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5

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PETER ENGLANDER
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
10

11 PETER ENGLANDER,
12 Plaintiff,

13 v.

14 ROOM & BOARD, INC.; *et al.*,
15 Defendants.
16

) Case No. RG13672407

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

) **[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT ROOM & BOARD, INC.**

) **(Health & Safety Code § 25249.6 et seq.**
60-Day Notice of Violation Served: January 28,
2013)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Peter Englander (“Englander”) and
4 defendant Room & Board, Inc. (“Room & Board”) with Englander and Room & Board
5 collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

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

10 **1.3 Room & Board, Inc.**

11 Room & Board 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** Englander alleges that Room & Board manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 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.
22 Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander
23 alleges that the TDCPP escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The categories of products that are covered by this Consent Judgment as to Room & Board
26 are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
27 manufactured for use as a component of a product, such as upholstered furniture, is specifically

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1 excluded from the definition of Products and shall not be identified by Room & Board on Exhibit
2 A as a Product.

3 **1.6 Notice of Violation**

4 On January 28, 2013, Englander served Room & Board, others, and certain requisite public
5 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients
6 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
7 consumers, and workers in California that the Products expose users to TDCPP.

8 To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
9 prosecuting the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On April 22, 2013, Englander filed a First Amended Complaint in the Superior Court in
12 and for the County of Alameda against Ashley Furniture Industries, Inc., among others, and Does 1
13 through 150, *Peter Englander v. Ashley Furniture Industries, Inc., et al.*, Case No. RG13672407,
14 which names Room & Board as a defendant and alleges violations of Proposition 65, based in part
15 on the alleged unwarned exposures to TDCPP contained in the Products (“Complaint”).

16 **1.8 No Admission**

17 Room & Board denies the material factual and legal allegations contained in Englander’s
18 Complaint and maintains that all products that it has manufactured, imported, distributed, and/or
19 sold in California, including the Products, have been and are in compliance with all laws. Nothing
20 in this Consent Judgment shall be construed as an admission by Room & Board of any fact,
21 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
22 Judgment constitute or be construed as an admission by Room & Board of any fact, finding,
23 conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise
24 affect Room & Board’s obligations, responsibilities, and duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Room & Board as to the allegations contained in the Complaint, that venue is

1 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
3 Procedure § 664.6.

4 **2. DEFINITIONS**

5 **2.1 California Customers**

6 “California Customer” shall mean any customer that Room & Board reasonably
7 understands is located in California, has a California warehouse or distribution center, maintains a
8 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

9 **2.2 Detectable**

10 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent
11 of .0025%) of any one chemical in any material, component, or constituent of a
12 subject product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies
13 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
14 presence, and measure the quantity, of TDCPP and/or tris(2-chloroethyl) phosphate (“TCEP”) in a
15 solid substance.

16 **2.3 Effective Date**

17 “Effective Date” shall mean October 15, 2013.

18 **2.4 Private Label Covered Products**

19 “Private Label Covered Products” means Products that bear a brand or trademark owned or
20 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State
21 of California.

22 **2.5 Reformulated Products**

23 “Reformulated Products” shall mean Products that contain no Detectable amount of
24 TDCPP or TCEP.

25 **2.6 Reformulation Standard**

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

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1 **2.7 Retailer**

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

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 **3.1 Reformulation Commitment**

6 Commencing on March 31, 2014, Room & Board shall not manufacture or import for
7 distribution or sale to California Customers, or cause to be manufactured or imported for
8 distribution or sale to California Customers, any Products that are not Reformulated Products.

9 **3.2 Vendor Notification/Certification**

10 On or before the Effective Date, Room & Board shall provide written notice to all of its
11 then-current vendors of the Products that will be sold or offered for sale in California, or to
12 California Customers, instructing each such vendor to use reasonable efforts to provide only
13 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
14 preceding sentence, Room & Board shall not employ statements that will encourage a vendor to
15 delay compliance with the Reformulation Standard. Room & Board shall subsequently obtain
16 written certifications, no later than April 1, 2014, from such vendors, and any newly engaged
17 vendors, that the Products manufactured by such vendors are in compliance with the
18 Reformulation Standard. Certifications shall be held by Room & Board for at least two years after
19 their receipt and shall be made available to Englander upon request.

20 **3.3 Products No Longer in Room & Board’s Control**

21 No later than 45 days after the Effective Date, Room & Board shall send a letter, electronic
22 or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after
23 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
24 received by Room & Board from Englander (“Exemplar Product”); and (2) any California
25 Customer and/or Retailer that Room & Board reasonably understands or believes had any
26 inventory for resale in California of Exemplar Product as of the relevant Notice’s dates. The
27 Notification Letter shall advise the recipient that the Exemplar Product “contains TDCPP, a
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1 chemical known to the State of California to cause cancer,” and request that the recipient either: (a)
2 label the Exemplar Products remaining in inventory for sale in California, or to California
3 Customers, pursuant to Section 3.5; or (b) return, at Room & Board’s sole expense, all units of the
4 Exemplar Product held for sale in California, or to California Customers, to Room & Board or a
5 party Room & Board has otherwise designated. The Notification Letter shall require a response
6 from the recipient within 15 days confirming whether the Exemplar Product will be labeled or
7 returned. Room & Board shall maintain records of all correspondence or other communications
8 generated pursuant to this Section for two years after the Effective Date and shall promptly
9 produce copies of such records upon Englander’s written request.

10 **3.4 Current Inventory**

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

15 **3.5 Product Warnings**

16 **3.5.1 Product Labeling**

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

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

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

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

6 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
7 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
8 set forth in this Section are addressed, including as to the required warning statement and method
9 of transmission as set forth above, Room & Board remains free not to utilize the template
10 warnings.

11 **3.5.2 Internet Website Warning**

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

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19 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
20 used if Room & Board had begun to use it, prior to the Effective Date. . If Room & Board seeks to
21 use alternative warning language, other than the language specified above or the safe harbor
22 warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the
23 warning, it must obtain the Court's approval of its proposed alternative and provide all Parties and
24 the Office of the Attorney General with timely notice and the opportunity to comment or object
25 before the Court acts on the request. The Parties agree that the following warning language shall
26 not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant
27 to this Consent Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b)
28 "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 that 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 The warning text shall be the same type size or larger than the Product description text:

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

6 **3.6 Alternatives to Interim Warnings**

7 The obligations of Room & Board under Section 3.3 shall be relieved provided Room &
8 Board certifies on or before December 15, 2013, that only Exemplar Products meeting the
9 Reformulation Standard will be offered for sale in California, or to California Customers for sale
10 in California, after December 15, 2013. The obligations of Room & Board under Section 3.4 shall
11 be relieved provided Room & Board certifies on or before December 15, 2013, that, after June 30,
12 2014, it will only distribute or cause to be distributed for sale in, or sell in, California, or to
13 California Customers for sale in California, Products (i.e., Products beyond the Exemplar Product)
14 meeting the Reformulation Standard. The certifications provided by this Section are material
15 terms and time is of the essence.

16 **4. MONETARY PAYMENTS**

17 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

27 ⁴ Footnote 2, *supra*, applies in this context as well.

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

3 4.1.2 Second Civil Penalty. On or before January 15, 2014, Room & Board shall
4 make a second civil penalty payment in the amount identified on Room & Board's Exhibit A. The
5 amount of the second penalty may be reduced according to any penalty waiver Room & Board is
6 eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

7 4.1.3 Third Civil Penalty. On or before November 30, 2014, Room & Board shall
8 make a third civil penalty payment in the amount identified on Room & Board's Exhibit A. The
9 amount of the third penalty may be reduced according to any penalty waiver Room & Board is
10 eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

11 4.1.4 Reductions to Civil Penalty Payment Amounts. Room & Board may reduce
12 the amount of the second and/or third civil penalty payments identified on Room & Board Exhibit
13 A by providing Englander with certification of certain efforts undertaken to reformulate their
14 Products or limit the ongoing sale of non-reformulated Products in California. The options to
15 provide a written certification in lieu of making a portion of Room & Board's civil penalty
16 payment constitute material terms of this Consent Judgment, and with regard to such terms, time is
17 of the essence.

18 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
19 **Products Sold or Offered for Sale in California.**

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

1 written certification, on or before November 15, confirming that, as of July 1, 2014, it has and will
2 continue to distribute, offer for sale, or sell in California, or to California Customers, only
3 Reformulated Products.

4 4.2 Representations

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

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

20 4.3 Stipulated Penalties for Certain Violations of the Reformulation

21 Standard.

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

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

12 **4.4 Reimbursement of Fees and Costs**

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

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

⁷ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

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1 anticipated significant amount of time Englander's counsel will incur to monitor various
2 provisions in this agreement over the next two years. Room & Board more specifically agreed,
3 upon the Court's approval and entry of this Consent Judgment, to pay Englander's counsel the
4 amount of fees and costs indicated on Room & Board's Exhibit A. Room & Board further agreed
5 to tender and shall tender its full required payment under this Section to a trust account at The
6 Chanler Group (made payable "In Trust for The Chanler Group") within two business days of the
7 Effective Date. Such funds shall be released from the trust account upon the Court's approval and
8 entry of this Consent Judgment.

9 **4.5 Payment Procedures**

10 **4.5.1 Issuance of Payments.**

11 (a) All payments owed to Englander and his 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
20 of 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
3 in Section 4.5.1(a) above, as proof of payment to OEHHA.

4 4.5.3 Tax Documentation. Room & Board shall issue a separate 1099 form for
5 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
7 fully 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
9 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
10 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

11 **5. CLAIMS COVERED AND RELEASED**

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

13 Englander, acting on his own behalf and in the public interest, releases Room & Board, its
14 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
15 employees, attorneys, and each entity to whom Room & Board directly or indirectly distribute or
16 sell Products, including, but not limited, to downstream distributors, wholesalers, customers,
17 retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all
18 claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to
19 the TDCPP in the Products, as set forth in the Notice. Compliance with the terms of this Consent
20 Judgment constitutes compliance with Proposition 65 with respect to exposures to the TDCPP
21 from the Products, as set forth in the Notice. The Parties further understand and agree that this
22 Section 5.1 release shall not extend upstream to any entities, other than Room & Board, 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 Room & Board, except that an entity upstream
25 of Room & Board that is a Retailer of a Private Labeled Covered Product shall be released as to
26 the Private Labeled Covered Products offered for sale in California, or to California Customers, by
27 the Retailer in question.

1 **5.2 Englander’s Individual Releases of Claims**

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

15 **5.3 Room & Board’s Release of Englander**

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

22 **6. COURT APPROVAL**

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

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
4 action to take, then the case shall proceed in its normal course on the Court's trial calendar. In the
5 event that this Consent Judgment is entered by the Court and subsequently overturned by any
6 appellate court, any monies that have been provided to OEHHA, Englander, or his counsel
7 pursuant to Section 4, above, shall be refunded within 15 days of the appellate decision becoming
8 final. If the Court does not approve and enter the Consent Judgment within one year of the
9 Effective Date, any monies that have been provided to OEHHA or held in trust for Englander or
10 his counsel pursuant to Section 4, above, shall be refunded to Room & Board 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 Room & Board may
17 provide written notice to Englander of any asserted change in the law, and shall have no further
18 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
19 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Room & Board
20 from any 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 to
23 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:
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1 To Room & Board:

To Englander:

2 At the address shown on Exhibit A

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

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

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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 § 25249.7(f)**

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

24 **12. MODIFICATION**

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

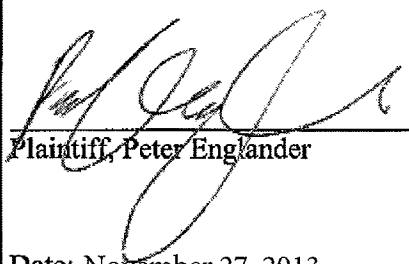
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1 **13. AUTHORIZATION**

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


6 **AGREED TO:**

7
8 
9 _____
10 Plaintiff, Peter Englander

11 Date: November 27, 2013

6 **AGREED TO:**

7 **Settling Defendant:**
8 **Room & Board, Inc.**

9 **By:** 
10 _____
11 Name: Bowen Chapman
12 President + COO

13 Date: October 15, 2013

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1 EXHIBIT A

2 I. Name of Settling Defendant: ROOM & BOARD, INC.

3 II. Names of Releasees (optional/partial):

4 III. Types of Covered Products Applicable to Room & Board:

5 Padded Upholstered Furniture, including Ottomans, containing TDCPP

6 IV. Types of Additional Products Room & Board Elects to Address (if any):

7 V. Room & Board Required Settlement Payments

8 A. Penalties of \$81,000, as follows:

9 \$15,000 initial payment due on or before the Effective Date;

10 \$42,000 second payment due on or before January 15, 2014, of which
11 \$23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be
waived pursuant to Section 4.1.4(iii); and

12 \$24,000 third payment due on or before November 30, 2014, of which
13 \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be
waived pursuant to Section 4.1.4(iv).

14 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
15 attributable to Room & Board, Inc.: \$35,000.

16 VI. Person(s) to receive Notices pursuant to Section 8

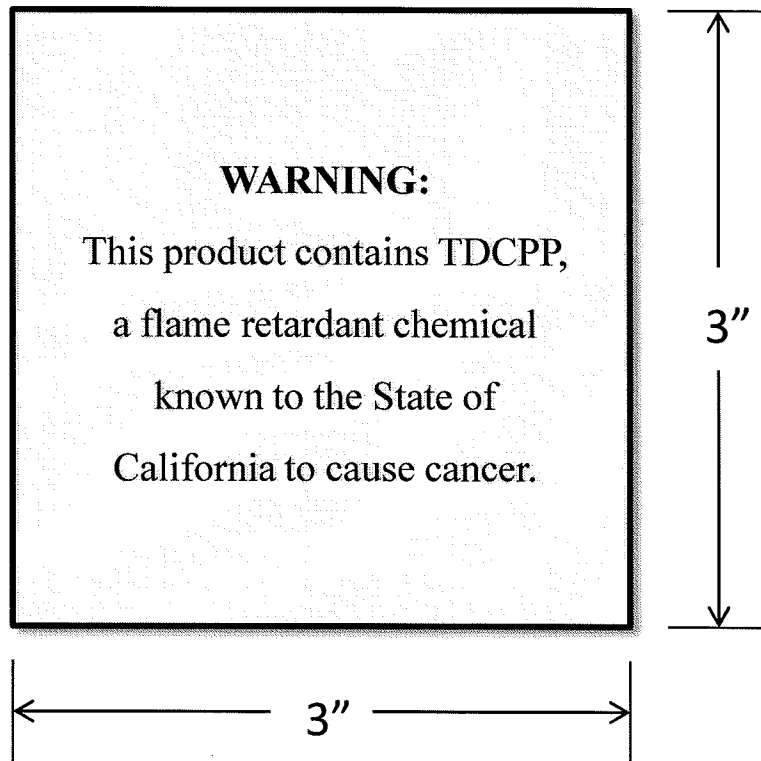
17 Steve Freeman
18 Room & Board, Inc.
19 Room & Board
20 4600 Olson Memorial Highway
Minneapolis, Minnesota 55422

21 With a copy to:

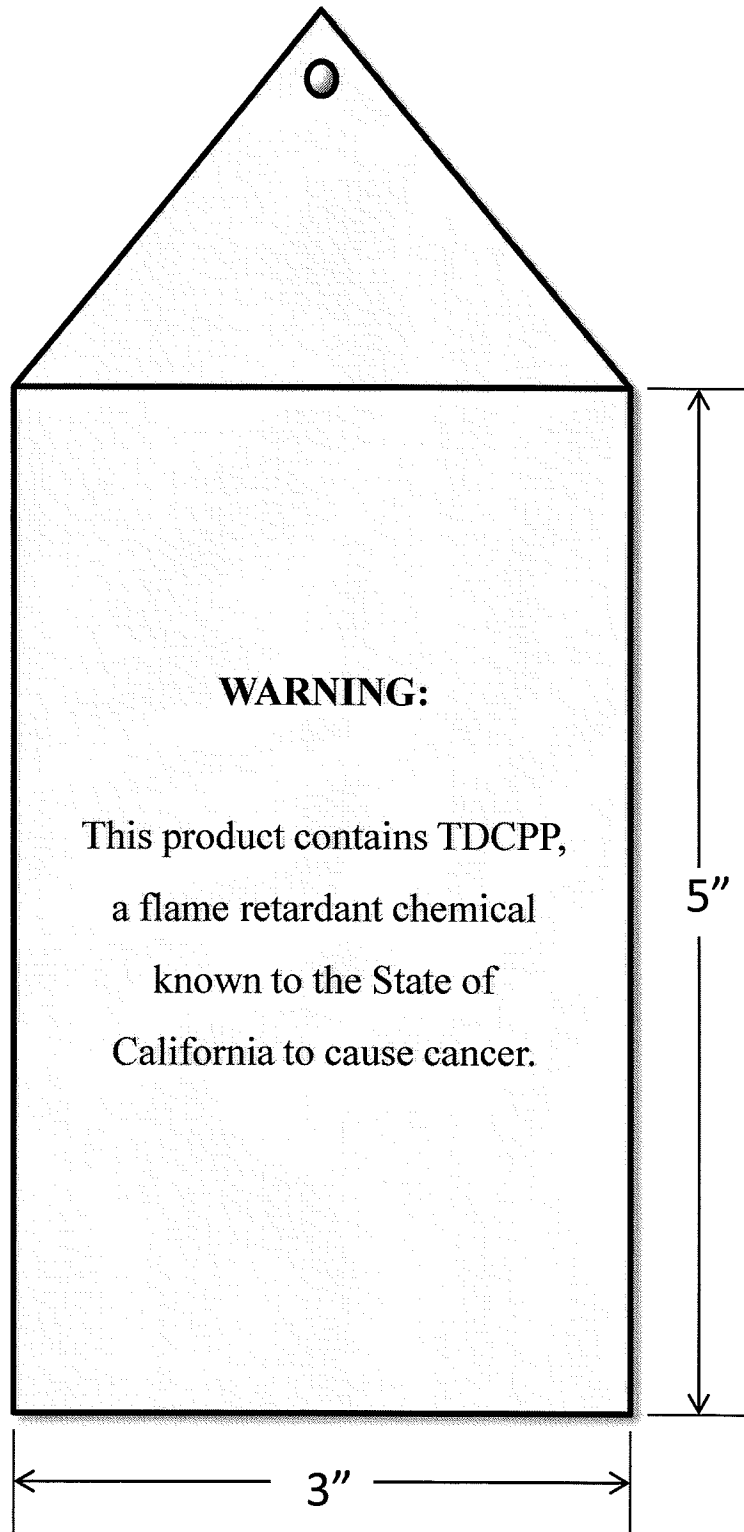
22 Jeffrey B. Margulies
23 Norton Rose Fulbright
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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

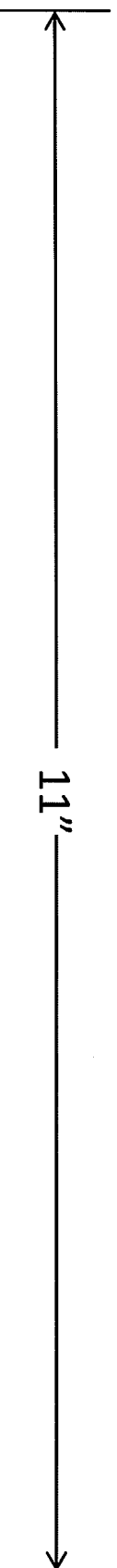


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. “WARNING:” text must be bold.

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to
cause cancer.



INSTRUCTIONS:

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