributors or suppliers who sold the Products  
14 or Additional Products, or any component parts thereof to the Settling Defendants, except that  
15 entities upstream of the Settling Defendant that is a Retailer of a Private Labeled Covered (or  
16 Additional) Product shall be released as to the Private Labeled Covered (or Additional) Products  
17 offered for sale in California by the Retailer in question. Nothing in this Section affects Plaintiff's  
18 rights to commence or prosecute an action under Proposition 65 against a Releasee that does not  
19 involve the Settling Defendant's Products or Additional Products.<sup>13</sup>

20 **5.3 Settling Defendant's Release of Plaintiff**

21 The Settling Defendant, on behalf of itself, its past and current agents, representatives,  
22 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his  
23 attorneys and other representatives, for any and all actions taken or statements made (or those that

24 \_\_\_\_\_  
25 <sup>11</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals" shall include DEHP with respect to  
those Settling Defendants that received supplemental Notices alleging violations of Proposition 65 as to exposures to DEHP.

26 <sup>12</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

27 <sup>13</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals" shall include DEHP, BBP and DBP  
28 with respect to those Settling Defendants that received supplemental Notices alleging violations of Proposition 65 as to exposures to  
DEHP.

1 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether  
2 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in  
3 this matter with respect to the Products or Additional Products.

4 **6. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and  
6 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court  
7 within one year after it has been fully executed by all Parties. If the Court does not approve the  
8 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or  
9 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case  
10 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is  
11 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to  
12 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action  
13 to take, then the case shall proceed in its normal course on the Court's trial calendar. In the event  
14 that this Consent Judgment is entered by the Court and subsequently overturned by any appellate  
15 court, any monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section  
16 4, above, shall be refunded within 15 days of the appellate decision becoming final. If the Court  
17 does not approve and enter the Consent Judgment within one year of the Effective Date, any  
18 monies that have been provided to OEHHA or held in trust for Plaintiff or his counsel pursuant to  
19 Section 4, above, shall be refunded to the Settling Defendant within 15 days.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of  
22 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
23 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
24 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
25 rendered inapplicable by reason of law generally as to the Products, then the Settling Defendant  
26 may provide written notice to Plaintiff of any asserted change in the law, and shall have no further  
27 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products  
28



1 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve the Settling  
2 Defendant from any obligation to comply with any pertinent state or federal law or regulation.

3 **8. NOTICES**

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

8 To Settling Defendant:

To Plaintiff:

9 At the addresses 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 **9. 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 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

21 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

22 11.1 In addition to the Products, where the Settling Defendant has identified on Exhibit  
23 A additional products that contain Listed Chemicals and that are sold or offered for sale by it in  
24 California, or to California Customers, ("Additional Products"), then by no later than October 15,  
25 2013, the Settling Defendant may provide Plaintiff with additional information or representations  
26 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit  
27 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.  
28

1 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,  
2 such as upholstered furniture, is specifically excluded from the definition of Additional Products  
3 and shall not be identified by the Settling Defendant on Exhibit A as an Additional Product.  
4 Except as agreed upon by Plaintiff, the Settling Defendant shall not include a product, as an  
5 Additional Product, that is the subject of an existing 60-day notice issued by Plaintiff or any other  
6 private enforcer at the time of execution. After receipt of the required information, Plaintiff agrees  
7 to issue a supplemental 60-day notice in compliance with all statutory and regulatory  
8 requirements for the Additional Products. Plaintiff will, and in no event later than October 1, 2014,  
9 prepare and file an amendment to this Consent Judgment to incorporate the Additional Products  
10 within the defined term "Products" and serve a copy thereof and supporting papers (including the  
11 basis for supplemental stipulated penalties, if any) on the Office of the California Attorney  
12 General. Upon the Court's approval thereof and finding that the supplemental stipulated penalty  
13 amount, if any, is reasonable, the Additional Products shall become subject to Section 5.1 in  
14 addition to Section 5.2. The Settling Defendant shall, at the time it elects to utilize this Section  
15 and tenders the additional information or representations regarding the Additional Products to  
16 Plaintiff, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as stipulated  
17 penalties and attorneys' fees and costs incurred by Plaintiff in issuing the new notice and engaging  
18 in other reasonably related activities, which may be released from the trust as awarded by the  
19 Court upon Plaintiff's application. Any fee award associated with the modification of the Consent  
20 Judgment to include Additional Products shall not offset any associated supplemental penalty  
21 award, if any. (Any tendered funds remaining in the trust thereafter shall be refunded to the  
22 Settling Defendant within 15 days). Such payment shall be made to "in trust for The Chanler  
23 Group" and delivered as per Section 4.5.1(a) above.

24 11.2 Plaintiff and the Settling Defendant agree to support the entry of this agreement as  
25 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
26 manner. The Parties acknowledge that, pursuant to California Health & Safety Code section  
27 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
28 Plaintiff shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and

1 the Settling Defendant shall work together to file a reply and appear at any hearing before the  
2 Court. This provision is a material component of the Consent Judgment and shall be treated as  
3 such in the event of a breach.

4 **12. MODIFICATION**

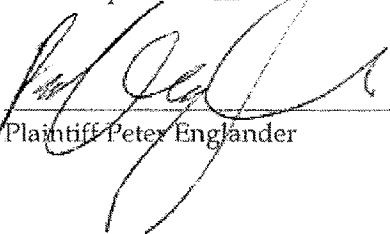
5 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
6 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
7 of any party and entry of a modified Consent Judgment by the Court.

8 **13. AUTHORIZATION**

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

12 AGREED TO:

13 Date: September 30, 2013

14   
15  
16 Plaintiff Peter Englander

12 AGREED TO:

13 Date: September 26, 2013

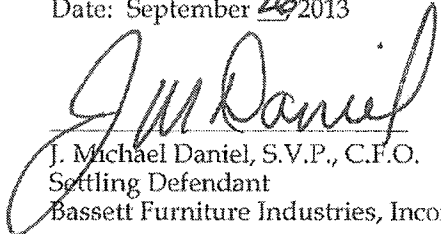
14   
15  
16 J. Michael Daniel, S.V.P., C.F.O.  
17 Settling Defendant  
18 Bassett Furniture Industries, Incorporated

EXHIBIT A  
SETTLING DEFENDANT

**BASSETT FURNITURE INDUSTRIES, INCORPORATED**

Product: padded, upholstered furniture, including ottomans

Exemplar Product: Bassettbaby Premier chair and ottoman

Additional Product: none

Penalty 1 (Section 4.1.1) (due October 15, 2013): \$27,000

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

Additional Releasees: Buy Buy Baby, Inc. *(As part of this settlement, consolidated defendant Buy, Buy Baby, Inc. is considered a Releasee but only to the extent of Buy Buy Baby's sale or other distribution of the Bassettbaby Premier chair and ottoman sold or supplied to Buy Buy Baby, Inc. by Bassett Furniture Industries, Inc.)*

Section 4.4 fee and costs reimbursement (due October 15, 2013): \$49,000

Supplemental fee for additional Releasees: (due October 15, 2013): \$8,000

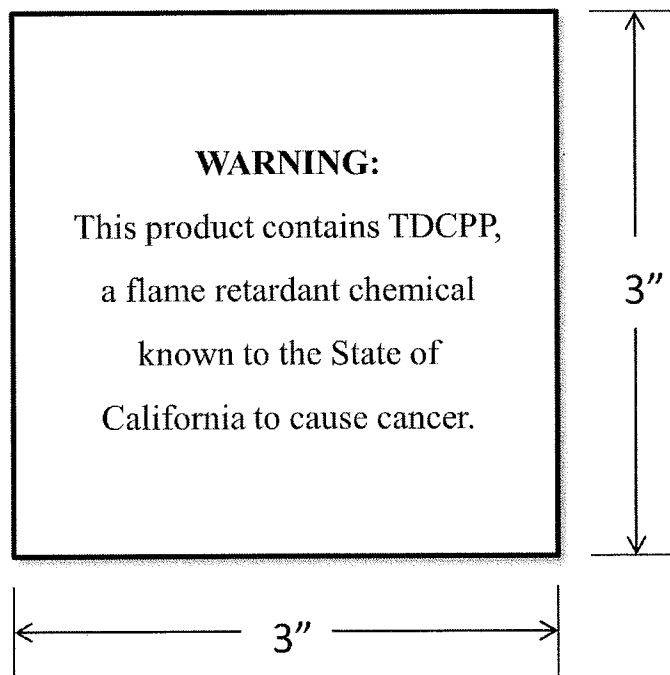
Person(s) to receive Notices pursuant to Section 8:

Jay R. Hervey, Esq.  
General Counsel, Vice President & Secretary  
Bassett Furniture Industries, Inc.  
P.O. Box 626  
Bassett, VA 24055

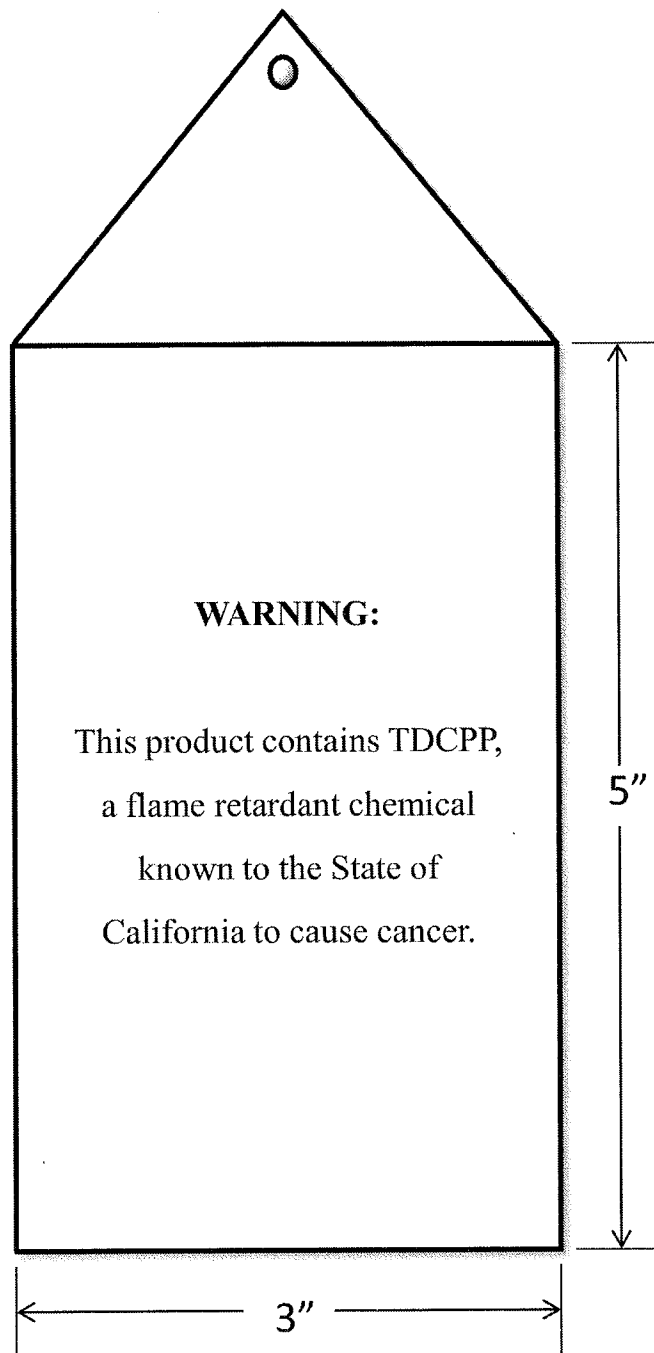
Holly Gaudreau, Esq.  
Kilpatrick Townsend and Stockton, LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, CA 94111

EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**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.