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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 NAJARIAN
FURNITURE COMPANY, INC.**

(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 Najarian Furniture Company, Inc. (“Settling Defendant”), with Plaintiff
5 and 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 Defendants**

11 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 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”) without the requisite Proposition 65 health
18 hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
22 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 TDCPP and TCEP are hereinafter collectively referred to as the “Listed Chemicals.” Plaintiff
24 alleges that the Listed Chemicals escape from foam padding, leading to human exposures.

25 **1.5 Product Description**

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

6 **1.6 Notices of Violation**

7 On January 17, 2013, Plaintiff served Settling Defendant and certain requisite public
8 enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the recipients
9 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
10 consumers, and workers in California that the Products expose users to one or more Listed
11 Chemicals. To the best of the Parties' knowledge, no public enforcer has commenced or is
12 diligently prosecuting the allegations set forth in the Notices.

13 **1.7 Complaint**

14 On April 10, 2013, Plaintiff filed a First Amended Complaint in the Superior Court in and
15 for the County of Alameda against the Settling Defendants, other defendants and Does 1 through
16 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to
17 TDCPP contained in the Products. On October 18, 2013, plaintiff filed a Second Amended
18 Complaint in this action including additional allegations and additional products against certain
19 defendants.

20 **1.8 No Admission**

21 Settling Defendant denies the material factual and legal allegations contained in Plaintiff's
22 Notices and Complaints and maintains that all products that they have manufactured, imported,
23 distributed, and/or sold in California, including the Products, have been and are in compliance
24 with all laws. Nothing in this Consent Judgment shall be construed as an admission by a Settling
25 Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
26 with this Consent Judgment constitute or be construed as an admission by any Settling Defendant
27 of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not
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1 diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and duties under
2 this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

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

9 **2. DEFINITIONS**

10 **2.1 California Customers**

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

14 **2.2 Detectable**

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

20 **2.3 Effective Date**

21 "Effective Date" shall mean December 15, 2013.

22 **2.4 Private Label Covered Products**

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

26 **2.5 Reformulated Products**

27 "Reformulated Products" shall mean Products that contain no Detectable amount of
28 TDCPP or TCEP.

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2.6 Reformulation Standard

The "Reformulation Standard" shall mean containing no more than 25 ppm for each of TDCPP and TCEP.

2.7 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 March 31, 2014, Settling Defendants shall not manufacture or import, or cause to be manufactured or imported, any Products that are not Reformulated Products.

3.2 Vendor Notification/Certification

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

3.3 Products No Longer in a Settling Defendant's Control

No later than 15 days after the Effective Date, Settling Defendant shall send a letter, electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice(s) the Settling Defendant received from Plaintiff ("Exemplar Product"); and (2) any California Customer and/or Retailer that the Settling Defendant reasonably understands or believes had any inventory for resale in California of Exemplar Products as of the relevant Notice's dates. The Notification Letter shall advise the recipient that the Exemplar Product "contains

1 TDCPP and/or TCEP, chemicals known to the State of California to cause cancer,” and request
2 that the recipient either: (a) label the Exemplar Products remaining in inventory for sale in
3 California, or to California Customers, pursuant to Section 3.5; or (b) return, at the Settling
4 Defendant’s sole expense, all units of the Exemplar Product held for sale in California, or to
5 California Customers, to the Settling Defendant or a party the Settling Defendant has otherwise
6 designated. The Notification Letter shall require a response from the recipient within 15 days
7 confirming whether the Exemplar Product will be labeled or returned. The Settling Defendant
8 shall maintain records of all correspondence or other communications generated pursuant to this
9 Section for two years after the Effective Date and shall promptly produce copies of such records
10 upon Plaintiff’s written request.

11 **3.4 Current Inventory**

12 Any Products in, or manufactured and en route to, Settling Defendant’s inventory as of or
13 after December 31, 2013, that do not qualify as Reformulated Products and that the Settling
14 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a
15 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.¹

16 **3.5 Product Warnings**

17 **3.5.1 Product Labeling**

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

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

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

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

Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements set forth in this Section are addressed, including as to the required warning statement and method of transmission as set forth above, Settling Defendants remain free not to utilize the template warnings.

3.5.2 Internet Website Warning

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

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

3.6 Alternatives to Interim Warnings

The obligations of Settling Defendant under Section 3.3 shall be relieved provided the Settling Defendant certifies on or before December 15, 2013 that only Exemplar Products meeting

² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks to use an alternate method of transmission of the warning, must obtain the Court's approval of its alternative and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to comment or object before the Court acts on the request. The Parties agree that the following warning language 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."

³ 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.

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

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

8 **4. MONETARY PAYMENTS**

9 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

12 Each penalty payment will be allocated in accordance with California Health & Safety Code
13 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
14 Health Hazard Assessment (“OEHHA”) and 25% of the penalty remitted to “The Chanler Group
15 in Trust for Englander.” Each penalty payment shall be made within two business days of the date
16 it is due and be delivered to the addresses listed in Section 4.5 below. A Settling Defendant shall
17 be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing
18 under this Section that are not received within two business days of the due date.

19 4.1.1 Initial Civil Penalty. On or before the July 18, 2014, Settling Defendant shall
20 make an initial civil penalty payment in the amount identified on the Settling Defendant’s Exhibit
21 A.

22 4.1.2 Second Civil Penalty. On or before August 15, each Settling Defendant shall
23 make a second civil penalty payment in the amount identified on the Settling Defendant’s Exhibit
24 A. The amount of the second penalty may be reduced according to any penalty waiver the Settling
25 Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

26 4.1.3 Third Civil Penalty. On or before August 15, 2014, each Settling Defendant
27 shall make a third civil penalty payment in the amount identified on the Settling Defendant’s
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1 Exhibit A. The amount of the third penalty may be reduced according to any penalty waiver the
2 Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

3 4.1.4 Reductions to Civil Penalty Payment Amounts. Each Settling Defendant
4 may reduce the amount of the second and/or third civil penalty payments identified on the
5 Settling Defendant's Exhibit A by providing Plaintiff with certification of certain efforts
6 undertaken to reformulate their Products or limit the ongoing sale of non-reformulated Products
7 in California. The options to provide a written certification in lieu of making a portion of a Settling
8 Defendant's civil penalty payment constitute material terms of this Consent Judgment, and with
9 regard to such terms, time is of the essence.

10 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
11 **Products Sold or Offered for Sale in California.**

12 As shown on an electing Settling Defendant's Exhibit A, a portion of the second civil
13 penalty shall be waived, to the extent that it has agreed that, as of November 1, 2013, and
14 continuing into the future, it shall only manufacture or import for distribution or sale to California
15 Customers or cause to be manufactured or imported for distribution or sale to California
16 Customers, Reformulated Products. An officer or other authorized representative of a Settling
17 Defendant that has exercised this election shall provide Plaintiff with a written certification
18 confirming compliance with such conditions, which certification must be received by Plaintiff's
19 counsel on or before July 18, 2014.

20 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

21 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil penalty
22 shall be waived, to the extent that it has agreed that, as of March 15, 2014, and continuing into the
23 future, it shall only manufacture or import for distribution or sale in California or cause to be
24 manufactured or imported for distribution or sale in California, Reformulated Products that also
25 do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than
26 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent
27 of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
28 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies

1 to determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or
2 other authorized representative of a Settling Defendant that has exercised this election shall
3 provide Plaintiff with a written certification confirming compliance with such conditions, which
4 certification must be received by Plaintiff's counsel on or before July 18, 2014.

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

7 As shown on a Settling Defendant's Exhibit A, a portion of the second civil penalty shall be
8 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff
9 with written certification confirming that each individual or establishment in California to which it
10 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining
11 Exemplar Products held for sale in California.⁵ An officer or other authorized representative of a
12 Settling Defendant that has exercised this election shall provide Plaintiff with a written
13 certification confirming compliance with such conditions, which certification must be received by
14 Plaintiff's counsel on or before July 18, 2014.

15 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
16 **California of Unreformulated Inventory.**

17 As shown on a Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
18 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff
19 with written certification confirming that, as of July 1, 2014, it has and will continue to distribute,
20 offer for sale, or sell in California, or to California Customers, only Reformulated Products. An
21 officer or other authorized representative of a Settling Defendant that has exercised this election
22 shall provide Plaintiff with a written certification confirming compliance with such conditions,
23 which certification must be received by Plaintiff's counsel on or before July 18, 2014.

24 **4.2 Representation**

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

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

16 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
17 **Standard.**

18 If Plaintiff provides notice and appropriate supporting information to a Settling Defendant
19 that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one
20 or more Products labeled or otherwise marked in an identifiable manner as manufactured or
21 imported after a deadline for meeting the Reformulation Standard has arisen for a Settling
22 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated
23 penalty to relieve any further potential liability under Proposition 65 or sanction under this
24 Consent Judgment as to Products sourced from the vendor in question.⁶ The stipulated penalty
25 shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between

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
Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

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

11 4.4 Reimbursement of Fees and Costs

12 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 this fee reimbursement issue to be resolved after the material terms of the agreement had been
15 settled. Shortly after the other settlement terms had been finalized, the Settling Defendants
16 expressed a desire to resolve the fee and cost issue. The Settling Defendants then agreed to pay
17 Plaintiff and his counsel under general contract principles and the private attorney general
18 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
19 through the mutual execution of this agreement, including the fees and costs incurred as a result of
20 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in
21 the public interest, and seeking court approval of the same. In addition, the negotiated fee and
22 cost figure expressly includes the anticipated significant amount of time plaintiffs' counsel will
23 incur to monitor various provisions in this agreement over the next two years. Each Settling
24 Defendant more specifically agreed, upon the Court's approval and entry of this Consent
25 Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on the Settling
26 Defendant's Exhibit A. Each Settling Defendant further agreed to tender and shall tender its full

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28 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 required payment under this Section to a trust account at The Chanler Group (made payable "In
2 Trust for The Chanler Group") on or before July 18, 2014. Such funds shall be released from the
3 trust account upon the Court's approval and entry of this Consent Judgment.

4 **4.5 Payment Procedures**

5 4.5.1 Issuance of Payments.

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

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

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

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

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

28 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
Section 4.5.1(a) above, as proof of payment to OEHHA.

4.5.3 Tax Documentation. A 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) Laurence Vinocur, whose address and tax identification number shall

1 be furnished upon request after this Consent Judgment has been fully executed by the Parties; (c)
2 OEHHA, who shall be identified as "California Office of Environmental Health Hazard
3 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
4 4010, Sacramento, CA 95814; and (d) "The Chanler Group" (EIN: 94-3171522) to the address set
5 forth in Section 4.5.1(a) above.

6 **5. CLAIMS COVERED AND RELEASED**

7 **5.1 Plaintiff's Release of Proposition 65 Claims**

8 Plaintiff, acting on his own behalf and in the public interest, releases each Settling
9 Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors,
10 officers, agents employees, attorneys, and each entity to whom the Settling Defendant directly or
11 indirectly distribute or sell Products, including, but not limited, to downstream distributors,
12 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively,
13 "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on
14 unwarned exposures to the Listed Chemicals in the Products, as set forth in the Notices. The
15 Parties further understand and agree that this Section 5.1 release shall not extend upstream to any
16 entities, other than Settling Defendants, that manufactured the Products or any component parts
17 thereof, or any distributors or suppliers who sold the Products or any component parts thereof to a
18 Settling Defendant, except that entities upstream of a Settling Defendant that is a Retailer of a
19 Private Labeled Covered Product shall be released as to the Private Labeled Covered Products
20 offered for sale in California, or to California Customers, by the Retailer in question.⁸ The parties
21 agree and understand that Plaintiff is not releasing or otherwise compromising by this Section his
22 right to reimbursement of attorney fees and costs under Section 4.4.

23 **5.2 Plaintiff's Individual Releases of Claims**

24 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides
25 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all

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27 ⁸ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals" shall include DEHP
28 with respect to those Settling Defendants that received supplemental Notices alleging violations of Proposition 65 as to
exposures to DEHP.

1 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
2 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
3 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
4 TCEP, and/or TDBPP in the Exemplar Products (as defined in Exhibit A) manufactured, imported,
5 distributed, or sold by Settling Defendants prior to the Effective Date.⁹ The Parties further
6 understand and agree that this Section 5.2 release shall not extend upstream to any entities that
7 manufactured the Products or Additional Products, or any component parts thereof, or any
8 distributors or suppliers who sold the Products or Additional Products, or any component parts
9 thereof to Settling Defendants, except that entities upstream of a Settling Defendant that is a
10 Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the Private
11 Labeled Covered (or Additional) Products offered for sale in California by the Retailer in question.
12 Nothing in this Section affects Plaintiff's rights to commence or prosecute an action under
13 Proposition 65 against a Releasee that does not involve a Settling Defendant's Products or
14 Additional Products.¹⁰ The parties agree and understand that Plaintiff is not releasing or
15 otherwise compromising by this Section his right to reimbursement of attorney fees and costs
16 under Section 4.4.

17 5.3 Settling Defendants' Release of Plaintiff

18 Each Settling Defendant, on behalf of itself, its past and current agents, representatives,
19 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his
20 attorneys and other representatives, for any and all actions taken or statements made (or those that
21 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether
22 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in
23 this matter with respect to the Products or Additional Products.
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26 ⁹ The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

27 ¹⁰ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals" shall include DEHP,
28 BBP and DBP with respect to those Settling Defendants that received supplemental Notices alleging violations of
Proposition 65 as to exposures to DEHP.

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6. COURT APPROVAL

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

7. GOVERNING LAW

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

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8. NOTICES

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

To Settling Defendants:

To Plaintiff:

At the address shown on Exhibit A

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

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

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

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

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

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12. MODIFICATION

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

13. AUTHORIZATION

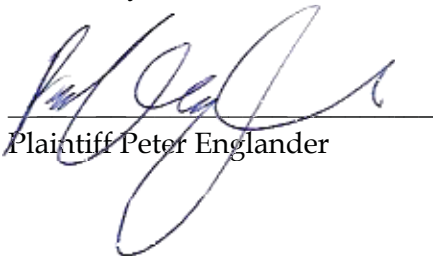
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: July 15, 2013

Date: July __, 2013



Plaintiff Peter Englander

Mike Najarian
Defendant Najarian Furniture Company, Inc.

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12. MODIFICATION

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13. AUTHORIZATION

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

AGREED TO:

Date: July __, 2013

Plaintiff Peter Englander

AGREED TO:

Date: July 15, 2013



Mike Najarian
Defendant Najarian Furniture Company, Inc.

EXHIBIT A

SETTLING DEFENDANT

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NAJARIAN FURNITURE COMPANY, INC.

Noticed Chemical(s): TDCPP

Noticed Product: padded, upholstered furniture (including chairs)

Exemplar Product: Malibu 2-Arm Chairs+Table

Additional Product: none

Penalty 1 (Section 4.1.1) (due July 18, 2014): \$7,000

Penalty 2 (Section 4.1.2) (due August 15, 2014): \$32,000

Penalty 3 (Section 4.1.3) (due August 15, 2014): \$20,000

Section 4.1.4(i) penalty waiver: \$20,000

Section 4.1.4(ii) penalty waiver: \$10,000

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

Section 4.1.4(iv) penalty waiver: \$10,000

Section 4.4 fee and costs reimbursement (due July 18, 2014): \$31,000

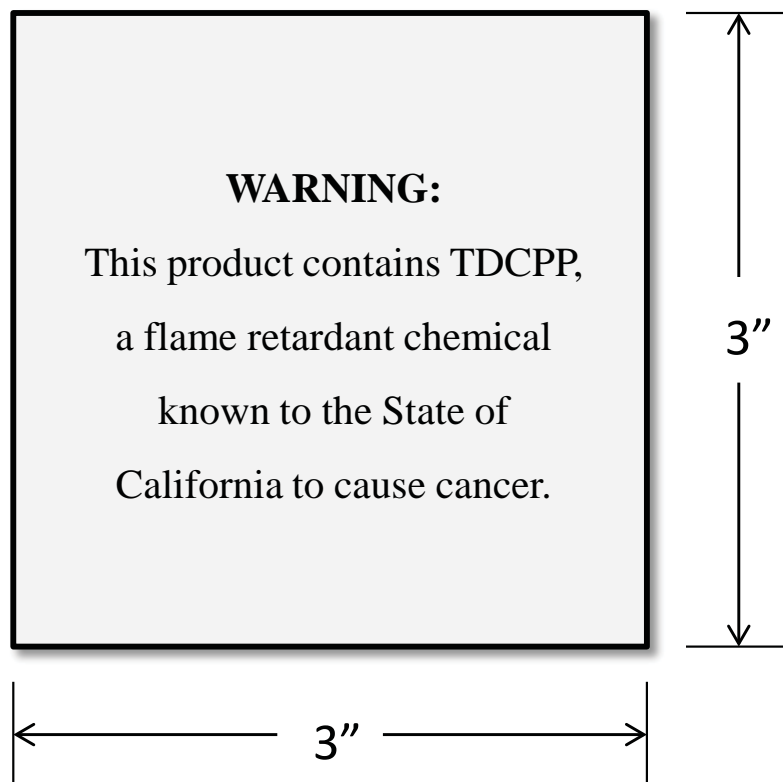
Additional Releasees: none

Person(s) to receive Notices pursuant to Section 8

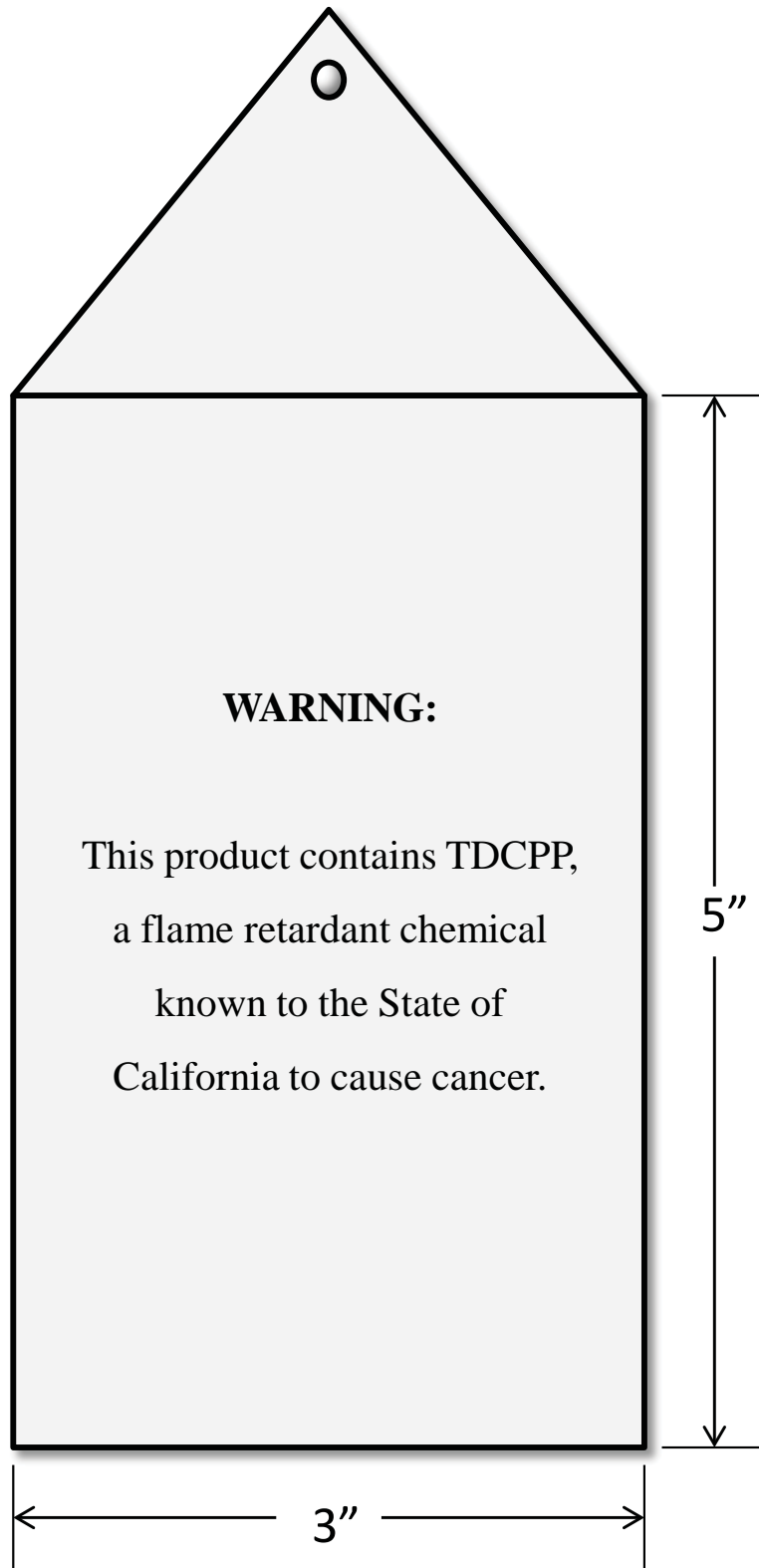
Navneet S. Chugh
The Chugh Firm, APC
15925 Carmenita Road
Cerritos, CA 90703-2206

EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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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.