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Attorneys for Plaintiff
PETER ENGLANDER

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

PETER ENGLANDER

Plaintiff,

vs.

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

Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS TO
DEFENDANT COA, 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 COA, Inc. ("COA" or "Settling Defendant"), with Plaintiff and the COA
5 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 COA employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that COA manufactured, imported, sold and/or distributed
16 for sale in California, products with foam cushioned components containing tris(1,3-dichloro-2-
17 propyl) phosphate ("TDCPP"), tris(2-chloroethyl) phosphate ("TCEP") and di(2-
18 ethylhexyl)phthalate ("DEHP") 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).

1 1.4.4 Pursuant to Proposition 65, on October 24, 2003, the State listed Di(2-
2 ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm.
3 DEHP became subject to the warning requirement one year later on October 24, 2004. 27 CCR §
4 27001(b); Cal. Health & Safety Code §§ 25249.8 and 25249.10(b).

5 DEHP, TDCPP and TCEP are hereinafter collectively referred to as the "Listed Chemicals."
6 Plaintiff alleges that the Listed Chemicals escape from foam padding and vinyl upholstery, leading
7 to human exposures.

8 1.5 Product Description

9 The categories of products that are covered by this Consent Judgment as to COA are
10 identified in Section 2, hereafter (hereinafter "Products"). Polyurethane foam that is supplied,
11 shaped or manufactured for use as a component of another product, such as upholstered furniture,
12 but which is not itself a finished product, is specifically excluded from the definition of Products.

13 1.6 Notices of Violation

14 On January 4, 2013, April 19, 2013 and July 12, 2013, Plaintiff served Settling Defendant and
15 certain requisite public enforcement agencies with "60-Day Notices of Violation" ("Notices") that
16 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
17 failure to warn customers, consumers, and workers in California that the Products expose users to
18 one or more Listed Chemicals. To the best of the Parties' knowledge, no public enforcer has
19 commenced or is diligently prosecuting the allegations set forth in the Notices.

20 1.7 Complaint

21 On March 29, 2010, plaintiff filed a Complaint in the Superior Court in and for the County
22 of Alameda against COA, other defendants and Does 1 through 150, alleging violations of
23 Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the
24 Products. On April 10, 2013, Plaintiff also filed a First Amended Complaint in the Superior Court
25 in and for the County of Alameda against COA, some additional defendants and Does 1 through
26 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to
27 TDCPP contained in the Products. On or about October 7, 2013, Plaintiff then filed a First
28 Amended Complaint in the Superior Court in and for the County of Alameda against COA, the

1 other defendants and Does 1 through 150, alleging violations of Proposition 65, based in part on
2 the alleged unwarned exposures to DEHP, TDCPP and TCEP contained in the Products.

3 **1.8 No Admission**

4 COA denies the material factual and legal allegations contained in Plaintiff's Notices and
5 Complaints and maintain that all products that they have manufactured, imported, distributed,
6 and/or sold in California, including the Products, have been and are in compliance with all laws.
7 Nothing in this Consent Judgment shall be construed as an admission by COA of any fact, finding,
8 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
9 constitute or be construed as an admission by COA of any fact, finding, conclusion, issue of law, or
10 violation of law. However, this section shall not diminish or otherwise affect COA's obligations,
11 responsibilities, and duties under this Consent Judgment.

12 **1.9 Consent to Jurisdiction**

13 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
14 jurisdiction over COA as to the allegations contained in the Complaints, that venue is proper in the
15 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
16 Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

17 **2. DEFINITIONS**

18 **2.1 California Customers**

19 "California Customer" shall mean any customer that COA reasonably understands is
20 located in California, has a California warehouse or distribution center, maintains a retail outlet in
21 California, or has made internet sales into California on or after January 1, 2011.

22 **2.2 Detectable**

23 As to TDCPP and TCEP, "Detectable" shall mean containing more than 25 parts per million
24 ("ppm") (the equivalent of .0025%) of any one chemical in any material, component, or constituent
25 of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
26 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies
27 to determine the presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.
28

1 As to DEHP, the term "Detectable" shall mean containing more than 1,000 parts per million
2 ("ppm") (the equivalent of .1%) of DEHP, BBP, and DBP in any material, component, or
3 constituent of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to
4 EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or
5 state agencies to determine the presence, and measure the quantity, of DEHP, BBP, and DBP in a
6 solid substance.

7 **2.3 Effective Date**

8 "Effective Date" shall mean January 1, 2015.

9 **2.4 Private Label Covered Products**

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

13 **2.5 Reformulated Products**

14 "Reformulated Products" shall mean Products, including Exemplar Products, that contain
15 no Detectable amount of TDCPP, TCEP, DEHP, BBP and DBP.

16 **2.6 Reformulation Standard**

17 The "Reformulation Standard" shall mean containing no more than 25 ppm for each of
18 TDCPP and TCEP and containing no more than 1,000 ppm for each DEHP, BBP and DBP.

19 **2.7 Retailer**

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

22 **2.8 Products**

23 "Products" or "Covered Products" shall mean padded, upholstered furniture (including
24 stools and ottomans) and stools upholstered with vinyl/PVC

25 **2.9 Exemplar Products**

26 "Exemplar Products" shall mean Coaster Bar Stool Items #122010 and #120346 and Coaster
27 Ottoman Item #500903.
28

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on March 15, 2015, COA shall not manufacture or import, or cause to be
4 manufactured or imported, any Products that are not Reformulated Products.

5 **3.2 Vendor Notification/Certification**

6 On or before the Effective Date, COA shall provide written notice to all of its then-current
7 vendors of the Products, instructing each such vendor to use reasonable efforts to provide it with
8 only Reformulated Products. In addressing the obligation set forth in the preceding sentence,
9 COA shall not employ statements that will encourage a vendor to delay compliance with the
10 Reformulation Standard. COA shall subsequently obtain written certifications, no later than
11 February 1, 2015, from such vendors, and any newly engaged vendors, that the Products
12 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications
13 shall be held by COA for at least two years after their receipt and shall be made available to
14 Plaintiff upon request.

15 **3.3 Products No Longer in COA's Control**

16 No later November 15, 2014, COA shall send a letter, electronic or otherwise ("Notification
17 Letter") to: (1) each California Customer and/or Retailer to which it supplied more than 50 units of
18 any Exemplar Product after January 1, 2013; and (2) any California Customer and/or Retailer that
19 COA reasonably understands or believes had any California inventory of Exemplar Product as of
20 January 1, 2015. The Notification Letter shall advise the recipient that the Exemplar Product
21 "contains TDCPP, TCEP and/or DEHP, chemicals known to the State of California to cause cancer,
22 birth defects or other reproductive harm" and request that the recipient label the Exemplar
23 Products remaining in inventory for sale in California, or to California Customers, pursuant to
24 Section 3.5. COA shall maintain records of all correspondence or other communications generated
25 pursuant to this Section until November 15, 2016, and shall promptly produce copies of such
26 records upon Plaintiff's written request.

27 **3.4 Current Inventory**

1 Any Products in, or manufactured and en route to, COA's inventory as of or after
2 December 31, 2013, that do not qualify as Reformulated Products and that COA has reason to
3 believe may be sold or distributed for sale in California, shall contain a clear and reasonable
4 warning as set forth in Section 3.5 below unless Section 3.6 applies.¹

5 **3.5 Product Warnings**

6 **3.5.1 Product Labeling**

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

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

15 **WARNING:** This product contains TDCPP and
16 TCEP, chemicals known to the State of
17 California to cause cancer and/or
18 DEHP, chemicals known to the State
of California to cause birth defects or
other reproductive harm.²

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

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

22 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 *et seq.* may also be used if COA had begun to
23 use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning language, other than the language
24 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
25 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
26 language shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent
27 Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth defects or other reproductive harm."

28 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.

1 requirements set forth in this Section are addressed, including as to the required warning
2 statement and method of transmission as set forth above, COA remains free not to utilize the
3 template warnings.

4 **3.5.2 Internet Website Warning**

5 As a material term of this agreement, COA represents and confirms that it does not allow
6 any purchase transaction, *of any product*, through its company website. As such it shall have no
7 obligation to provide any Proposition 65 clear and reasonable warning in conjunction with its
8 website

9 **4. MONETARY PAYMENTS**

10 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

11 In settlement of all the claims referred to in this Consent Judgment, COA shall the civil
12 penalty amounts identified hereafter in this Section, unless such penalty is waived.⁴ Each penalty
13 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and
14 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
15 Assessment (“OEHHA”) and 25% of the penalty remitted to “Peter Englander, Client Trust.”

16 4.1.1 Initial Civil Penalty. COA shall pay an initial civil penalty of \$17,000 within
17 two business days of the date this settlement is approved. Payment shall be delivered to the
18 addresses listed in Section 4.5 below. COA shall be liable for payment of interest, at a rate of 10%
19 simple interest, for all amounts due and owing under this Section that are not received within two
20 business days of the due date.

21 4.1.2 Second Civil Penalty. COA shall pay an additional civil penalty of \$18,000
22 on or before January 31, 2015. This penalty shall be waived in its entirety if an officer of COA
23 provides Plaintiff, on or before January 31, 2015, with a written certification that, as of January 31,
24 2015, and continuing into the future, it will only manufacture or import for distribution or sale to
25 California Customers or cause to be manufactured or imported for distribution or sale to
26 California Customers, Reformulated Exemplar Products (Accelerated Reformulation).COA shall

27 ⁴ 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 be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing
2 under this Section that are not received within two business days of the due date.

3 4.1.3 Third Civil Penalty. COA shall pay an additional civil penalty of \$12,000 on
4 or before March 31, 2015. This penalty shall be waived in its entirety if an officer of COA provides
5 Plaintiff, on or before March 31, 2015, with a written certification that, as of March 31, 2015, and
6 continuing into the future, it will only manufacture or import for distribution or sale to California
7 Customers or cause to be manufactured or imported for distribution or sale to California
8 Customers, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate
9 (“TDBPP”) in a detectable amount of more than 25 parts per million (“ppm”) (the equivalent of
10 .0025%) in any material, component, or constituent of a subject product, when analyzed by an
11 accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent
12 methodologies utilized by federal or state agencies to determine the presence, and measure the
13 quantity, of TDBPP in a solid substance (Extended Reformulation). COA shall be liable for
14 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
15 Section that are not received within two business days of the due date.

16 4.1.4 Fourth Civil Penalty. COA shall pay an additional civil penalty of \$15,000
17 on or before January 31, 2015. This penalty shall be waived in its entirety if an officer of COA
18 provides Plaintiff, on or before January 31, 2015, with a written certification confirming that each
19 individual or establishment in California to which it supplied more than 50 units of any Exemplar
20 Product after January 1, 2013, or that COA reasonably understood maintained inventory of the
21 Exemplar product after January 1, 2014, has either elected to place warnings on all remaining
22 inventory of Exemplar Products held for sale in California or has confirmed in writing that such
23 individual or establishment no longer has any inventory of the Exemplar Product (Customer
24 Inventory Withdrawal). COA shall be liable for payment of interest, at a rate of 10% simple interest,
25 for all amounts due and owing under this Section that are not received within two business days
26 of the due date.

27 4.1.5 Fifth Civil Penalty. COA shall pay an additional civil penalty of \$12,000 on
28 or before February 28, 2015. This penalty shall be waived in its entirety if an officer of COA

1 provides Plaintiff, on or before February 28, 2015, with a written certification confirming that,
2 commencing on February 28, 2015, and continuing into the future, COA shall refrain from any sale
3 of any non-Reformulated Products manufactured or imported, or caused to be manufactured or
4 imported, prior to February 28, 2015, regardless of compliance with Section 3.4 (Non-Reformulated
5 Inventory Termination). COA shall be liable for payment of interest, at a rate of 10% simple
6 interest, for all amounts due and owing under this Section that are not received within two
7 business days of the due date.

8 4.2 Representations

9 COA represents that the sales data and other information concerning its size, knowledge of
10 Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Plaintiff was
11 truthful to its knowledge and a material factor upon which Plaintiffs have relied to determine the
12 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
13 Judgment. If, within nine months of the Effective Date, Plaintiff discover and present to COA,
14 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
15 then COA shall have 30 days to meet and confer regarding the Plaintiff's contention. Should this
16 30 day period pass without any such resolution between the Plaintiff and COA, Plaintiff shall be
17 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of
18 contract.

19 COA further represents that in implementing the requirements set forth in Sections 3.1 and
20 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
21 reformulation of its Products and Additional Products on a nationwide basis and not employ
22 statements that will encourage a vendor to limit its compliance with the Reformulation Standard
23 to goods intended for sale to California Consumers.

24 4.3 Stipulated Penalties for Certain Violations of the Reformulation 25 Standard.

26 If Plaintiff provides notice and appropriate supporting information to COA that levels of
27 TDCPP or TCEP in excess of the Reformulation Standard have been detected in one or more
28 Products labeled or otherwise marked in an identifiable manner as manufactured or imported

1 after a deadline for meeting the Reformulation Standard has arisen for COA under Sections 3.1 or
2 3.6 above, COA may elect to pay a stipulated penalty to relieve any further potential liability
3 under Proposition 65 or sanction under this Consent Judgment as to Products sourced from the
4 vendor in question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm
5 and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any
6 amount in excess of the Reformulation Standards but under 250 ppm.⁶ Plaintiff shall further be
7 entitled to reimbursement of their associated expense in an amount not to exceed \$5,000 regardless
8 of the stipulated penalty level. COA under this Section must provide notice and appropriate
9 supporting information relating to the purchase (e.g. vendor name and contact information
10 including representative, purchase order, certification (if any) received from vendor for the
11 exemplar or subcategory of products), test results, and a letter from a company representative or
12 counsel attesting to the information provided, to Plaintiff within 30 calendar days of receiving test
13 results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the
14 full remedies provided pursuant to this Consent Judgment and at law.

15 **4.4 Reimbursement of Fees and Costs**

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

25 ⁵ This Section shall not be applicable where the vendor in question had previously been found by COA to have provided
26 unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion. Notwithstanding the
27 foregoing, a stipulated penalty for a second exceedance by COA's vendor at a level between 100 and 249 ppm shall not be available
after July 1, 2015.

28 ⁶ Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in the same manner as set
forth in Sections 4.1 and 4.5, respectively.

1 The negotiated fee and cost figure expressly *does not* include the anticipated significant amount of
2 time plaintiffs' counsel will incur to monitor various provisions in this agreement over the next
3 two years. In resolution of plaintiff's right to seek reimbursement of his fees and costs expended
4 on this claim, COA shall pay The Chanler Group the compromise amount of \$47,500.00. Payment
5 under this Section shall be made no later than two business days after the Court's approval of this
6 settlement agreement and COA shall be liable for payment of interest, at a rate of 10% simple
7 interest, for all amounts due and owing under this Section that are not received within two
8 business days of the due date.

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. COA shall issue a separate 1099 form for each payment
5 required by this Section to: (a) Peter Englander, whose address and tax identification number shall
6 be furnished upon request after this Consent Judgment has been fully executed by the Parties; (b)
7 OEHHA, who shall be identified as "California Office of Environmental Health Hazard
8 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
9 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set
10 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 COA, its parents,
14 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
15 attorneys, and each entity to whom COA directly or indirectly distribute or sell Products,
16 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
17 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
18 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
19 Chemicals in the Products, as set forth in the Notices. Compliance with the terms of this Consent
20 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
21 Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree
22 that this Section 5.1 release shall not extend upstream to any entities, other than COA, that
23 manufactured the Products or any component parts thereof, or any distributors or suppliers who
24 sold the Products or any component parts thereof to COA, except that entities upstream of COA
25 that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled
26 Covered Products offered for sale in California, or to California Customers, by the Retailer in
27 question.

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

Plaintiff, in his individual capacities only and *not* in his representative capacities, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP, TDCPP and/or TCEP in the Products manufactured, imported, distributed, or sold by COA prior to the Effective Date.⁷ The Parties further understand and agree that this Section 5.2 release shall not extend upstream to any entities that manufactured the Products or Additional Products, or any component parts thereof, or any distributors or suppliers who sold the Products or Additional Products, or any component parts thereof to COAs, except that entities upstream of COA that is a Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the Private Labeled Covered (or Additional) Products offered for sale in California by the Retailer in question.

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

COA, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products or Additional Products.

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

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

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

11 **7. GOVERNING LAW**

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

21 **8. NOTICES**

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

26 ///

27 ///

1 To Settling Defendant:

To Plaintiff:

2 Michael Yeh, President
3 COA, Inc.
4 12928 Sandoval Street
5 Santa Fe Springs, CA 90670

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

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

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

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

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

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

23 **12. MODIFICATION**

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

27 ///

13. AUTHORIZATION

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

4 AGREED TO:

AGREED TO:

5 Date: October 24, 2014

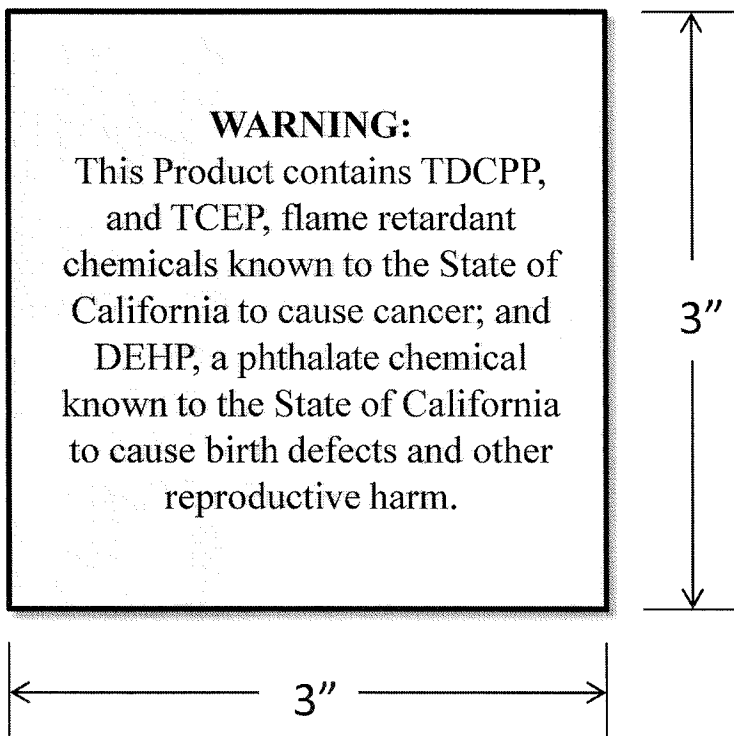
Date: October 22, 2014

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7 
8 Plaintiff Peter Englander

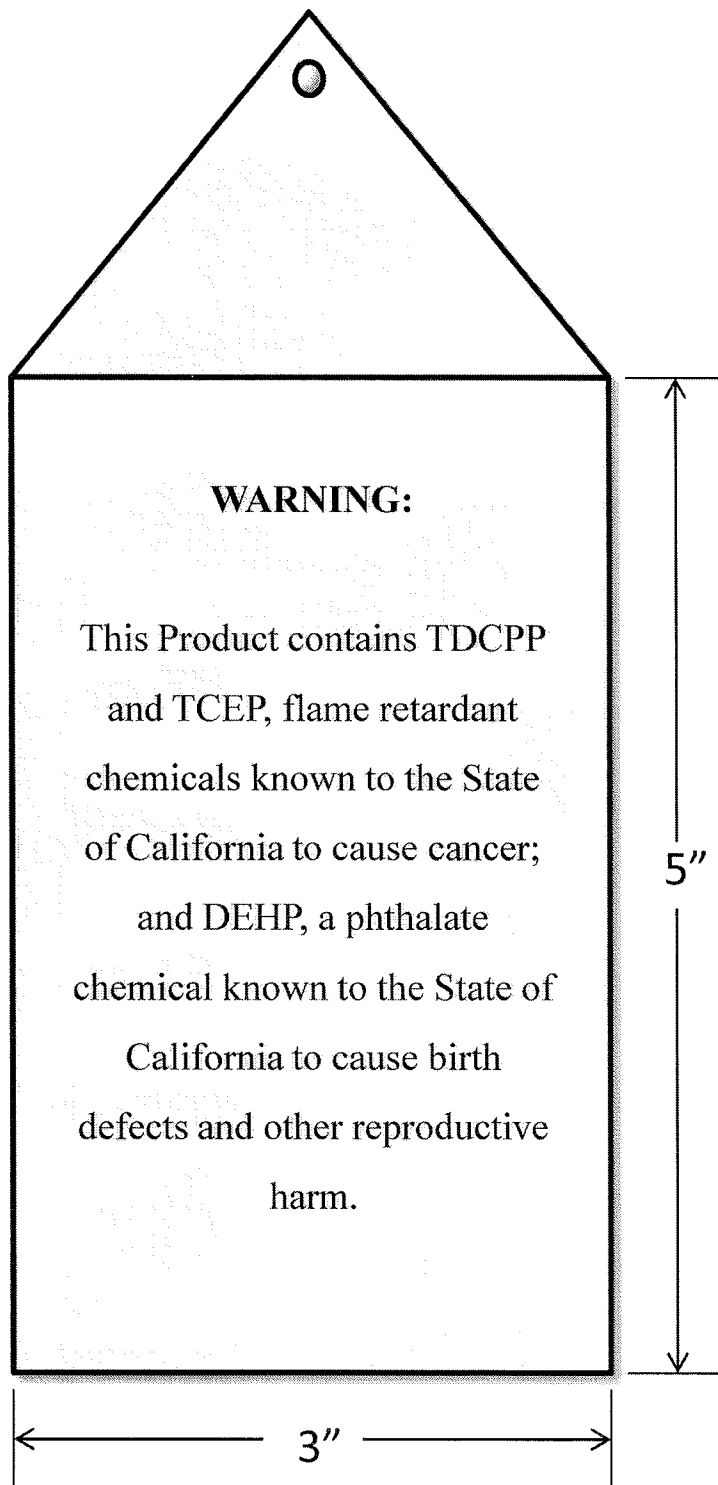
9 
10 Michael Yeh, President
11 Settling Defendant COA, Inc.

EXHIBIT A
(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 and TCEP, flame retardant chemicals known to the State of California to cause cancer; and DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

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