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10 PETER ENGLANDER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER) Case No. RG 13673023
14)
15 Plaintiff,)
16)
17 v.) Assigned for All Purposes to
18) Judge George C. Hernandez, Jr.,
19) Department 17
20 EUROMARKET DESIGNS, INC.; et al.)
21)
22 Defendants.) **[PROPOSED] CONSENT JUDGMENT AS**
23) **TO URBAN HOME**
24)
25)
26) **(Health & Safety Code § 25249.6 et seq.**
27) *First Amended Complaint Filed: April 10, 2013)*
28)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander” or “Plaintiff”) and the defendant Urban Home with Englander and Urban Home
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 eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Urban Home**

11 Urban Home 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 Urban Home 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”) and 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). Plaintiffs alleges
23 that TDCPP escapes from foam padding, leading to human exposures.

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

27

28

1 1.4.4 Pursuant to Proposition 65, on October 24, 2003, California identified and
2 listed di(2-ethylhexyl)phthalate (“DEHP”) as a chemical known to cause birth defects and other
3 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements of
4 Proposition 65 one year later on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health &
5 Safety Code §§ 25249.8 and 25249.10(b).

6 TDCPP and DEHP shall hereinafter be collectively referred to as the “Listed
7 Chemicals.”

8 **1.5 Product Description**

9 The categories of products that are covered by this Consent Judgment as to Urban Home are
10 identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
11 manufactured for use as a component of another product, such as upholstered furniture, but which is
12 not itself a finished product, is specifically excluded from the definition of Products and shall not be
13 identified by Urban Home on Exhibit A as a Product.

14 **1.6 Notice of Violation**

15 On January 24, 2013, Englander served Urban Home and certain requisite public
16 enforcement agencies with a “60-Day Notice of Violation” (“January 24, 2013, Notice”) that
17 provided the recipients with notice of alleged violations of Proposition 65 based on Urban Home’s
18 alleged failure to warn its customers, consumers, workers and other individuals that the Products
19 exposed users in California to TDCPP.

20 On April 3, 2013, Englander served Urban Home and certain requisite public enforcement
21 agencies with a “60-Day Notice of Violation” (“April 3, 2013, Notice”) that provided the recipients
22 with notice of alleged violations of Proposition 65 based on Urban Home’s alleged failure to warn
23 its customers and consumers that the Products exposed users in California to DEHP (“Phthalate
24 Products”). DEHP and other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl
25 phthalate (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and
26 other reproductive harm.

1 The January 24, 2013, Notice and April 3, 2013, Notice shall hereinafter collectively be
2 referred to as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has
3 commenced or is diligently prosecuting the allegations set forth in the Notices.

4 **1.7 Complaint**

5 On April 10, 2013 Englander filed a *First Amended* Complaint in and for the County of
6 Alameda against Urban Home, other defendants, and Does 1 through 150, *Peter Englander v.*
7 *Euromarket Designs, Inc., et al.*, Case No. RG 13673023, alleging violations of Proposition 65,
8 based in part on the alleged unwarned exposures to TDCPP contained in the Products. On April 10,
9 2013, Englander filed a First Amended Complaint (“Complaint”), alleging additional violations of
10 Proposition 65, including unwarned exposures to TDCPP. Upon entry of this Consent Judgment,
11 the Complaint shall be deemed amended *nunc pro tunc* to include the violations of Proposition 65
12 alleged by Englander in the April 3, 2013 Notice.

13 **1.8 No Admission**

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

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Urban Home as to the allegations contained in the Notices and Complaint, that
25 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce
26 the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
27 Procedure § 664.6.

1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 “California Customer” shall mean any customer that Urban Home reasonably understands is
4 located in California, has a California warehouse or distribution center, maintains a retail outlet in
5 California, or has made internet sales into California on or after January 1, 2011. (“California
6 Customer” does not include individuals who purchased the Products for their own use.)

7 **2.2 Detectable**

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

13 **2.3 Effective Date**

14 “Effective Date” shall mean November 15, 2014.

15 **2.4 Private Label Covered Products**

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

19 **2.5 Reformulated Products**

20 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
21 and Phthalate Products which contain no more than 1000 ppm each of, DEHP, BBP, and DBP.

22 **2.6 Reformulation Standard**

23 The “Reformulation Standard” shall mean containing no more than 25 ppm of TDCPP and
24 for Phthalate Products, no more than 1000 ppm each of, DEHP, BBP, and DBP.

25 **2.7 Retailer**

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

28

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on January 30, 2015, Urban Home shall not manufacture or import for
4 distribution or sale to California Customers, or cause to be manufactured or imported for
5 distribution or sale to California Customers, any Products that are not Reformulated Products.

6 **3.2 Vendor Notification/Certification**

7 On or before the Effective Date, Urban Home 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, Urban Home shall not employ statements that will encourage a vendor to delay
12 compliance with the Reformulation Standard. Urban Home shall subsequently obtain written
13 certifications, no later than January 30, 2015, from such vendors, and any newly engaged vendors,
14 that the Products manufactured by such vendors are in compliance with the Reformulation
15 Standard. Certifications shall be held by Urban Home for at least two years after its receipt and
16 shall be made available to Englander upon request.

17 **3.3 Products No Longer in Urban Home's Control**

18 Urban Home has not supplied or sold any Product to any California Customer and/or
19 Retailer for resale. Further, Urban Home does not track individual customers who may have
20 purchased the Products for their own use.

21 **3.4 Current Inventory**

22 Any Products in, or manufactured and en route to, Urban Home's inventory as of or after the
23 Effective Date, that do not qualify as Reformulated Products and that Urban Home has reason to
24 believe may be sold or distributed for sale in California, shall contain a clear and reasonable
25 warning as set forth in Section 3.5 below unless Section 3.6 applies.¹

26

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

28

1 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
2 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
3 set forth in this Section are addressed, including as to the required warning statement and method of
4 transmission as set forth above, if Urban Home remains free not to utilize the template warnings.

5 3.5.2 Internet Website Warning

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

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

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

14 Or, for Phthalate Products:

15 **WARNING:** This product contains DEHP, a
16 phthalate chemical known to the State
17 of California to cause birth defects and
other reproductive harm.⁴

18 3.6 Alternatives to Interim Warnings

19 The obligations of Urban Home under Section 3.4 shall be relieved provided Urban Home
20 certifies on or before November 31, 2014 that, after June 30, 2015, it will only distribute or cause to
21 be distributed for sale in, or sell in California, or to California Customers for sale in California,
22 Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard. The
23 certifications provided by this Section are material terms and time is of the essence.

24 ³ The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x
25 5", with no less than 12 point font, with the warning language printed on each side of the hang tag, which
26 shall be affixed directly to the Product; (b) a yellow warning sign measuring 8.5" x 11", with no less than 32
27 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.

³ Footnote 1, *supra*, applies in this context as well.

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, Urban Home shall pay
4 the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment
5 will be allocated in accordance with California Health & Safety Code
6 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
7 Health Hazard Assessment (“OEHHA”), 25% of the penalty remitted to “Peter Englander, Client
8 Trust Account.”

9 Each penalty payment shall be made within two business days of the date it is due and be
10 delivered to the addresses listed in Section 4.5 below. Urban Home shall be liable for payment of
11 interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are
12 not received within two business days of the due date.

13 4.1.1 Initial Civil Penalty. On or before the Effective Date, the Settling Defendant
14 shall deliver to its legal counsel, Bowman and Brooke, LLP, two separate checks, one made
15 payable to “OEHHA” in the amount specified in Exhibit A, and the other made payable to “Peter
16 Englander, Client Trust Account” in the amount specified on Exhibit A. Bowman and Brooke, LLP
17 shall provide The Chanler Group with written confirmation within five business days of receipt of
18 the checks. Within five business days following the date that this Consent Judgment is approved by
19 the Court, Bowman and Brooke, LLP shall mail the checks to the respective payee at the addresses
20 listed in Section 4.5 below.

21 4.1.2 Second Civil Penalty. On or before January 30, 2015, Urban Home shall
22 make a second civil penalty payment in the amount identified on Urban Home’s Exhibit A. The
23 amount of the second penalty may be reduced according to any penalty waiver Urban Home is
24 eligible for under Section 4.1.4(i) , below.

25 4.1.3 Third Civil Penalty. On or before September 30, 2015, Urban Home shall
26 make a third civil penalty payment in the amount identified on Urban Home’s Exhibit A. The
27

1 amount of the third penalty may be reduced according to any penalty waiver Urban Home is
2 eligible for under Sections 4.1.4(ii) and 4.1.4(iii), below.

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

9 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
10 **Products Sold or Offered for Sale in California.**

11 If Urban Home so elects on Exhibit A, the second civil penalty shall be waived, to the extent
12 that it has agreed that, as of November 30, 2014, and continuing into the future, it shall only
13 manufacture or import for distribution or sale to California Customers or cause to be manufactured
14 or imported for distribution or sale to California Customers, Reformulated Products. An officer or
15 other authorized representative of Urban Home that has exercised this election shall provide
16 Englander with a written certification confirming compliance with such conditions, which
17 certification must be received by Englander’s counsel on or before January 15, 2015.

18 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

19 As shown on Urban Home’s Exhibit A, a portion of the third civil penalty shall be waived,
20 to the extent that it has agreed that, as of December 30, 2014, and continuing into the future, it shall
21 only manufacture or import for distribution or sale in California or cause to be manufactured or
22 imported for distribution or sale in California, Reformulated Products which also do not contain
23 tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per
24 million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject
25 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
26 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
27 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized

1 representative of Urban Home that has exercised this election shall provide Englander with a
2 written certification confirming compliance with such conditions, which certification must be
3 received by Englander's counsel on or before September 1, 2015.

4 **4.1.4(iii) Partial Penalty Waiver for Termination of Distribution to**
5 **California of Unreformulated Inventory.**

6 As shown on Urban Home's Exhibit A, a portion of the third civil penalty shall be waived,
7 if an officer or other authorized representative of Urban Home provides Englander with written
8 certification, on or before September 15, 2015, confirming that, as of June 15, 2015, it has and will
9 continue to distribute, offer for sale, or sell in California, or to California Customers, only
10 Reformulated Products.

11 **4.2 Representations**

12 Urban Home represents that the sales data and other information concerning its size,
13 knowledge of the Listed Chemicals, and prior reformulation and/or warning efforts, it provided to
14 Englander was truthful to its knowledge and a material factor upon which Englander has relied to
15 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
16 Consent Judgment.

17 If, within nine months of the Effective Date, Englander discovers and presents to Urban
18 Home, evidence demonstrating that the preceding representation and warranty was materially
19 inaccurate, then Urban Home shall have 30 days to meet and confer regarding Englander's
20 contention. Should this 30 day period pass without any such resolution between Englander and
21 Urban Home, Englander shall be entitled to file a formal legal claim including, but not limited to, a
22 claim for damages for breach of contract.

23 Urban Home further represents that in implementing the requirements set forth in Sections
24 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
25 reformulation of its Products and Additional Products on a nationwide basis and not employ
26 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
27 goods intended for sale to California Consumers.

1 4.3 **Stipulated Penalties for Certain Violations of the Reformulation**
2 **Standard.**

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

20 4.4 **Reimbursement of Fees and Costs**

21 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
23

24 ⁵ This Section shall not be applicable where the vendor in question had previously been found by
25 Urban Home to have provided unreliable certifications as to meeting the Reformulation Standard in its
26 Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second
27 exceedance by Urban Home’s vendor at a level between 100 and 249 ppm shall not be available after July 1,
28 2015.

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

1 this fee reimbursement issue to be resolved after the material terms of the agreement had been
2 settled. Shortly after the other settlement terms had been finalized, Urban Home expressed a desire
3 to resolve the fee and cost issue. Urban Home then agreed to pay Englander and his counsel under
4 general contract principles and the private attorney general doctrine codified at California Code of
5 Civil Procedure section 1021.5 for all work performed through the mutual execution of this
6 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
7 Urban Home’s attention, negotiating a settlement in the public interest, and seeking court approval
8 of the same. In addition, the negotiated fee and cost figure expressly includes the anticipated
9 significant amount of time Englander’s counsel will incur to monitor various provisions in this
10 agreement over the next two years, with the exception of additional fees that may be incurred
11 pursuant to a Urban Home’s election in Section 11. Urban Home, within five days of the Effective
12 Date, shall issue a check payable to “The Chanler Group” in the amount of fees and costs indicated
13 on Exhibit A to be held by Bowman and Brooke, LLP for The Chanler Group. Bowman and
14 Brooke, LLP shall provide The Chanler Group with written confirmation within five days of receipt
15 of the check. Bowman and Brooke, LLP shall release the check and shall deliver payment within
16 five business days of the date which this Consent Judgment is approved by the Court, to the address
17 listed in Section 4.5.1(a) below.

18 **4.5 Payment Procedures**

19 4.5.1 Issuance of Payments.

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

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 (b) All payments owed to OEHHA, pursuant to Section 4.1, shall be
28 delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the following
addresses, as appropriate:

1 For United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
14 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
15 Section 4.3.1(a) above, as proof of payment to OEHHA.

16 **5. CLAIMS COVERED AND RELEASED**

17 **5.1 Englander's Release of Proposition 65 Claims**

18 Englander, acting on his own behalf and in the public interest, releases Urban Home, its
19 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
20 employees, attorneys, and each entity to whom Urban Home directly or indirectly distribute or sell
21 Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers,
22 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
23 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
24 Chemicals in the Products, as set forth in the Notices. Compliance with the terms of this Consent
25 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
26 Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree
27 that this Section 5.1 release shall not extend upstream to any entities, other than Urban Homes, that
28 manufactured the Products or any component parts thereof, or any distributors or suppliers who
sold the Products or any component parts thereof to Urban Home, except that entities upstream of
Urban Home that is a Retailer of a Private Labeled Covered Product shall be released as to the

1 Private Labeled Covered Products offered for sale in California, or to California Customers, by the
2 Retailer in question.

3 **5.2 Englander’s Individual Releases of Claims**

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

20 **5.3 Urban Home’s Release of Englander**

21 Urban Home, on behalf of itself, its past and current agents, representatives, attorneys,
22 successors, and assignees, hereby waives any and all claims against Englander and his attorneys and
23 other representatives, for any and all actions taken or statements made (or those that could have
24 been taken or made) by Englander and his attorneys and other representatives, whether in the course
25

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

1 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
2 respect to the Products or Additional Products.

3 **6. COURT APPROVAL**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California.
21 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
22 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
23 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
24 inapplicable by reason of law generally as to the Products, then Urban Home may provide written
25 notice to Englander of any asserted change in the law, and shall have no further obligations
26 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so

27
28

1 affected. Nothing in this Consent Judgment shall be interpreted to relieve Urban Home from any
2 obligation to comply with any pertinent state or federal law or regulation.

3 **8. NOTICES**

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

8
9 To Urban Home:

10 At the address shown on Exhibit A

To Englander:

11 Proposition 65 Coordinator
12 The Chanler Group
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710-2565

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

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

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

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

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

25 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

26 11.1 In addition to the Products, where Urban Home has identified on Exhibit A
27 additional products that contain TDCPP and that are sold or offered for sale by it in California, or to
28 California Customers, (“Additional Products”), then by no later than January 31, 2015, Urban
Home may provide Englander with additional information or representations necessary to enable

1 him to issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to
2 Health & Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam
3 that is supplied, shaped or manufactured for use as a component of a product, such as upholstered
4 furniture, is specifically excluded from the definition of Additional Products and shall not be
5 identified by Urban Home on Exhibit A as an Additional Product. Except as agreed upon by
6 Englander, Urban Home shall not include a product, as an Additional Product, that is the subject of
7 an existing 60-day notice issued by Englander or any other private enforcer at the time of execution.
8 After receipt of the required information, Englander agrees to issue a supplemental 60-day notice in
9 compliance with all statutory and regulatory requirements for the Additional Products. Englander
10 will, and in no event later than October 1, 2014, prepare and file an amendment to this Consent
11 Judgment to incorporate the Additional Products within the defined term “Products” and serve a
12 copy thereof and its supporting papers (including the basis for supplemental stipulated penalties, if
13 any) on the Office of the California Attorney General; upon the Court’s approval and finding that
14 the supplemental stipulated penalty amount, if any, is reasonable, the Additional Products shall
15 become subject to Section 5.1 in addition to Section 5.2. Urban Home shall, at the time it elects to
16 utilize this Section and tenders the additional information or representations regarding the
17 Additional Products to Englander, tender to The Chanler Group’s trust account, an amount not to
18 exceed \$8,750 as stipulated penalties and attorneys’ fees and costs incurred by Englander in issuing
19 the new notice and engaging in other reasonably related activities, which may be released from the
20 trust as awarded by the Court upon Englander’s application. Any fee award associated with the
21 modification of the Consent Judgment to include Additional Products shall not offset any associated
22 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be
23 refunded to Urban Home within 15 days). Such payment shall be made to “The Chanler Group”
24 and delivered as per Section 4.5.1(a) above.

25 11.2 Englander and Urban Home agree to support the entry of this agreement as a
26 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
27 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
28

1 noticed motion is required to obtain judicial approval of this Consent Judgment, which Englander
2 shall draft and file. If any third party objection to the noticed motion is filed, Englander and Urban
3 Home shall work together to file a reply and appear at any hearing before the Court. This provision
4 is a material component of the Consent Judgment and shall be treated as such in the event of a
5 breach.

6 **12. MODIFICATION**

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

13 **13. AUTHORIZATION**

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

18 AGREED TO:

19
20 
21 _____
22 Plaintiff, Peter Englander
23
24 Date: October 31, 2014

AGREED TO:

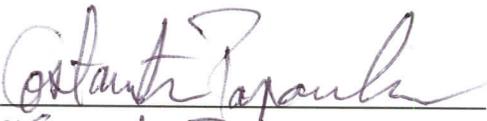
Defendant:
Urban Home
By: 
Name: _____
It's: CONSTANTINO PAPANICOLAOU
PRESIDENT.
Date: October 31, 2014

EXHIBIT A

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- I. Name of Settling Defendant (Mandatory): URBAN HOME
- II. Names of Releasees (Optional; May be Partial)
- III. Types of Covered Products Applicable to Urban Home:
 - a) Vinyl/PVC chairs containing DEHP
 - b) Padded upholstered furniture including ottomans containing TDCPP
- IV. Types of Additional Products Urban Home Elects to Address (if any):
- V. Urban Home's Required Settlement Payments
 - A. Penalties for Urban Home: \$29,000, as follows:
 - \$7,000 initial payment due on or before the Effective Date;
 - \$12,000 second payment due on or before January 30, 2015, which may be waived pursuant to Section 4.1.4(i) ; and
 - \$ 10,000 third payment due on or before September 30, 2015, of which \$4,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iii).
 - B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs: \$ 32,000
- VII. Person(s) to receive Notices pursuant to Section 8

Greg G. Jackson
Name

Michael B. Stuzane
Name

Attorney
Title

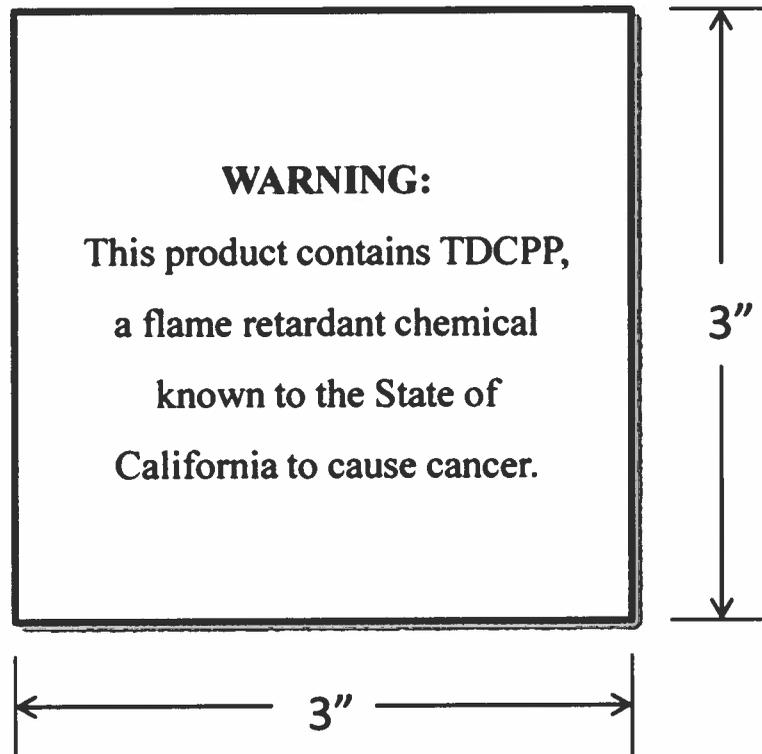
Attorney
Title

Address
402 West Broadway, Suite 1270
San Diego, CA 92101

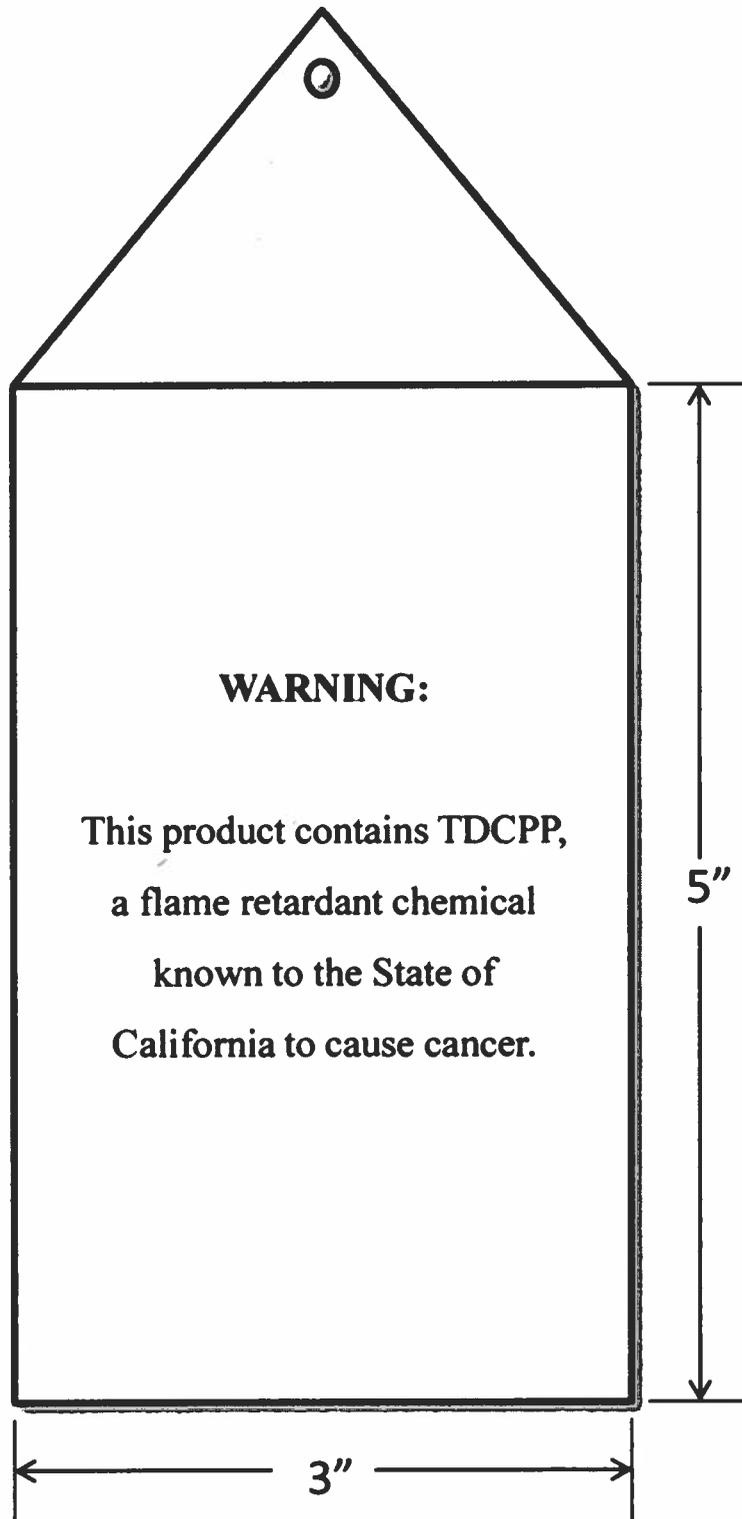
Address
56 E. Mail Street, Suite 200
Ventura, CA 93001-2664

EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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

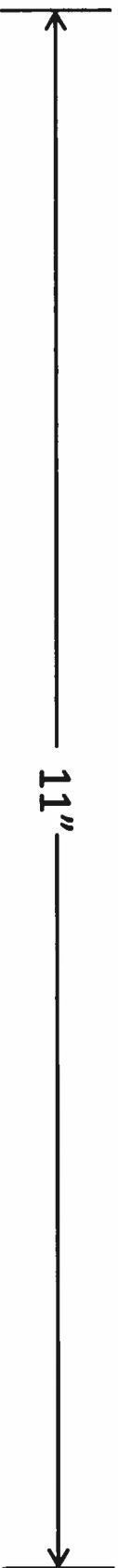


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

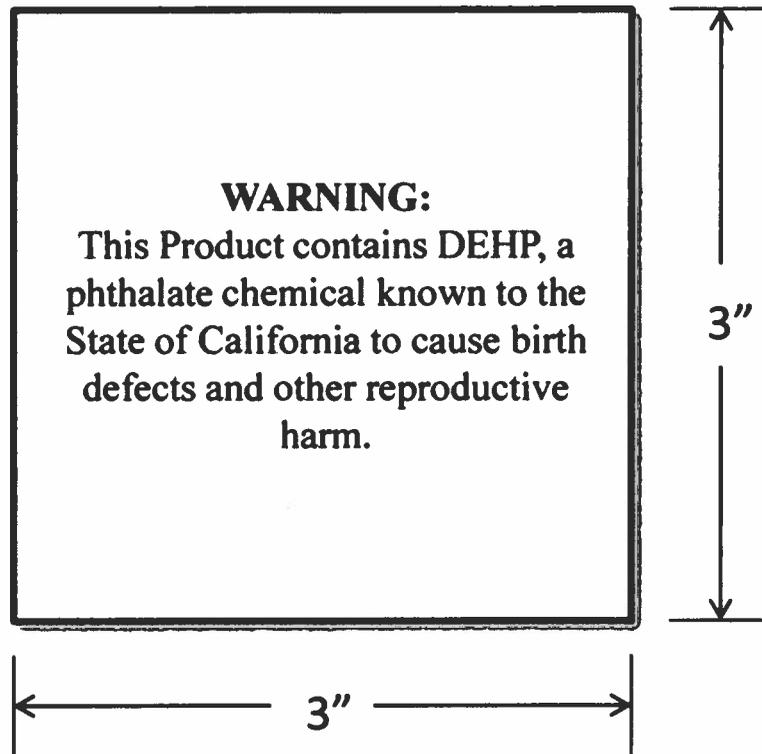
WARNING:

This product contains TDCPP, a flame retardant 8.5"

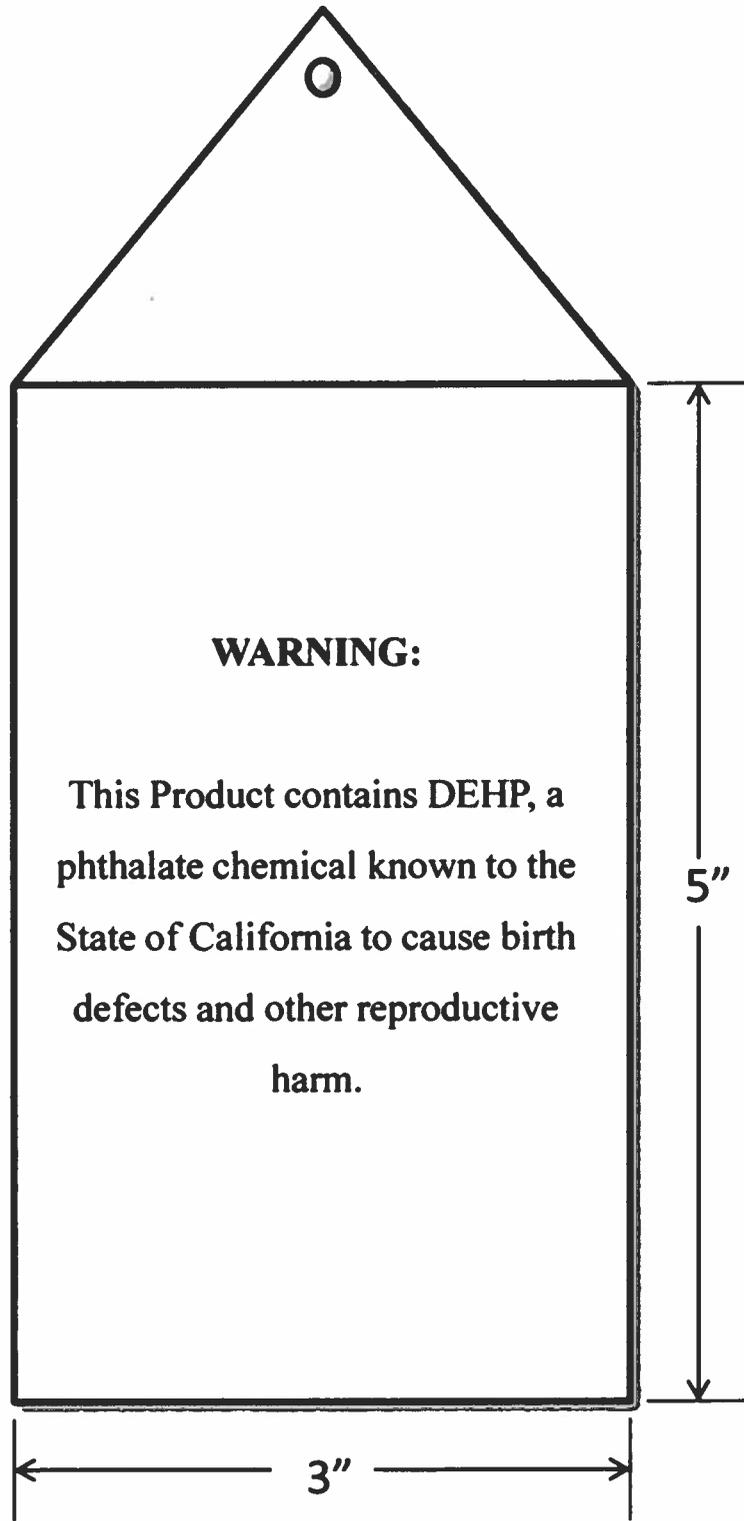
chemical known to the State of California to
cause cancer.



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.