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

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 CM INTERNATIONAL, INC.; et al.

18 Defendants.

) Case No. RG 13-676712

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

) **[PROPOSED] CONSENT JUDGMENT AS  
) TO CMC WORLDWIDE, INC.**

) **(Health & Safety Code § 25249.6 et seq.)**

) Complaint Filed: April 23, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander  
4 (“Englander”) and CMC Worldwide, Inc. (“CMC”), with Englander and CMC collectively referred  
5 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 CMC Worldwide, Inc.**

11 CMC 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. General Allegations**

15 **1.4.1** Englander alleges that CMC manufactured, imported, sold and/or distributed  
16 for sale in California products with foam cushioned components containing tris(1,3-dichloro-2-  
17 propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard warnings.  
18 Englander alleges that TDCPP escapes from foam padding, leading to human exposures.

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).

23 **1.5 Product Description**

24 The categories of products that are covered by this Consent Judgment as to CMC are  
25 identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or  
26 manufactured for use as a component of another product, such as upholstered furniture, but which is  
27 not itself a finished product, is specifically excluded from the definition of Products and shall not be  
28

1 identified by CMC on Exhibit A as a Product.

2 **1.6 Notice of Violation**

3 On or about February 8, 2013, Englander issued to CMC and certain requisite public  
4 enforcement agencies a "60-Day Notice of Violation" ("Notice") that provided the recipients with  
5 notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,  
6 consumers, and workers in California that the Products expose users to TDCPP. To the best of the  
7 Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations  
8 set forth in the Notice.

9 **1.7 Complaint**

10 On April 23, 2013, Englander filed a Complaint in the Superior Court in and for the County  
11 of Alameda against CMC, other defendants and Does 1 through 150, *Peter Englander v. CM*  
12 *International, Inc., et al.*, Case No. RG 13-676712 ("Complaint"), alleging violations of Proposition  
13 65, based in part on the alleged unwarned exposures to the TDCPP contained in the Products.

14 **1.8 No Admission**

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

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over CMC as to the allegations contained in the Notice and Complaint, that venue is  
26 proper in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions  
27 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.  
28

1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 “California Customer” shall mean any customer of CMC that CMC reasonably understands  
4 is 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.

6 **2.2 Detectable**

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

13 **2.3 Effective Date**

14 “Effective Date” shall mean November 15, 2013.

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 or TCEP.

22 **2.6 Reformulation Standard**

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

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 March 31, 2014, CMC shall not manufacture or import for distribution or  
4 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, CMC shall provide written notice to all of its then-current  
8 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, CMC shall not employ statements that will encourage a vendor to delay compliance with  
12 the Reformulation Standard. CMC shall subsequently obtain written certifications, no later than  
13 April 1, 2014, from such vendors, and any newly engaged vendors, that the Products manufactured  
14 by such vendors are in compliance with the Reformulation Standard. Certifications shall be held by  
15 CMC for at least two years after their receipt and shall be made available to Englander upon  
16 request.

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

18 No later than 45 days after the Effective Date, CMC 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 Notice CMC received from Englander ("Exemplar Product(s)"); and (2) any California Customer  
22 and/or Retailer that CMC reasonably understands or believes had any inventory for resale in  
23 California of Exemplar Product(s) as of the relevant Notice's date. The Notification Letter shall  
24 advise the recipient that the Exemplar Product(s) contains TDCPP, a chemical known to the State of  
25 California to cause cancer and request that the recipient either: (a) label the Exemplar Product(s)  
26 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or  
27 (b) return, at CMC's sole expense, all units of the Exemplar Product(s) held for sale in California,  
28

1 or to California Customers, to CMC or a party CMC has otherwise designated. The Notification  
2 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar  
3 Product(s) will be labeled or returned. CMC shall maintain records of all correspondence or other  
4 communications generated pursuant to this Section for two years after the Effective Date and shall  
5 promptly produce copies of such records upon Englander's written request.

#### 6 3.4 Current Inventory

7 Any Products in, or manufactured and en route to, CMC's inventory as of or after December  
8 31, 2013, that do not qualify as Reformulated Products and that CMC has reason to believe may be  
9 sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth in  
10 Section 3.5 below unless Section 3.6 applies.

#### 11 3.5 Product Warnings

##### 12 3.5.1 Product Labeling

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

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

20  
21 **WARNING:** This product contains TDCPP, a flame  
22 retardant chemical known to the State  
of California to cause cancer.<sup>1</sup>

23  
24 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be  
25 used if CMC had begun to use it, prior to the Effective Date. If CMC seeks to use alternative  
26 warning language, other than the language specified above or the safe harbor warning specified in  
27 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, CMC must  
28 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."

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.<sup>2</sup> 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, CMC 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  
if California to cause cancer.<sup>3</sup>

### 14 3.6 Alternatives to Interim Warnings

15 The obligations of CMC under Section 3.3 shall be relieved provided CMC certifies on or  
16 before December 15, 2013 that only Exemplar Products meeting the Reformulation Standard will  
17 be offered for sale in California, or to California Customers for sale in California, after December  
18 31, 2013. The obligations of CMC under Section 3.4 shall be relieved provided CMC certifies on  
19 or before December 15, 2013 that, after June 30, 2014, it will only distribute or cause to be  
20 distributed for sale in, or sell in, California, or to California Customers for sale in California,  
21 Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard. The  
22 certifications provided by this Section are material terms and time is of the essence.

23  
24 <sup>2</sup> 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 that 32 point font, with the warning language printed on each side, which  
28 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.

<sup>3</sup> 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, CMC shall pay the civil  
4 penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment will be  
5 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75%  
6 of the funds remitted to the California Office of Environmental Health Hazard Assessment  
7 (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for Englander.” Each  
8 penalty payment shall be made within two business days of the date it is due and be delivered to the  
9 addresses listed in Section 4.5 below. CMC shall be liable for payment of interest, at a rate of 10%  
10 simple interest, for all amounts due and owing under this Section that are not received within two  
11 business days of the due date.

12 4.1.1 Initial Civil Penalty. On or before the Effective Date, CMC shall make an  
13 initial civil penalty payment in the amount identified on Exhibit A.

14 4.1.2 Second Civil Penalty. On or before January 15, 2014, CMC shall make a  
15 second civil penalty payment in the amount identified on Exhibit A. The amount of the second  
16 penalty may be reduced according to any penalty waiver CMC is eligible for under Sections 4.1.4(i)  
17 and 4.1.4(iii), below.

18 4.1.3 Third Civil Penalty. On or before November 30, 2014, CMC shall make a  
19 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty  
20 may be reduced according to any penalty waiver CMC is eligible for under Sections 4.1.4(ii) and  
21 4.1.4(iv), below.

22 4.1.4 Reductions to Civil Penalty Payment Amounts. CMC may reduce the  
23 amount of the second and/or third civil penalty payments identified on Exhibit A by providing  
24 Englander with certification of certain efforts undertaken to reformulate their Products or limit the  
25 ongoing sale of non-reformulated Products in California. The options to provide a written  
26 certification in lieu of making a portion of a civil penalty payment constitute material terms of this  
27 Consent Judgment, and with regard to such terms, time is of the essence.

28



1                                   **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**  
2                                   **Products Sold or Offered for Sale in California.**

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

10                                   **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation**

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

23                                   **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**  
24                                   **Exemplar Products from the California Market.**

25           As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or  
26 other authorized representative of CMC provides Englander with written certification, by December  
27 15, 2013, confirming that each individual or establishment in California to which it supplied the  
28

1 Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products  
2 held for sale in California.<sup>4</sup>

3 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**  
4 **California of Unreformulated Inventory.**

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

9 4.2 **Representations**

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

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

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>4</sup> For purposes of this Section, the term Exemplar Products shall further include Products for  
28 which Englander has, prior to August 31, 2013, provided CMC with test results from a NVLAP  
accredited laboratory showing the presence of a TDCPP and/or TCEP at a level in excess of 250  
ppm pursuant to EPA testing methodologies 3545 or 8270C.

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

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

19           **4.4 Reimbursement of Fees and Costs**

20           The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
22 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
23 settled. Shortly after the other settlement terms had been finalized, CMC expressed a desire to  
24

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

<sup>6</sup> 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 resolve the fee and cost issue. CMC then agreed to pay Englander and his counsel under general  
2 contract principles and the private attorney general doctrine codified at California Code of Civil  
3 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,  
4 including the fees and costs incurred as a result of investigating, bringing this matter to CMC's  
5 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In  
6 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of  
7 time Plaintiff's counsel will incur to monitor various provisions in this agreement over the next two  
8 years, with the exception of additional fees that may be incurred pursuant to CMC's election in  
9 Section 11. CMC more specifically agreed, upon the Court's approval and entry of this Consent  
10 Judgment, to pay Englander's counsel the amount of fees and costs indicated on Exhibit A. CMC  
11 further agreed to tender and shall tender its full required payment under this Section to a trust  
12 account at The Chanler Group (made payable "In Trust for The Chanler Group") within two  
13 business days of the Effective Date. Such funds shall be released from the trust account upon the  
14 Court's approval and entry of this Consent Judgment.

15 **4.5 Payment Procedures**

16 **4.5.1 Issuance of Payments.**

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

19 The Chanler Group  
20 Attn: Proposition 65 Controller  
21 2560 Ninth Street  
22 Parker Plaza, Suite 214  
23 Berkeley, CA 94710

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

27 For United States Postal Service Delivery:

28 Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 1001 I Street  
6 Sacramento, CA 95814

7 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA  
8 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in  
9 Section 4.5.1(a) above, as proof of payment to OEHHA.

10 4.5.3 Tax Documentation. CMC shall issue a separate 1099 form for each  
11 payment required by this Section to: (a) Peter Englander, whose address and tax identification  
12 number shall be furnished upon request after this Consent Judgment has been fully executed by the  
13 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard  
14 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box  
15 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set  
16 forth in Section 4.5.1(a) above.

17 **5. CLAIMS COVERED AND RELEASED**

18 **5.1 Englander's Release of Proposition 65 Claims**

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

1 component parts thereof to CMC, except any entities upstream of CMC that is a Retailer of a  
2 Private Labeled Covered Product shall be released as to the Private Labeled Covered Products  
3 offered for sale in California, or to California Customers, by the Retailer in question.

4 **5.2 Englander's Individual Releases of Claims**

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

20 **5.3 CMC's Release of Englander**

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

27 \_\_\_\_\_  
28 <sup>7</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as  
otherwise specified.



1 **8. NOTICES**

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

6 To CMC:	To Englander:
7 At the address shown on Exhibit A	Proposition 65 Coordinator
8	The Chanler Group
9	2560 Ninth Street
10	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

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

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

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

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

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

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

21 11.1 In addition to the Products, where CMC has identified on Exhibit A additional  
22 products that contain TDCPP and/or TCEP and that are sold or offered for sale by it in California,  
23 or to California Customers ("Additional Products"), then by no later than October 15, 2013, CMC  
24 may provide Englander with additional information or representations necessary to enable them to  
25 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &  
26 Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam that is  
27 supplied, shaped or manufactured for use as a component of a product, such as upholstered  
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1 furniture, is specifically excluded from the definition of Additional Products and shall not be  
2 identified by CMC on Exhibit A as an Additional Product. Except as agreed upon by Englander,  
3 CMC shall not include a product, as an Additional Product, that is the subject of an existing 60-day  
4 notice issued by Englander or any other private enforcer at the time of execution. After receipt of  
5 the required information, Englander agrees to issue a supplemental 60-day notice in compliance  
6 with all statutory and regulatory requirements for the Additional Products. Englander will, and in  
7 no event later than October 1, 2014, prepare and file an amendment to this Consent Judgment to  
8 incorporate the Additional Products within the defined term "Products" and serve a copy thereof  
9 and its supporting papers (including the basis for supplemental stipulated penalties, if any) on the  
10 Office of the California Attorney General; upon the Court's approval and finding that the  
11 supplemental stipulated penalty amount, if any, is reasonable the Additional Products shall become  
12 subject to Section 5.1 in addition to Section 5.2. CMC shall, at the time it elects to utilize this  
13 Section and tenders the additional information or representations regarding the Additional Products  
14 to Englander, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as  
15 stipulated penalties and attorneys' fees and costs incurred by Englander in issuing the new notice  
16 and engaging in other reasonably related activities, which may be released from the trust as  
17 awarded by the Court upon Englander's application. Any fee award associated with the  
18 modification of the Consent Judgment to include Additional Product shall not offset any associate  
19 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be  
20 refunded to CMC within 15 days). Such payment shall be made "In trust for The Chanler Group"  
21 and delivered as per Section 4.5.1(a) above.

22       11.2 Englander and CMC agree to support the entry of this agreement as a Consent  
23 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The  
24 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed  
25 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall  
26 draft and file. If any third party objection to the noticed motion is filed, Englander and CMC shall  
27 work together to file a reply and appear at any hearing before the Court. This provision is a  
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1 material component of the Consent Judgment and shall be treated as such in the event of a breach.

2 **12. DISMISSAL OF CM INTERNATIONAL, INC.**

3 Within ten days of an order entered by the Court granting approval of this Consent  
4 Judgment, Englander shall file a Request for Dismissal without prejudice as to defendant CM  
5 International, Inc.

6 **13. 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.

10 **14. AUTHORIZATION**

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

14 AGREED TO:

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\_\_\_\_\_  
17 Plaintiff Peter Englander

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Date: October \_\_, 2013

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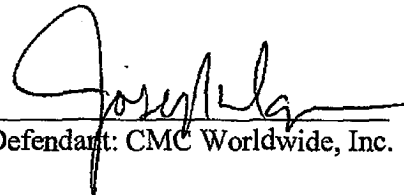
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AGREED TO:

  
\_\_\_\_\_  
Defendant: CMC Worldwide, Inc.

Date: October 28, 2013

1 material component of the Consent Judgment and shall be treated as such in the event of a breach.

2 **12. DISMISSAL OF CM INTERNATIONAL, INC.**

3 Within ten days of an order entered by the Court granting approval of this Consent  
4 Judgment, Englander shall file a Request for Dismissal without prejudice as to defendant CM  
5 International, Inc.

6 **13. MODIFICATION**

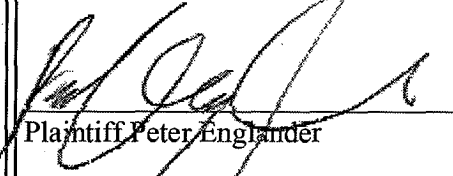
7 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
8 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
9 of any party and entry of a modified Consent Judgment by the Court.

10 **14. AUTHORIZATION**

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

14 AGREED TO:

AGREED TO:

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17 Plaintiff Peter Englander

\_\_\_\_\_  
Defendant: CMC Worldwide, Inc.

18 Date: October 24, 2013

Date: October \_\_, 2013

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EXHIBIT A

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I. Name of Settling Defendant (Mandatory)

CMC Worldwide, Inc.

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

CM International, Inc.; RC Willey Home Furnishings

III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

Foam-cushioned pads for children and infants to lie on, such as rest mats

Upholstered furniture

Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

Car seats, strollers

Other (specify): Padded Upholstered Stools containing TDCPP

IV. Types of Additional Products CMC Worldwide, Inc. Elects to Address (if any):

V. CMC Worldwide, Inc.'s Required Settlement Payments

A. Civil Penalties for CMC Worldwide, Inc.: \$53,000, as follows:

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

\$24,000 second payment due on or before January 15, 2014, of which \$15,000 may be waived pursuant to Section 4.1.4(i) and \$9,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before November 30, 2014, of which \$9,000 may be waived pursuant to Section 4.1.4(ii) and \$5,000 may be waived pursuant to Section 4.1.4(iv).

VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

A. Fees and Costs for CMC Worldwide, Inc.: \$37,000.

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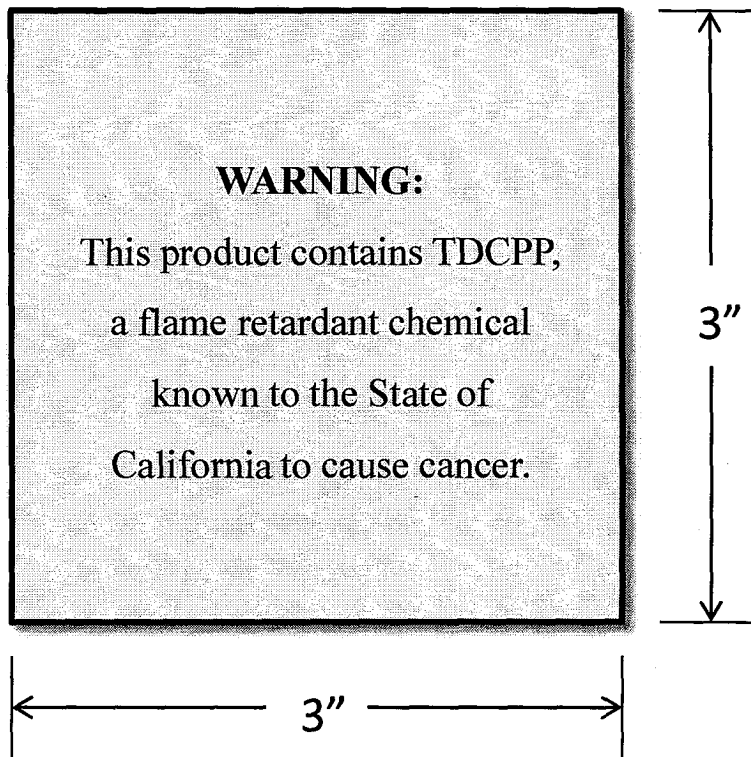
VII. Person(s) to receive Notices pursuant to Section 8:

Paul S. Rosenlund, Esq.  
Duane Morris LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105

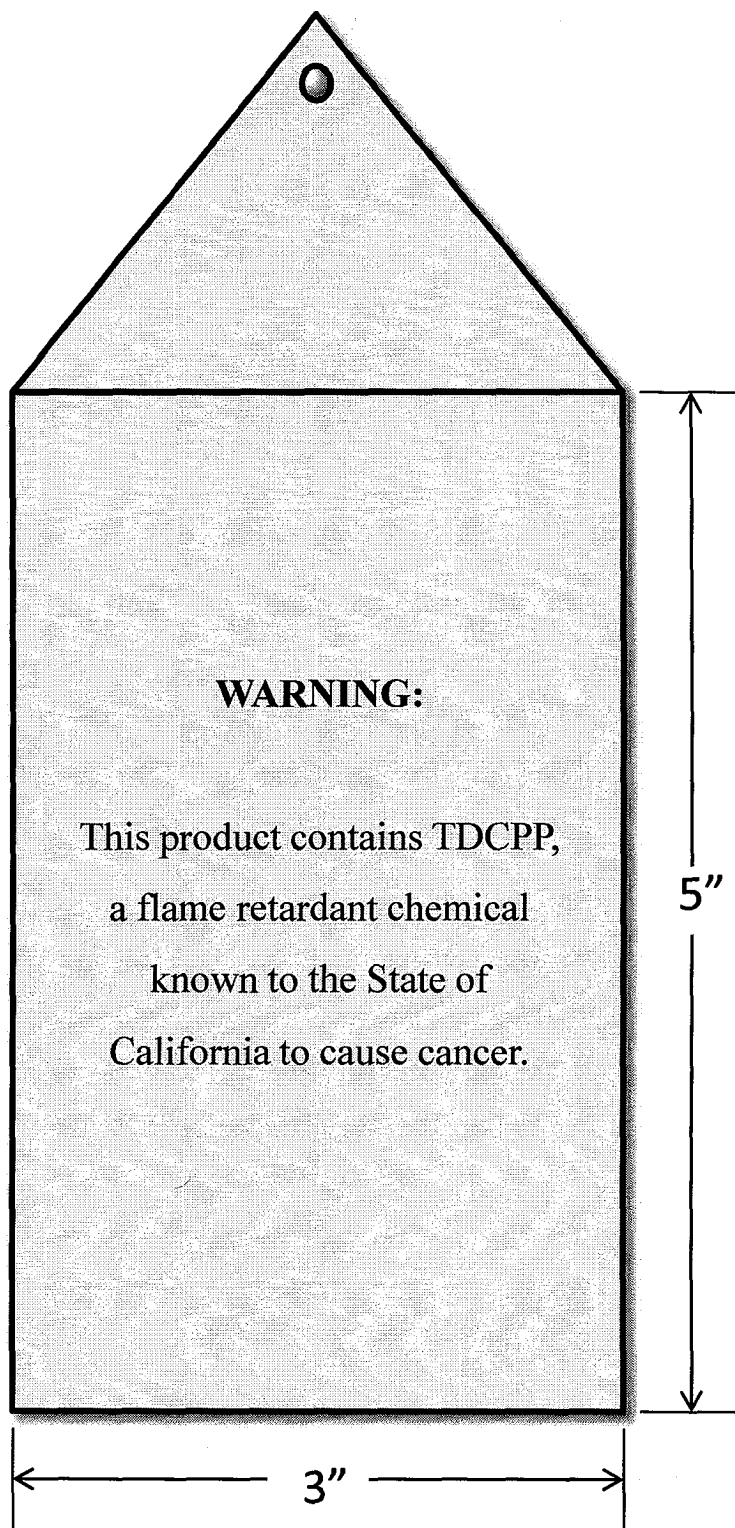
Joseph Ngo, President  
CMC Worldwide, Inc.  
West Holt Avenue  
Pomona, CA 91768

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EXHIBIT B  
(ILLUSTRATIVE WARNINGS)



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



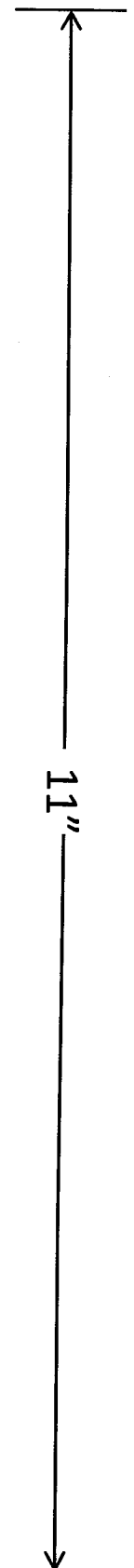
**INSTRUCTIONS:** Print warning on each side of hang tag.  
Minimum 12 pt. font. "WARNING:" text must be bold.



**WARNING:**

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to  
cause cancer.



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