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

11 PETER ENGLANDER
12
13 Plaintiff,
14 v.
15 UNIVERSAL FURNITURE
16 INTERNATIONAL, INC.; et al.
17
18 Defendants.

Case No. RG 13678154

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

**[PROPOSED] CONSENT JUDGMENT AS
TO UNIVERSAL FURNITURE
INTERNATIONAL, INC.**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: May 3, 2013

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and Universal Furniture International, Inc. (“Universal”), with Plaintiff and
5 Universal 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 Universal Furniture International, Inc.**

11 Universal 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 Englander alleges that Universal 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. Code
22 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges
23 that TDCPP escapes from foam padding, leading to human exposures.

24 1.4.3 Englander alleges that Universal manufactured, imported, sold and/or
25 distributed for sale in California, vinyl/PVC kids recliners containing di(2-ethylhexyl)phthalate
26 (“DEHP”) without the requisite Proposition 65 health hazard warnings.

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1 **1.7 Complaint**

2 On May 3, 2013, Englander filed a Complaint in the Superior Court in and for the
3 County of Alameda against Universal and Does 4 through 150, *Peter Englander v. Universal*
4 *International Furniture, Inc., et al.*, Case No. RG 13678154, alleging violations of Proposition 65,
5 based in part on the alleged unwarned exposures to TDCPP contained in the Products. Upon entry
6 of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to include the
7 violations of Proposition 65 alleged by Englander in the April 3, 2013 Notice.

8 **1.8 No Admission**

9 Universal denies the material factual and legal allegations contained in Englander Notices
10 and Complaint and maintains that all products that they have manufactured, imported, distributed,
11 and/or sold in California, including the Products, have been and are in compliance with all laws.
12 Nothing in this Consent Judgment shall be construed as an admission by Universal of any fact,
13 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
14 Judgment constitute or be construed as an admission by Universal of any fact, finding, conclusion,
15 issue of law, or violation of law. However, this section shall not diminish or otherwise affect a
16 Universal’s obligations, responsibilities, and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Universal as to the allegations contained in the Notices and Complaint, that venue
20 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
21 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
22 Procedure § 664.6.

23 **2. DEFINITIONS**

24 **2.1 California Customers**

25 “California Customer” shall mean any customer that Universal reasonably understands is
26 located in California, has a California warehouse or distribution center, maintains a retail outlet in
27 California, or has made internet sales into California on or after January 1, 2011.

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on March 31, 2014, Universal shall not manufacture or import for distribution
4 or sale to California Customers, or cause to be manufactured or imported for distribution or sale to
5 California Customers, any Products that are not Reformulated Products.

6 **3.2 Vendor Notification/Certification**

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

17 **3.3 Products No Longer in Universal's Control**

18 No later than 45 days after the Effective Date, Universal shall send a letter, electronic or
19 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
20 October 28, 2011, supplied the item for resale in California described as an exemplar in each of the
21 Notices Universal received from Englander ("Exemplar Product(s)"); and (2) any California
22 Customer and/or Retailer that Englander reasonably understands or believes had any inventory for
23 resale in California of Exemplar Product(s) as of the relevant Notice's dates. The Notification
24 Letter shall advise the recipient that the Exemplar Product(s) contains TDCPP, a chemical known to
25 the State of California to cause cancer, and/or DEHP, a chemical known to the State of California to
26 cause birth defects and other reproductive harm, as appropriate depending on the allegations in the
27 February 5, 2013 Notice and April 3, 2013 Notice, and request that the recipient either: (a) label
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1 the Exemplar Product(s) remaining in inventory for sale in California, or to California Customers,
2 pursuant to Section 3.5; (b) return, at Universal's sole expense, all units of the Exemplar Product(s)
3 held for sale in California, or to California Customers, to Universal or a party Universal 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(s) will be labeled or returned. Universal shall maintain records of all
8 correspondence or other communications generated pursuant to this Section for two years after the
9 Effective Date and shall promptly 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, Universal's inventory as of or after
12 December 31, 2013, that do not qualify as Reformulated Products and that Universal has reason to
13 believe may be sold or distributed for sale in California, shall contain a clear and reasonable
14 warning as set forth in Section 3.5 below unless Section 3.6 applies.

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 likely
20 to be read and understood by an ordinary individual under customary conditions before purchase.
21 Each warning shall be provided in a manner such that the consumer or user understands to which
22 specific Product the warning applies, so as to minimize the risk of consumer confusion.

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

24 **WARNING:** This product contains TDCPP, a flame
25 retardant chemical known to the State
26 of California to cause cancer.
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Or, for Phthalate Products:

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and reproductive harm.³

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

3.5.2 Internet Website Warning

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

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

Or, for Phthalate Products:

³ The regulatory safe harbor warning language specified in 27 CCR § 25601 *et seq.* may also be used if the Universal had begun to use it, prior to the Effective Date. If Universal seeks to use alternative warning language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the 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.”

⁴ 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.

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and reproductive harm.⁵

3.6 Alternatives to Interim Warnings

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

4. MONETARY PAYMENTS

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

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

4.1.1 Initial Civil Penalty. On or before the Effective Date, Universal shall make an initial civil penalty payment in the amount identified on Exhibit A.

4.1.2 Second Civil Penalty. On or before January 15, 2014, Universal shall make a second civil penalty payment in the amount identified on Exhibit A. The amount of the second

⁵ Footnote 3, *supra*, applies in this context as well.

1 penalty may be reduced according to any penalty waiver Universal is eligible for under Sections
2 4.1.4(i) and 4.1.4(iii), below.

3 4.1.3 Third Civil Penalty. On or before November 30, 2014, Universal shall make
4 a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
5 penalty may be reduced according to any penalty waiver Universal is eligible for under Sections
6 4.1.4(ii) and 4.1.4(iv), below.

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

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

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

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

23 If Universal so elects on Exhibit A, a portion of the third civil penalty shall be waived, to the
24 extent that it has agreed that, as of March 31, 2014, and continuing into the future, it shall only
25 manufacture or import for distribution or sale in California or cause to be manufactured or imported
26 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-
27 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million
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1 (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject product,
2 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
3 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
4 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
5 representative of Universal that has exercised this election shall provide Englander with a written
6 certification confirming compliance with such conditions, which certification must be received by
7 Englander’s counsel on or before November 15, 2014.

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

10 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
11 other authorized representative of Universal provides Englanders with written certification, by
12 December 15, 2013, confirming that each individual or establishment in California to which it
13 supplied the Exemplar Product after October 28, 2011, has already sold, disposed of, or otherwise
14 destroyed all Exemplar Products in its possession, in accordance with all applicable laws.⁶

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

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

22 **4.2 Representations**

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

26 _____
27 ⁶ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander has, prior to August 31, 2013, provided Universal with test results from a NVLAP
accredited laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm
pursuant to EPA testing methodologies 3545 or 8270C.

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

8 Universal further represents that in implementing the requirements set forth in Sections 3.1
9 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 Universal that levels
16 of the Listed Chemicals in excess of the Reformulation Standard have been detected in one or more
17 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a
18 deadline for meeting the Reformulation Standard has arisen for Universal under Sections 3.1 or 3.6
19 above, Universal may elect to pay a stipulated penalty to relieve any further potential liability under
20 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
21 question.⁷ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000
22 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
23 excess of the Reformulation Standards but under 250 ppm.⁸ Englander shall further be entitled to

24 _____
25 ⁷ This Section shall not be applicable where the vendor in question had previously been
26 found by Universal to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
28 penalty for a second exceedance by Universal's vendor at a level between 100 and 249 ppm shall
not be available after July 1, 2015.

⁸ 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 reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the
2 stipulated penalty level. Universal under this Section must provide notice and appropriate
3 supporting information relating to the purchase (e.g. vendor name and contact information
4 including representative, purchase order, certification (if any) received from vendor for the
5 exemplar or subcategory of products), test results, and a letter from a company representative or
6 counsel attesting to the information provided, to Englander within 30 calendar days of receiving test
7 results from Englander’s counsel. Any violation levels at or above 250 ppm shall be subject to the
8 full remedies provided pursuant to this Consent Judgment and at 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, Universal expressed a desire to
14 resolve the fee and cost issue. Universal then agreed to pay Englander and his counsel under
15 general contract principles and the private attorney general doctrine codified at California Code of
16 Civil Procedure section 1021.5 for all work performed through the mutual execution of this
17 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
18 Universal’s attention, negotiating a settlement in the public interest, and seeking court approval of
19 the same. In addition, the negotiated fee and cost figure expressly includes the anticipated
20 significant amount of time Englander’s counsel will incur to monitor various provisions in this
21 agreement over the next two years, with the exception of additional fees that may be incurred
22 pursuant to Universal’s election in Section 11. Universal more specifically agreed, upon the
23 Court’s approval and entry of this Consent Judgment, to pay Englander’s counsel the amount of
24 fees and costs indicated on Exhibit A. Universal further agreed to tender and shall tender its full
25 required payment under this Section to a trust account at The Chanler Group (made payable “In
26 Trust for The Chanler Group”) within two business days of the Effective Date. Such funds shall be
27 released from the trust account upon the Court’s approval and entry of this Consent Judgment.
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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. Universal shall issue a separate 1099 form for each
29 payment required by this Section to: (a) Peter Englander, whose address and tax identification
30 number shall be furnished upon request after this Consent Judgment has been fully executed by the
31 Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard
32 Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box

1 4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set
2 forth in Section 4.5.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Englander’s Release of Proposition 65 Claims**

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

20 **5.2 Englander’s Individual Releases of Claims**

21 Englander, in his individual capacity only and *not* in his representative capacity, provides a
22 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
23 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
24 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,
25 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
26 TCEP, TDBPP, DEHP, DBP and/or BBP in the Products or Additional Products (as defined in
27 Section 11.1 and delineated on Exhibit A) manufactured, imported, distributed, or sold by Universal
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1 prior to the Effective Date.⁹ The Parties further understand and agree that this Section 5.2 release
2 shall not extend upstream to any entities that manufactured the Products or Additional Products, or
3 any component parts thereof, or any distributors or suppliers who sold the Products or Additional
4 Products, or any component parts thereof to Universal, except that entities upstream of Universal
5 that is a Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the
6 Private Labeled Covered (or Additional) Products offered for sale in California by the Retailer in
7 question. Nothing in this Section affects Englander’s right to commence or prosecute an action
8 under Proposition 65 against a Releasee that does not involve Universal’s Products or Additional
9 Products.

10 **5.3 Universal’s Release of Englander**

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

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
20 within one year after it has been fully executed by all Parties. If the Court does not approve the
21 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal
22 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall
23 proceed in its normal course on the Court’s trial calendar. If the Court’s approval is ultimately
24 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the
25 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,
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27 ⁹ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

1 then the case shall proceed in its normal course on the Court’s trial calendar. In the event that this
2 Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any
3 monies that have been provided to OEHHA, Englander or his counsel pursuant to Section 4, above,
4 shall be refunded within 15 days of the appellate decision becoming final. If the Court does not
5 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
6 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 4,
7 above, shall be refunded to Universal within 15 days.

8 **7. GOVERNING LAW**

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

18 **8. NOTICES**

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

23 To Universal:

24 At the address shown on Exhibit A

To Englander:

25 Proposition 65 Coordinator
26 The Chanler Group
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

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

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

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

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

10 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

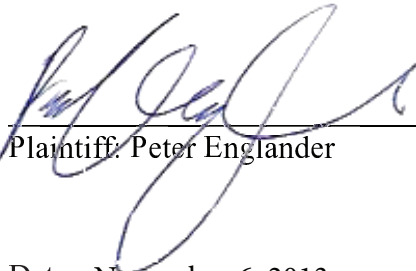
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13. AUTHORIZATION

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

AGREED TO:

AGREED TO:



Plaintiff: Peter Englander

By: _____
Name:
It's:

Date: November 6, 2013

Date: October __, 2013

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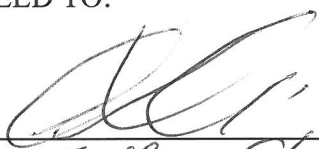
13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Plaintiff: Peter Englander

By: 
Name: Jeffery Chang
It's: CFO.

Date: October __, 2013

Date: October 18, 2013

1 EXHIBIT A

2 I. Name of Settling Defendant: UNIVERSAL FURNITURE INTERNATIONAL, INC.

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

4 III. Types of Covered Products Applicable to Universal Furniture International, Inc.:

5 a) Vinyl/PVC kids recliners containing DEHP; and

6 b) Padded upholstered furniture including benches containing TDCPP.

7 IV. Types of Additional Products Universal Furniture International, Inc. Elects to Address (if
8 any):

9 V. Universal Furniture International, Inc.'s Required Settlement Payments

10 A. Penalties of \$91,000, as follows:

11 \$25,000 initial payment due on or before the Effective Date;

12 \$42,000 second payment due on or before January 15, 2014, of which
13 \$23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be
14 waived pursuant to Section 4.1.4(iii); and

15 \$24,000 third payment due on or before November 30, 2014, of which
16 \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be
17 waived pursuant to Section 4.1.4(iv).

18 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
19 attributable to Universal Furniture International.: \$46,000.

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

21 Kevin C. Mayer
22 Name

23 Attorney
24 Title

25 _____
26 Company/Firm Name

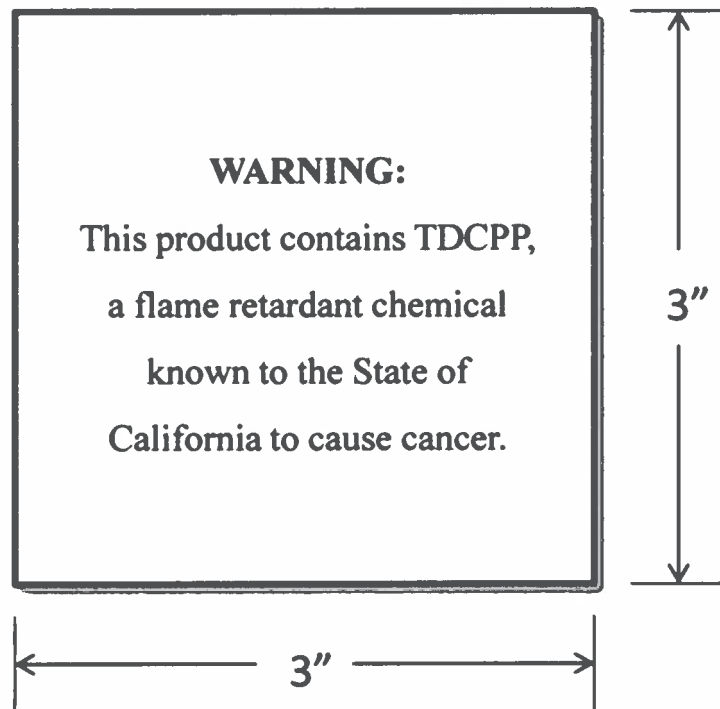
27 Crowell & Moring LLP
28 Address

515 South Flower Street, 40th Floor

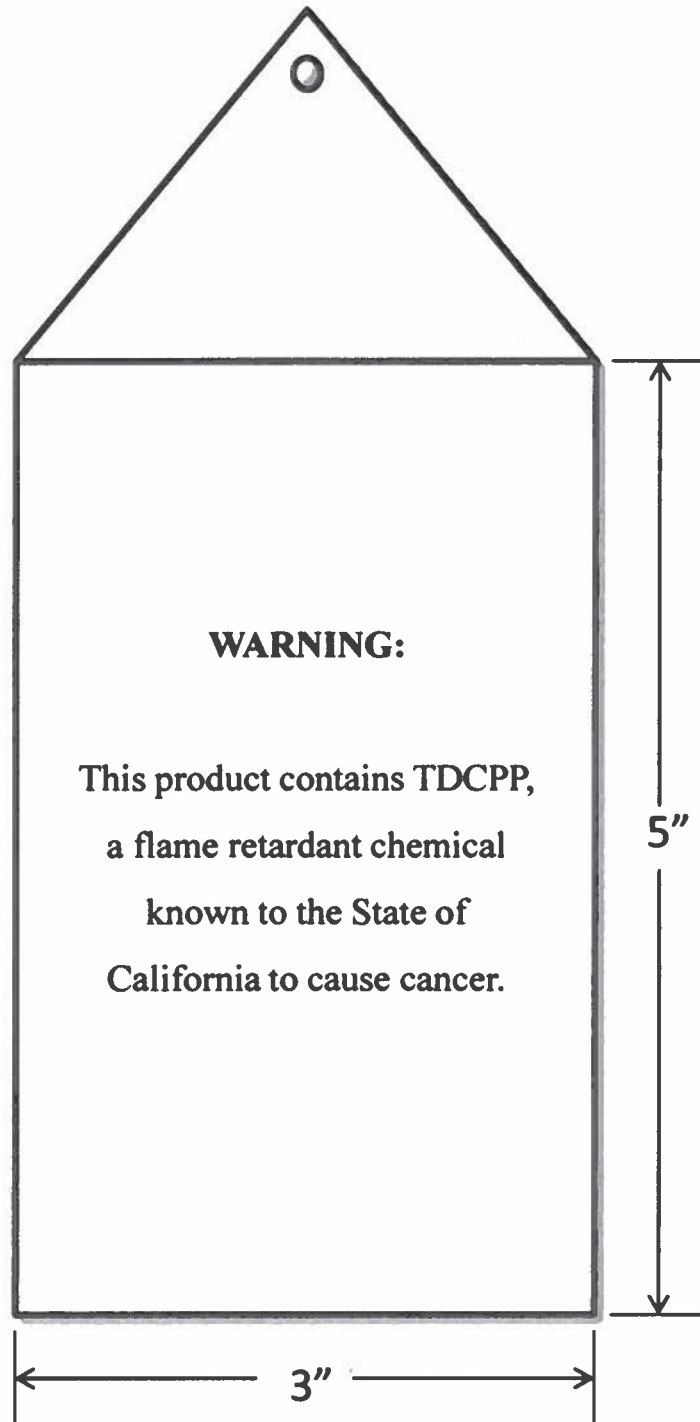
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



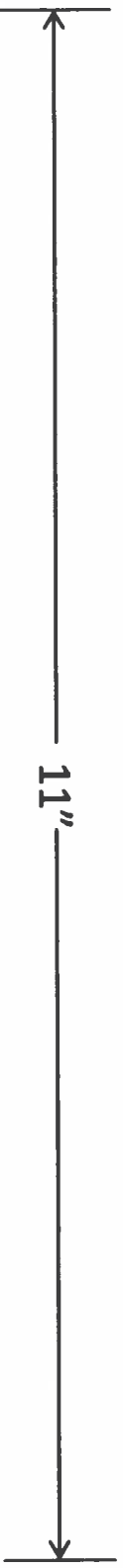
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



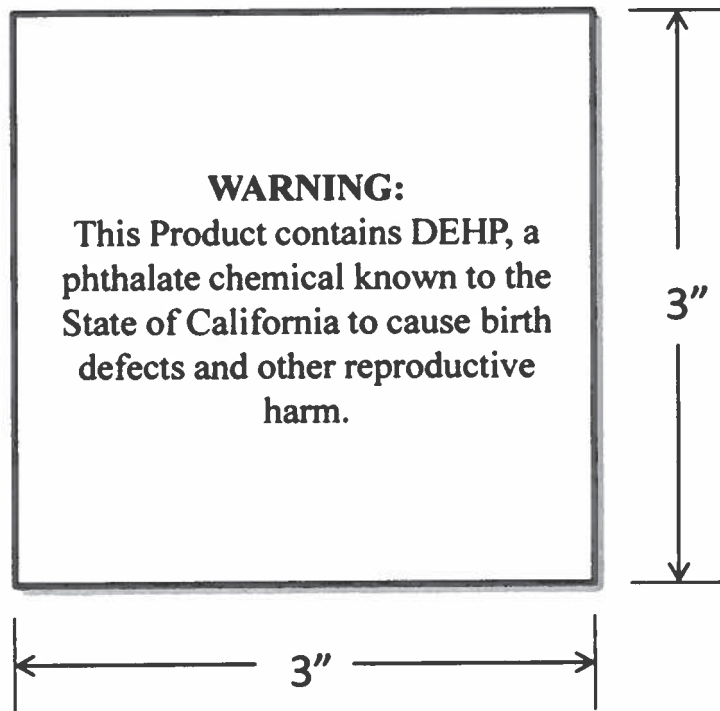
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

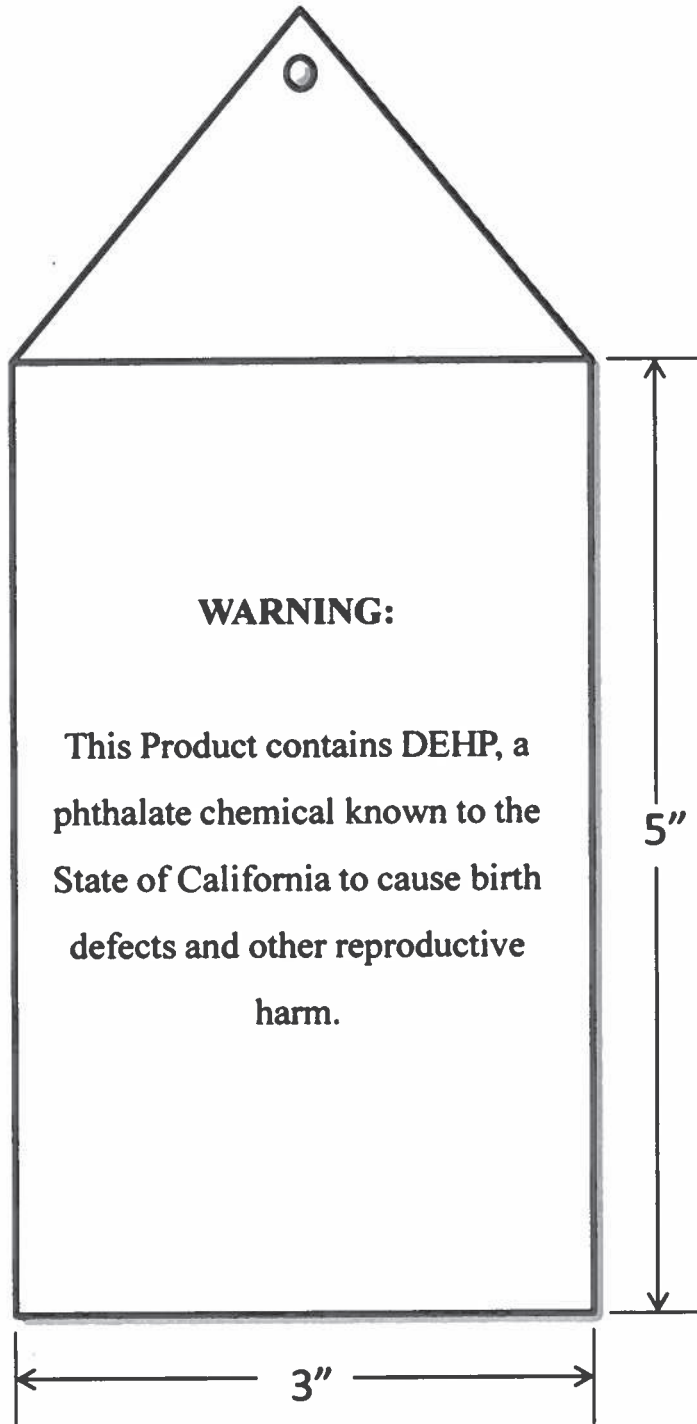
This product contains TDCPP, a flame retardant
chemical known to the State of California to
cause cancer.



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



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 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.