

1 Clifford A. Chanler, State Bar No. 135534
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
7 PETER ENGLANDER

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

12 PETER ENGLANDER
13 Plaintiff,

14 v.

15 COSTCO WHOLESALE
16 CORPORATION; et al.,
17 Defendants.

) Case No. RG 13-672233
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO LEGACY CLASSIC FURNITURE, INC.**
)
) (Health & Safety Code § 25249.6 et seq.)
)
)
) First Amended Complaint Filed: April 12, 2013
)
)
)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and Legacy Classic Furniture, Inc. (“Legacy Classic”), with Englander and the
5 Legacy Classic 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 eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Legacy Classic Furniture, Inc.**

11 Legacy Classic employs ten or more persons and is a person in the course of doing business
12 for 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** Englander alleges that Legacy Classic 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 **1.4.3** 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 shall hereinafter be referred to as the “Listed Chemical.” Englander alleges that the
24 Listed Chemical escapes from foam padding, leading to human exposures.

25 **1.5 Product Description**

26 The categories of products that are covered by this Consent Judgment as to Legacy Classic
27 are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
28 manufactured for use as a component of another product, such as upholstered furniture, but which is

1 not itself a finished product, is specifically excluded from the definition of Products and shall not be
2 identified by Legacy Classic on Exhibit A as a Product.

3 **1.6 Notices of Violation**

4 Beginning in January 2013, Englander served Legacy Classic and certain requisite public
5 enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided Legacy Classic
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 the Listed Chemical. To the
8 best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the
9 allegations set forth in the Notices.

10 **1.7 Complaint**

11 On April 12, 2013, Englander filed a First Amended Complaint in the Superior
12 Court in and for the County of Alameda against Legacy Classic, other defendants and Does 4
13 through 150, *Laurence Vinocur, John Moore and Peter Englander v. Costco Wholesale*
14 *Corporation, et al.*, Case No. RG 13-672233, alleging violations of Proposition 65, based in part on
15 the alleged unwarned exposures to TDCPP contained in the Products ("Complaint").

16 **1.8 No Admission**

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

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over the Legacy Classic as to the allegations contained in the Notices and Complaint,

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

4 **2. DEFINITIONS**

5 **2.1 California Customers**

6 "California Customer" shall mean any customer that Legacy Classic reasonably understands
7 is located in California, has a California warehouse or distribution center, maintains a retail outlet in
8 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 a NVLAP accredited laboratory pursuant to EPA testing
13 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
14 determine the presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

15 **2.3 Effective Date**

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

17 **2.4 Private Label Covered Products**

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

21 **2.5 Reformulated Products**

22 "Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP,
23 or TCEP.

24 **2.6 Reformulation Standard**

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

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, Legacy Classic 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, Legacy Classic 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, Legacy Classic shall not employ statements that will encourage a vendor to
15 delay compliance with the Reformulation Standard. Legacy Classic 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 Reformulation
18 Standard. Certifications shall be held by Legacy Classic for at least two years after their receipt and
19 shall be made available to Englander upon request.

20 **3.3 Products No Longer in Legacy Classic’s Control**

21 No later than 45 days after the Effective Date, Legacy Classic 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
24 Notice(s) Legacy Classic received from Englander (“Exemplar Product”); and (2) any California
25 Customer and/or Retailer that Legacy Classic reasonably understands or believes had any inventory
26 for resale in California of Exemplar Products as of the relevant Notice’s dates. The Notification
27 Letter shall advise the recipient that the Exemplar Product(s) contains TDCPP, a chemical known to
28 the State of California to cause cancer and request that the recipient either: (a) label the Exemplar

1 Products remaining in inventory for sale in California, or to California Customers, pursuant to
2 Section 3.5; (b) return, at the Legacy Classic's sole expense, all units of the Exemplar Product held
3 for sale in California, or to California Customers, to Legacy Classic or a party Legacy Classic has
4 otherwise designated; or (c) provide written certification that it has already sold, disposed of, or
5 otherwise destroyed all Exemplar Products in its possession, in accordance with all applicable laws.
6 The Notification Letter shall require a response from the recipient within 15 days confirming
7 whether the Exemplar Product will be labeled or returned. Legacy Classic shall maintain records of
8 all correspondence or other communications generated pursuant to this Section for two years after
9 the Effective Date and shall promptly produce copies of such records upon Englander's written
10 request.

11 3.4 Current Inventory

12 Any Products in, or manufactured and en route to, Legacy Classic's inventory as of or after
13 December 31, 2013, that do not qualify as Reformulated Products and that Legacy Classic has
14 reason to believe may be sold or distributed for sale in California, shall contain a clear and
15 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 likely
21 to be read and understood by an ordinary individual under customary conditions before purchase.
22 Each warning shall be provided in a manner such that the consumer or user understands to which
23 specific Product the warning applies, so as to minimize the risk of consumer confusion.

24 A warning provided pursuant to this Consent Judgment shall state:
25
26
27

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.

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

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

8 3.5.2 Internet Website Warning

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

14 The warning text shall be the same type size or larger than the Product description text:

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

18
19 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
20 used if Legacy Classic had begun to use it, prior to the Effective Date. If Legacy Classic 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
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."

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

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

1 **3.6 Alternatives to Interim Warnings**

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

11 **4. MONETARY PAYMENTS**

12 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

22 **4.1.1 Initial Civil Penalty.** On or before the Effective Date, Legacy Classic shall
23 make an initial civil penalty payment in the amount identified on Legacy Classic’s Exhibit A.

24 **4.1.2 Second Civil Penalty.** On or before January 15, 2014, Legacy Classic shall
25 make a second civil penalty payment in the amount identified on the Legacy Classic’s Exhibit A.
26 The amount of the second penalty may be reduced according to any penalty waiver Legacy Classic
27 is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

1 4.1.3 Third Civil Penalty. On or before November 30, 2014, Legacy Classic shall
2 make a third civil penalty payment in the amount identified on the Legacy Classic's Exhibit A. The
3 amount of the third penalty may be reduced according to any penalty waiver Legacy Classic is
4 eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

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

12 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**
13 **Products Sold or Offered for Sale in California.**

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

21 **4.1.4(ii) Partial Penalty Waiver for Extended Nationwide**
22 **Reformulation.**

23 As shown on Legacy Classic's Exhibit A, a portion of the third civil penalty shall be
24 waived, to the extent that it has agreed that, as of March 31, 2014, and continuing into the future, it
25 shall only manufacture or import for distribution or sale in California or cause to be manufactured
26 or imported for distribution or sale in California, Reformulated Products which also do not contain
27 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
28 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject

1 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
2 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
3 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
4 representative of Legacy Classic that has exercised this election shall provide Englander with a
5 written certification confirming compliance with such conditions, which certification must be
6 received by Englander's counsel on or before November 15, 2014.

7 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
8 **Exemplar Products from the California Market.**

9 As shown on Legacy Classic's Exhibit A, a portion of the second civil penalty shall be
10 waived, if an officer or other authorized representative of Legacy Classic provides Englander with
11 written certification, by December 15, 2013, confirming that each individual or establishment in
12 California to which it supplied the Exemplar Product after October 28, 2011, has already sold,
13 disposed of, or otherwise destroyed all Exemplar Products in its possession, in accordance with all
14 applicable laws.⁵

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

17 As shown on Legacy Classic's Exhibit A, a portion of the third civil penalty shall be
18 waived, if an officer or other authorized representative of Legacy Classic provides Englander with
19 written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it has
20 and will continue to distribute, offer for sale, or sell in California, or to California Customers, only
21 Reformulated Products.

22 **4.2 Representations**

23 Legacy Classic represents that the sales data and other information concerning its size,
24 knowledge of the Listed Chemical, and prior reformulation and/or warning efforts, it provided to
25 Englander was truthful to its knowledge and a material factor upon which Englander has relied to
26

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

1 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
2 Consent Judgment. If, within nine months of the Effective Date, Englander discovers and presents
3 to Legacy Classic, evidence demonstrating that the preceding representation and warranty was
4 materially inaccurate, then Legacy Classic shall have 30 days to meet and confer regarding
5 Englander's contention. Should this 30 day period pass without any such resolution between
6 Englander and Legacy Classic, Englander shall be entitled to file a formal legal claim including, but
7 not limited to, a claim for damages for breach of contract.

8 Legacy Classic further represents that in implementing the requirements set forth in Sections
9 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
10 reformulation of its Products and Additional Products on a nationwide basis and not employ
11 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
12 goods intended for sale to California Consumers.

13 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
14 **Standard.**

15 If Englander provides notice and appropriate supporting information to Legacy Classic that
16 levels of the Listed Chemical in excess of the Reformulation Standard have been detected in one or
17 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported
18 after a deadline for meeting the Reformulation Standard has arisen for Legacy Classic under
19 Sections 3.1 or 3.6 above, Legacy Classic may elect to pay a stipulated penalty to relieve any
20 further potential liability under Proposition 65 or sanction under this Consent Judgment as to
21 Products sourced from the vendor in question.⁶ The stipulated penalty shall be \$1,500 if the
22 violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249
23 ppm, this being applicable for any amount in excess of the Reformulation Standards but under 250
24 ppm.⁷ Englander shall further be entitled to reimbursement of their associated expense in an

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

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

1 amount not to exceed \$5,000 regardless of the stipulated penalty level. Legacy Classic, under this
2 Section, must provide notice and appropriate supporting information relating to the purchase (e.g.
3 vendor name and contact information including representative, purchase order, certification (if any)
4 received from vendor for the exemplar or subcategory of products), test results, and a letter from a
5 company representative or counsel attesting to the information provided, to Englander within 30
6 calendar days of receiving test results from Englander's counsel. Any violation levels at or above
7 250 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at
8 law.

9 4.4 Reimbursement of Fees and Costs

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

1 **4.5 Payment Procedures**

2 **4.5.1 Issuance of Payments.**

3 (a) All payments owed to Englander and his counsel, pursuant to
4 Sections 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

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

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
26 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
27 Section 4.5.1(a) above, as proof of payment to OEHHA.

28 4.5.3 Tax Documentation. Legacy Classic 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; and (b) OEHHA, who shall be identified as "California Office of Environmental Health
Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O.
Box 4010, Sacramento, CA 95814; and (d) "The Chanler Group" (EIN: 94-3171522) to the address
set forth in Section 4.5.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Englander's Release of Proposition 65 Claims**

3 Englander, acting on his own behalf and in the public interest, releases Legacy Classic, its
4 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
5 employees, attorneys, and each entity to whom Legacy Classic directly or indirectly distributes or
6 sells Products, including, but not limited, to downstream distributors, wholesalers, customers,
7 retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all
8 claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to
9 the Listed Chemical in the Products, as set forth in the Notices. Compliance with the terms of this
10 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the
11 Listed Chemical from the Products, as set forth in the Notices. The Parties further understand and
12 agree that this Section 5.1 release shall not extend upstream to any entities, other than Legacy
13 Classic, that manufactured the Products or any component parts thereof, or any distributors or
14 suppliers who sold the Products or any component parts thereof to Legacy Classic, except that
15 entities upstream of Legacy Classic that is a Retailer of a Private Labeled Covered Product shall be
16 released as to the Private Labeled Covered Products offered for sale in California, or to California
17 Customers, by the Retailer in question.

18 **5.2 Englander's Individual Releases of Claims**

19 Englander, in his individual capacity only and *not* in his representative capacity, provides a
20 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
21 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
22 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,
23 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
24 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
25 delineated on Legacy Classic's Exhibit A) manufactured, imported, distributed, or sold by Legacy
26 Classic prior to the Effective Date.⁸ The Parties further understand and agree that this Section 5.2

27 _____
28 ⁸ The injunctive relief requirements of Section 3 shall apply to Additional Products as
otherwise specified.

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

9 **5.3 Legacy Classic's Release of Englander**

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

16 **6. COURT APPROVAL**

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

1 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
2 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 4,
3 above, shall be refunded to the associated Settling Defendant within 15 days.

4 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 To Legacy Classic:

20 At the address shown on each Exhibit A

To Englander:

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

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

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

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

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 In addition to the Products, where Legacy Classic has identified on Exhibit A
10 additional products that contain the Listed Chemical and that are sold or offered for sale by it in
11 California, or to California Customers, (“Additional Products”), then by no later than October 15,
12 2013, Legacy Classic may provide Englander with additional information or representations
13 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit
14 therefore, pursuant to Health & Safety Code § 25249.7, that includes the Additional Products.
15 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
16 such as upholstered furniture, is specifically excluded from the definition of Additional Products
17 and shall not be identified by Legacy Classic on Exhibit A as an Additional Product. Except as
18 agreed upon by Englander, Legacy Classic shall not include a product, as an Additional Product,
19 that is the subject of an existing 60-day notice issued by Englander or any other private enforcer at
20 the time of execution. After receipt of the required information, Englander agrees to issue a
21 supplemental 60-day notice in compliance with all statutory and regulatory requirements for the
22 Additional Products. Englander will, and in no event later than October 1, 2014, prepare and file an
23 amendment to this Consent Judgment to incorporate the Additional Products within the defined
24 term “Products” and serve a copy thereof and its supporting papers (including the basis for
25 supplemental stipulated penalties, if any) on the Office of the California Attorney General; upon the
26 Court’s approval and finding that the supplemental stipulated penalty amount, if any, is reasonable,
27 the Additional Products shall become subject to Section 5.1 in addition to Section 5.2. Legacy
28 Classic shall, at the time it elects to utilize this Section and tenders the additional information or

1 representations regarding the Additional Products to Englander, tender to The Chanler Group's trust
2 account an amount not to exceed \$8,750 as stipulated penalties and attorneys' fees and costs
3 incurred by Englander in issuing the new notice and engaging in other reasonably related activities,
4 which may be released from the trust as awarded by the Court upon Englander's application. Any
5 fee award associated with the modification of the Consent Judgment to include Additional Products
6 shall not offset any associated supplemental penalty award, if any. (Any tendered funds remaining
7 in the trust thereafter shall be refunded to Legacy Classic within 15 days). Such payment shall be
8 made to "in trust for The Chanler Group" and delivered as per Section 4.5.1(a) above.

9 11.2 Englander and Legacy Classic agree to support the entry of this agreement as a
10 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
11 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
12 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall
13 draft and file. If any third party objection to the noticed motion is filed, Englander and Legacy
14 Classic shall work together to file a reply and appear at any hearing before the Court. This
15 provision is a material component of the Consent Judgment and shall be treated as such in the event
16 of a breach.

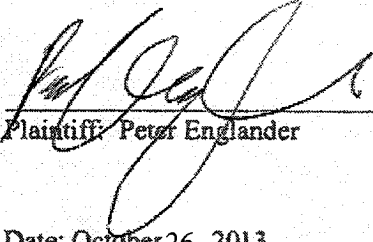
17 **12. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
19 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
20 of any party and entry of a modified Consent Judgment by the Court.
21
22
23
24
25
26
27
28

1 13. AUTHORIZATION

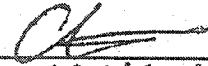
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 AGREED TO:

7 
8 _____
9 Plaintiff: Peter Englander

10 Date: October 26, 2013

AGREED TO:

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
By: 
Name: CHENKUN SHIH
It's:

Date: October 25, 2013

EXHIBIT A

I. Name of Settling Defendant: LEGACY CLASSIC FURNITURE, INC.

II. Names of Releasees (Optional; May be Partial):

III. Types of Covered Products Applicable to Settling Defendant:

 Padded upholstered furniture including kid and teen chairs containing TDCPP

IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

V. Settling Defendant's Required Settlement Payments

A. Penalties of \$101,000, as follows:

 \$35,000 initial payment due on or before the Effective Date;

 \$42,000 second payment due on or before January 15, 2014, of which
 \$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

 \$24,000 third payment due on or before November 30, 2014, of which
 \$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).

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
 attributable to Legacy Classic Furniture, Inc.: \$50,000.

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

Kevin C. Mayer

Name

Attorney

Title

Company/Firm Name

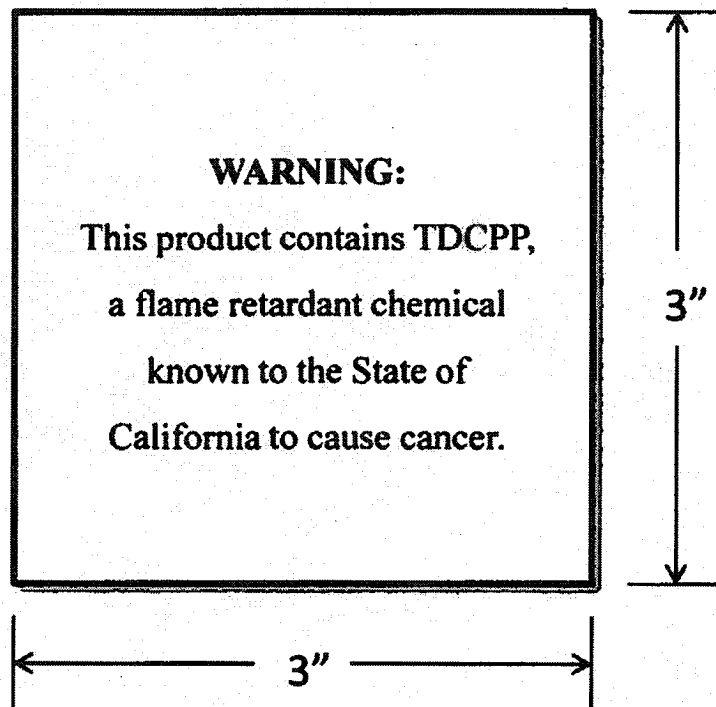
Address Crowell & Moring LLP

515 South Flower Street, 40th Floor

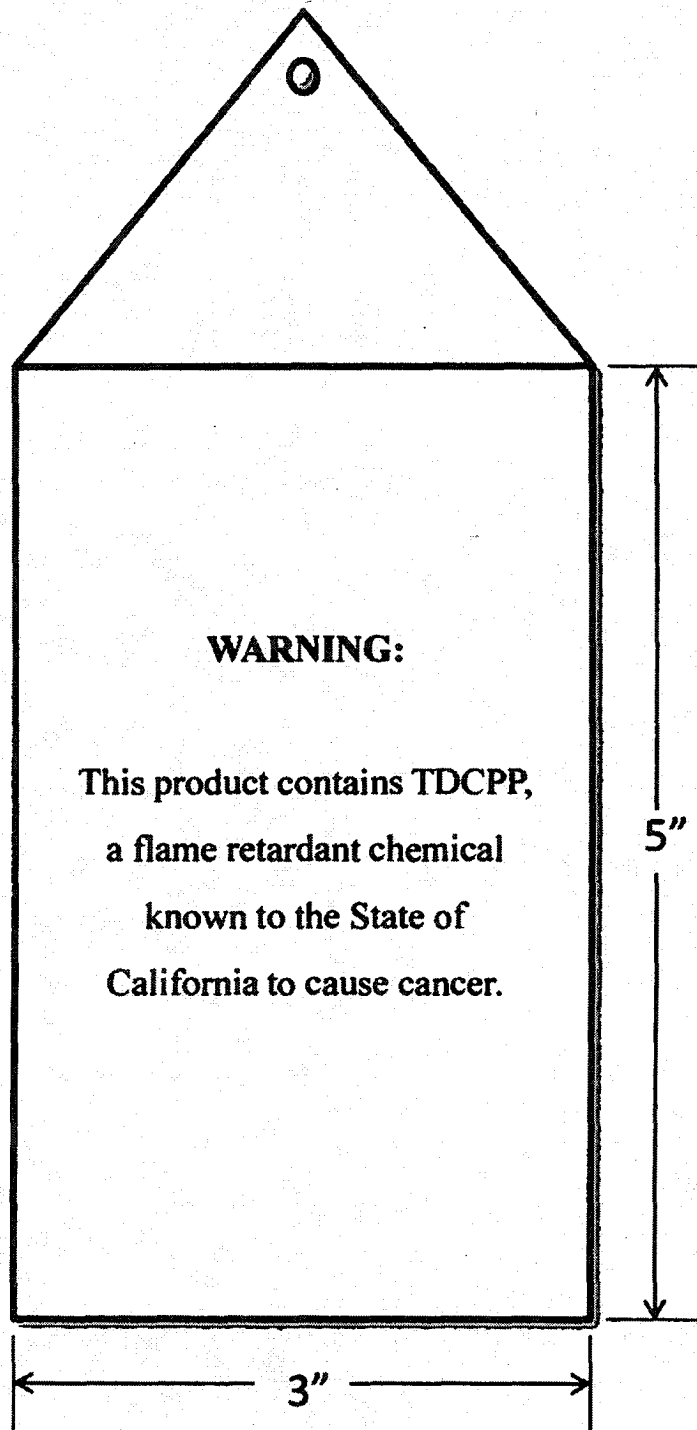
Los Angeles, CA 90071

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

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:

8.5"

This product contains TDCPP, a flame retardant
chemical known to the State of California to
cause cancer.

11"

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