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

PETER ENGLANDER,)	Case No. RG 13-676717
)	
Plaintiff,)	
)	Assigned for All Purposes to
v.)	Judge George C. Hernandez, Jr.,
)	Department 17
IDEAVILLAGE PRODUCTS CORP; et)	
al.,)	
)	[PROPOSED] CONSENT JUDGMENT AS
Defendants.)	TO IDEAVILLAGE PRODUCTS CORP
)	
)	(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 Ideavillage Products Corp (“Ideavillage”), with Englander and Ideavillage
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 Ideavillage Products Corp**

11 Ideavillage 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 Ideavillage 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 tris(2-chloroethyl) phosphate (“TCEP”) without the
18 requisite Proposition 65 health hazard warnings. Englander alleges that TDCPP and TCEP escapes
19 from foam padding, leading to human exposures.

20 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed
21 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
22 warning” requirements of Proposition 65 one year later on April 1, 1993. Cal. Code Regs., tit. 27, §
23 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

24 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and
25 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
26 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
27 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

1 TDCPP and TCEP shall hereinafter be collectively referred to as the “Listed Chemicals.”

2 **1.5 Product Description**

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

8 **1.6 Notices of Violation**

9 On or about February 8, 2013, Englander issued to Ideavillage and certain requisite public
10 enforcement agencies a “60-Day Notice of Violation” (“TDCPP Notice”) that provided the
11 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
12 customers, consumers, and workers in California that the Products expose users to TDCPP.

13 On or about March 13, 2013, Englander issued to Ideavillage and certain requisite public
14 enforcement agencies a “60-Day Notice of Violation” (“TCEP Notice”) that provided the recipients
15 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
16 consumers and workers in California that the Products expose users to TCEP.

17 The TDCPP Notice and TCEP Notice shall hereinafter collectively be referred to as the
18 “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced or is
19 diligently prosecuting the allegations set forth in the Notices.

20 **1.7 Complaint**

21 On April 23, 2013, Englander filed a Complaint in the Superior Court in and for the County
22 of Alameda against Ideavillage, other defendants and Does 1 through 150, *Peter Englander v.*
23 *Ideavillage Products Corp, et al.*, Case No. RG 13-676717, alleging violations of Proposition 65,
24 based in part on the alleged unwarned exposures to TCEP contained in the Products. On August 1,
25 2013, Englander filed a First Amended Complaint (“Complaint”), alleging additional violations of
26 Proposition 65 against Ideavillage, including unwarned exposures to TDCPP.

1 **1.8 No Admission**

2 Ideavillage denies the material factual and legal allegations contained in Englander’s
3 Notices and Complaint and maintains that all products that it has manufactured, imported,
4 distributed, and/or sold in California, including the Products, have been and are in compliance with
5 all laws. Nothing in this Consent Judgment shall be construed as an admission by Ideavillage of
6 any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this
7 Consent Judgment constitute or be construed as an admission by Ideavillage of any fact, finding,
8 conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise
9 affect Ideavillage’s obligations, responsibilities, and duties under this Consent Judgment.

10 **1.9 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
12 jurisdiction over Ideavillage as to the allegations contained in the Notices and Complaint, that
13 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce
14 the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
15 Procedure § 664.6.

16 **2. DEFINITIONS**

17 **2.1 California Customers**

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

21 **2.2 Detectable**

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

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2.3 Effective Date

“Effective Date” shall mean October 15, 2013.

2.4 Private Label Covered Products

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

2.5 Reformulated Products

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

2.6 Reformulation Standard

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

2.7 Retailer

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

3. INJUNCTIVE RELIEF: REFORMULATION

3.1 Reformulation Commitment

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

3.2 Vendor Notification/Certification

On or before the Effective Date, Ideavillage shall provide written notice to all of its then-current vendors of the Products that will be sold or offered for sale in California, or to California Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated Products for potential sale in California. In addressing the obligation set forth in the preceding sentence, Ideavillage shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. Ideavillage shall subsequently obtain written certifications, no

1 later than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products
2 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications
3 shall be held by Ideavillage for at least two years after their receipt and shall be made available to
4 Englander upon request.

5 3.3 Products No Longer in Ideavillage's Control

6 No later than 45 days after the Effective Date, Ideavillage shall send a letter, electronic or
7 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
8 October 28, 2011, supplied the item for resale in California described as an exemplar in each of the
9 Notices Ideavillage received from Englander ("Exemplar Product(s)"); and (2) any California
10 Customer and/or Retailer that Ideavillage reasonably understands or believes had any inventory for
11 resale in California of Exemplar Product(s) as of the relevant Notices' dates. The Notification
12 Letter shall advise the recipient that the Exemplar Product(s) contains TCEP and TDCPP,
13 chemicals known to the State of California to cause cancer and request that the recipient either: (a)
14 label the Exemplar Product(s) remaining in inventory for sale in California, or to California
15 Customers, pursuant to Section 3.5; or (b) return, at Ideavillage's sole expense, all units of the
16 Exemplar Product(s) held for sale in California, or to California Customers, to Ideavillage or a party
17 Ideavillage has otherwise designated. The Notification Letter shall require a response from the
18 recipient within 15 days confirming whether the Exemplar Product(s) will be labeled or returned.
19 Ideavillage shall maintain records of all correspondence or other communications generated
20 pursuant to this Section for two years after the Effective Date and shall promptly produce copies of
21 such records upon Englander's written request.

22 3.4 Current Inventory

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

1 3.5 **Product Warnings**

2 3.5.1 **Product Labeling**

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

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

10 **WARNING:** This product contains TCEP and
11 TDCPP, flame retardant chemicals
12 known to the State of California to
 cause cancer.¹

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

17 3.5.2 **Internet Website Warning**

18 A warning shall be given in conjunction with the sale of the Products to California, or
19 California Customers, via the internet, which warning shall appear on one or more web pages

20 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
21 used if Ideavillage had begun to use it, prior to the Effective Date. If Ideavillage seeks to use
22 alternative warning language, other than the language specified above or the safe harbor warning
23 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,
24 Ideavillage 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.”

25 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag
26 measuring 3” x 5”, with no less than 12 point font, with the warning language printed on each side
27 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
28 8.5” x. 11”, with no less that 32 point font, with the warning language printed on each side, which
shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a
yellow warning sticker measuring 3” x 3”, with no less than 12 point font, which shall be affixed
directly to the Product packaging.

1 displayed to a purchaser during the checkout process. The following warning statement shall be
2 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
3 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

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

5 **WARNING:** This product contains TCEP and
6 TDCPP, flame retardant chemicals
7 known to the State of California to
8 cause cancer.³

9 3.6 Alternatives to Interim Warnings

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

19 4. MONETARY PAYMENTS

20 4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

21 In settlement of all the claims referred to in this Consent Judgment, Ideavillage shall pay the
22 civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment
23 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d),
24 with 75% of the funds remitted to the California Office of Environmental Health Hazard
25 Assessment (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for
26 Englander.” Each penalty payment shall be made within two business days of the date it is due and
27 be delivered to the addresses listed in Section 4.5 below. Ideavillage shall be liable for payment of

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

1 interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are
2 not received within two business days of the due date.

3 4.1.1 Initial Civil Penalty. On or before the Effective Date, Ideavillage shall make
4 an initial civil penalty payment in the amount identified on Exhibit A.

5 4.1.2 Second Civil Penalty. On or before January 15, 2014, Ideavillage shall make
6 a second civil penalty payment in the amount identified on Exhibit A. The amount of the second
7 penalty may be reduced according to any penalty waiver Ideavillage is eligible for under Sections
8 4.1.4(i) and 4.1.4(iii), below.

9 4.1.3 Third Civil Penalty. On or before November 30, 2014, Ideavillage shall
10 make a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
11 penalty may be reduced according to any penalty waiver Ideavillage is eligible for under Sections
12 4.1.4(ii) and 4.1.4(iv), below.

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

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

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

1 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation**

2 If Ideavillage so elects on Exhibit A, a portion of the third civil penalty shall be waived, to
3 the extent that it has agreed that, as of March 15, 2014, and continuing into the future, it shall only
4 manufacture or import for distribution or sale in the California or cause to be manufactured or
5 imported for distribution or sale in California, Reformulated Products which also do not contain
6 tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per
7 million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject
8 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
9 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
10 presence, and measure the quantity of, TDBPP in a solid substance. If this option is exercised, an
11 officer or other authorized representative of Ideavillage shall provide Englander with a written
12 certification confirming compliance with such conditions, which certification must be received by
13 Englander’s counsel on or before November 15, 2014.

14 4.1.4(iii) **Partial Penalty Waiver for Withdrawal of Unreformulated**
15 **Exemplar Products from the California Market.**

16 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
17 other authorized representative of Ideavillage provides Englander with written certification, by
18 December 15, 2013, confirming that each individual or establishment in California to which it
19 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar
20 Products held for sale in California.⁴

21 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**
22 **California of Unreformulated Inventory.**

23 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
24 other authorized representative of Ideavillage provides Englander with written certification, on or
25 before November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to

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27 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander has, prior to August 31, 2013, provided Ideavillage 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 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
2 Products.

3 **4.2 Representations**

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

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

19 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

20 If Englander provides notice and appropriate supporting information to Ideavillage that
21 levels of the Listed Chemicals in excess of the Reformulation Standard have been detected in one or
22 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported
23 after a deadline for meeting the Reformulation Standard has arisen for Ideavillage under Sections
24 3.1 or 3.6 above, Ideavillage may elect to pay a stipulated penalty to relieve any further potential
25 liability under Proposition 65 or sanction under this Consent Judgment as to Products sourced from
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1 the vendor in question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100
2 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for
3 any amount in excess of the Reformulation Standards but under 250 ppm.⁶ Englander shall further
4 be entitled to reimbursement of his associated expense in an amount not to exceed \$5,000
5 regardless of the stipulated penalty level. Ideavillage under this Section must provide notice and
6 appropriate supporting information relating to the purchase (e.g. vendor name and contact
7 information including representative, purchase order, certification (if any) received from vendor for
8 the exemplar or subcategory of products), test results, and a letter from a company representative or
9 counsel attesting to the information provided, to Englander within 30 calendar days of receiving test
10 results from Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the
11 full remedies provided pursuant to this Consent Judgment and at law.

12 4.4 Reimbursement of Fees and Costs

13 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
15 this fee reimbursement issue to be resolved after the material terms of the agreement had been
16 settled. Shortly after the other settlement terms had been finalized, Ideavillage expressed a desire to
17 resolve the fee and cost issue. Ideavillage then agreed to pay Englander and his counsel under
18 general contract principles and the private attorney general doctrine codified at California Code of
19 Civil Procedure section 1021.5 for all work performed through the mutual execution of this
20 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
21 Ideavillage's attention, negotiating a settlement in the public interest, and seeking court approval of
22 the same. In addition, the negotiated fee and cost figure expressly includes the anticipated
23 significant amount of time Plaintiff's counsel will incur to monitor various provisions in this
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25 ⁵ This Section shall not be applicable where the vendor in question had previously been
26 found by Ideavillage 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 Ideavillage's vendor at a level between 100 and 249 ppm shall
not be available after July 1, 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 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
2 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
3 Section 4.5.1(a) above, as proof of payment to OEHHA.

4 4.5.3 Tax Documentation. Ideavillage shall issue a separate 1099 form for each
5 payment required by this Section to: (a) Peter Englander, whose address and tax identification
6 number shall be furnished upon request after this Consent Judgment has been fully executed by the
7 Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard
8 Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
9 4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set
10 forth in Section 4.5.1(a) above.

11 **5. CLAIMS COVERED AND RELEASED**

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

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

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

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

18 **5.3 Ideavillage’s Release of Englander**

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

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

1 **COURT APPROVAL**

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

17 **GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California.
19 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
20 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
21 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
22 inapplicable by reason of law generally as to the Products, then Ideavillage may provide written
23 notice to Englander of any asserted change in the law, and shall have no further obligations
24 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
25 affected. Nothing in this Consent Judgment shall be interpreted to relieve Ideavillage from any
26 obligation to comply with any pertinent state or federal law or regulation.

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 Ideavillage:

To Englander:

7 At the address shown on Exhibit A

8 Proposition 65 Coordinator
9 The Chanler Group
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 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 Ideavillage 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,
24 Ideavillage may provide Englander with additional information or representations necessary to
25 enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant
26 to Health & Safety Code section 25249.7, that includes the Additional Products. Polyurethane
27 foam that is supplied, shaped or manufactured for use as a component of a product, such as
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1 upholstered furniture, is specifically excluded from the definition of Additional Products and shall
2 not be identified by Ideavillage on Exhibit A as an Additional Product. Except as agreed upon by
3 Englander, Ideavillage shall not include a product, as an Additional Product, that is the subject of an
4 existing 60-day notice issued by Englander or any other private enforcer at the time of execution.
5 After receipt of the required information, Englander agrees to issue a supplemental 60-day notice in
6 compliance with all statutory and regulatory requirements for the Additional Products. Englander
7 will, and in no event later than October 1, 2014, prepare and file an amendment to this Consent
8 Judgment to incorporate the Additional Products within the defined term “Products” and serve a
9 copy thereof and its supporting papers (including the basis for supplemental stipulated penalties, if
10 any) on the Office of the California Attorney General; upon the Court’s approval and finding that
11 the supplemental stipulated penalty amount, if any , is reasonable the Additional Products shall
12 become subject to Section 5.1 in addition to Section 5.2. Ideavillage shall, at the time it elects to
13 utilize this Section and tenders the additional information or representations regarding the
14 Additional Products to Englander, tender to The Chanler Group’s trust account an amount not to
15 exceed \$8,750 as stipulated penalties and attorneys’ fees and costs incurred by Englander in issuing
16 the new notice and engaging in other reasonably related activities, which may be released from the
17 trust as 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 Ideavillage within 15 days). Such payment shall be made “In trust for The Chanler
21 Group” and delivered as per Section 4.5.1(a) above.

22 11.2 Englander and Ideavillage 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 Ideavillage
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1 shall work together to file a reply and appear at any hearing before the Court. This provision is a
2 material component of the Consent Judgment and shall be treated as such in the event of a breach.

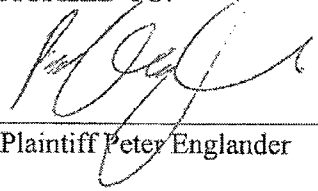
3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

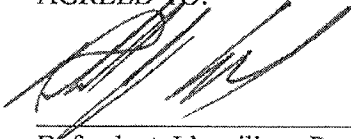
8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood, and agree to all of the terms and conditions of this
10 Consent Judgment.

11
12 AGREED TO:

13 
14 _____
15 Plaintiff Peter Englander

16
17 Date: October 10, 2013

12 AGREED TO:

13 
14 _____
15 Defendant: Ideavillage Products Corp
16 *Ronald F. Bogen*

17 Date: ~~October~~ __, 2013
18 *November 5, 2013*

EXHIBIT A

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I. Name of Settling Defendant (Mandatory)

Ideavillage Products Corp.

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

CVS Caremark Corporation; CVS Pharmacy, Inc.

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): Massaging Pillows containing TDCPP and/or TCEP

IV. Types of Additional Products Ideavillage Products Corp Elects to Address (if any):

V. Ideavillage Products Corp's Required Settlement Payments

A. Civil Penalties for Ideavillage Product Corp: \$86,000, as follows:

\$17,000 initial payment due on or before the Effective Date;

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

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

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

A. Fees and Costs for Ideavillage Products Corp: \$43,000.

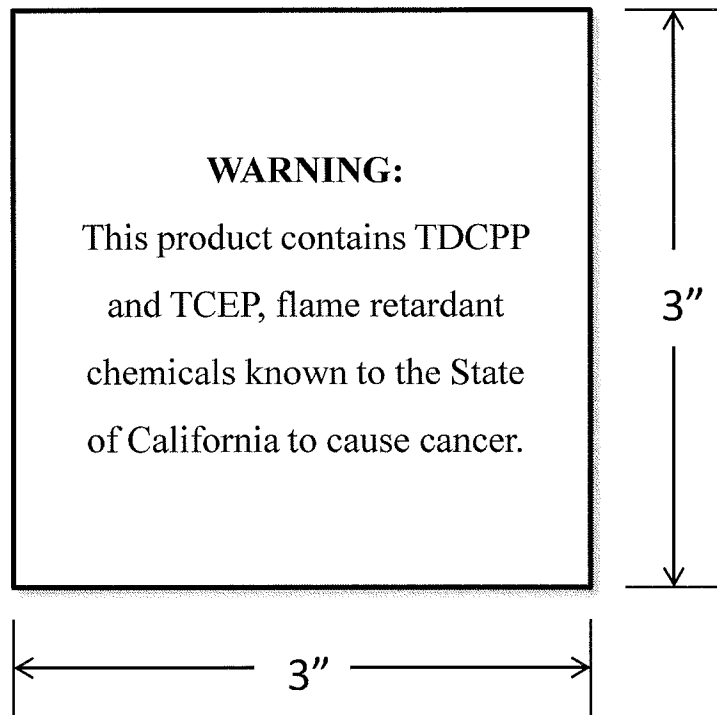
VII. Person(s) to receive Notices pursuant to Section 8

Anand Khubani, President
Ideavillage Products Corp.
155 US Route 46 West, 4th Floor
Wayne, NJ 07470

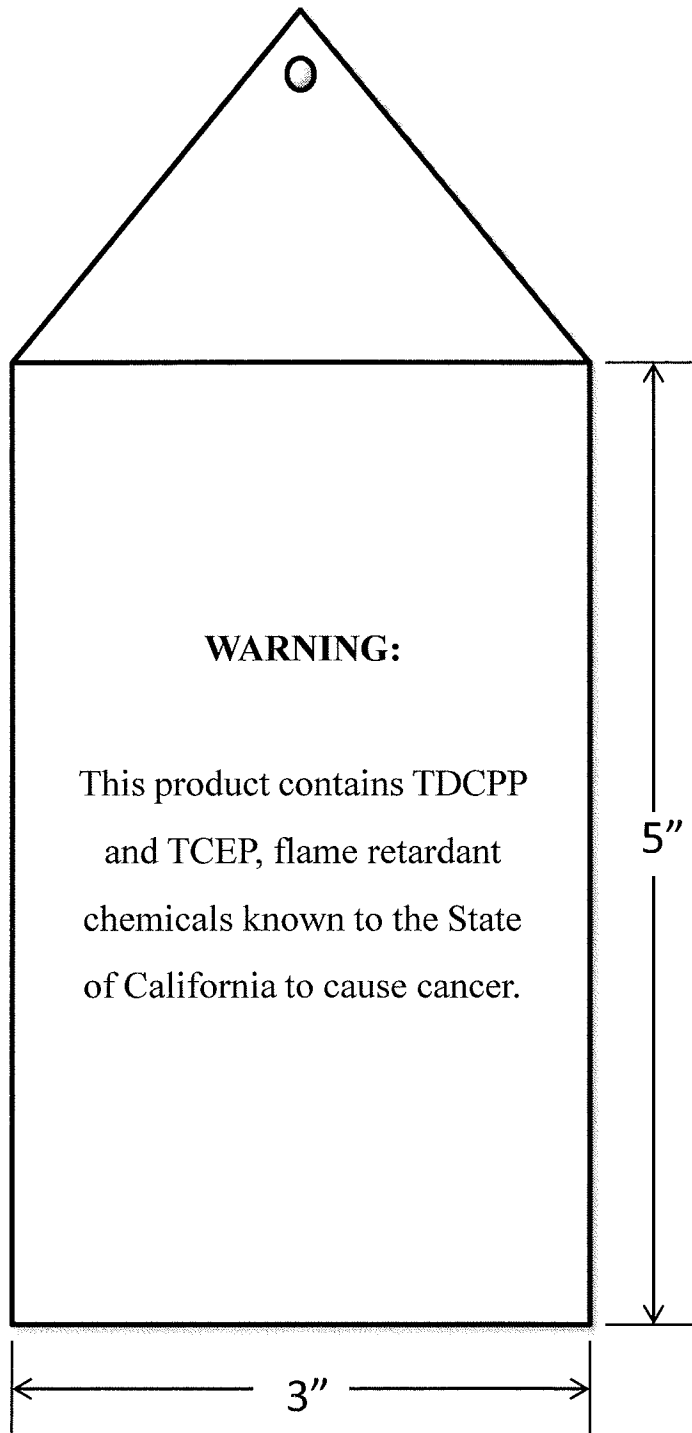
Don Beshada, Esq.
Beshada Farnese LLP
108 Wanaque Ave.
Pompton Lakes, NJ 07442

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 and TCPEP, flame
retardant chemicals known to the State of
California to cause cancer.

8.5"

11"

INSTRUCTIONS:

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