

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and Riverside Furniture Corporation (“Riverside”), with Plaintiff and Riverside
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 Riverside Furniture Corporation**

11 Riverside 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 Riverside manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings.

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
22 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges
23 that TDCPP escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

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

3 **1.6 Notice of Violation**

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

10 **1.7 Complaint**

11 On April 30, 2013, Englander filed a Complaint in the Superior Court in and for the County
12 of Alameda against Grand Basket Co., Inc., Riverside and Does 1 through 150, *Peter Englander v.*
13 *Grand Basket Co., Inc., et al.*, Case No. RG 13677613, alleging violations of Proposition 65, based
14 in part on the alleged unwarned exposures to TDCPP contained in the Products.

15 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

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

3 **2. DEFINITIONS**

4 **2.1 California Customers**

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

8 **2.2 Detectable**

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

15 **2.3 Effective Date**

16 “Effective Date” shall mean November 1, 2013.

17 **2.4 Reformulated Products**

18 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
19 and TCEP.

20 **2.5 Reformulation Standard**

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

23 **2.6 Retailer**

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

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1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

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

6 **3.2 Vendor Notification/Certification**

7 On or before the Effective Date, Riverside 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, Riverside shall not employ statements that will encourage a vendor to delay compliance
12 with the Reformulation Standard. Riverside shall subsequently obtain written certifications, no
13 later than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products
14 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications
15 shall be held by Riverside for at least two years after their receipt and shall be made available to
16 Englander upon request.

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

18 No later than 45 days after the Effective Date, Riverside 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 the Notice
21 Riverside received from Englander ("Exemplar Product(s)"); and (2) any California Customer
22 and/or Retailer that Englander 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 Riverside's sole expense, all units of the Exemplar Product(s) held for sale in
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1 California, or to California Customers, to Riverside or a party Riverside has otherwise designated.
2 The Notification Letter shall require a response from the recipient within 15 days confirming
3 whether the Exemplar Product(s) will be labeled or returned. Riverside shall maintain records of all
4 correspondence or other communications generated pursuant to this Section for two years after the
5 Effective Date and shall 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, Riverside's inventory as of or after
8 December 31, 2013, that do not qualify as Reformulated Products and that Riverside has reason to
9 believe may be sold or distributed for sale in California, shall contain a clear and reasonable
10 warning as set forth in 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 **WARNING:** This product contains TDCPP, a flame
21 retardant chemical known to the State
22 of California to cause cancer.¹

23 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
24 used if Riverside had begun to use it, prior to the Effective Date. If Riverside seeks to use
25 alternative warning language, other than the language specified above or the safe harbor warning
26 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,
27 it must obtain the Court's approval of its proposed alternative and provide all Parties and the Office
28 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.² 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, Riverside 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 customer. The
11 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.³

14 3.6 Alternatives to Interim Warnings

15 Riverside's obligations under Section 3.3 shall be relieved provided Riverside 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 Riverside under Section 3.4 shall be relieved provided Riverside
19 certifies on or before December 15, 2013 that, after June 30, 2014, it will only distribute or cause to
20 be 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(s)) meeting the Reformulation Standard. The
22 certifications provided by this Section are material terms and time is of the essence.

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

28 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, Riverside shall pay the
4 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 § 25249.12(c)(1) and (d),
6 with 75% of the funds remitted to the California Office of Environmental Health Hazard
7 Assessment (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for Peter
8 Englander.” Each penalty payment shall be made within two business days of the date it is due and
9 be delivered to the addresses listed in Section 4.5 below. Riverside shall be liable for payment of
10 interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are
11 not received within two business days of the due date.

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

14 4.1.2 Second Civil Penalty. On or before January 15, 2014, Riverside 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 Riverside is eligible for under Sections
17 4.1.4(i) and 4.1.4(iii), below.

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

22 4.1.4 Reductions to Civil Penalty Payment Amounts. Riverside 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.
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4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of Products Sold or Offered for Sale in California.

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

4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.

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

1 4.1.4(iii) **Partial Penalty Waiver for Withdrawal of Unreformulated**
2 **Exemplar Products from the California Market.**

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

8 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**
9 **California of Unreformulated Inventory.**

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

15 4.2 **Representations**

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

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

3 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

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

21 **4.4 Reimbursement of Fees and Costs**

22 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
23 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
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25 ⁴ This Section shall not be applicable where the vendor in question had previously been
26 found by Riverside 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 Riverside's vendor at a level between 100 and 249 ppm shall
not be available after July 1, 2015.

⁵ 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, Riverside expressed a desire to
3 resolve the fee and cost issue. Riverside 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 Riverside's attention, negotiating a settlement in the public interest, and seeking court approval of
8 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. Riverside more specifically agreed, upon the Court's approval
11 and entry of this Consent Judgment, to pay Englander's counsel the amount of fees and costs
12 indicated on Exhibit A. Riverside further agreed to tender and shall tender its full required payment
13 under this Section to a trust account at The Chanler Group (made payable "In Trust for The Chanler
14 Group") within two business days of the Effective Date. Such funds shall be released from the trust
15 account upon the Court's approval and entry of this Consent Judgment.

16 **4.5 Payment Procedures**

17 4.5.1 Issuance of Payments.

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

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710
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1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
2 Section 4.1, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one
3 of the following addresses, as appropriate:

4 For United States Postal Service Delivery:

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

8 For Non-United States Postal Service Delivery:

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

12 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
14 Section 4.5.1(a) above, as proof of payment to OEHHA.

15 4.5.3 Tax Documentation. Riverside shall issue a separate 1099 form for each
16 payment required by this Section to: (a) Peter Englander, whose address and tax identification
17 number shall be furnished upon request after this Consent Judgment has been fully executed by the
18 Parties; (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard
19 Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
20 4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set
21 forth in Section 4.5.1(a) above.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Englander’s Release of Proposition 65 Claims**

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

9 **5.2 Englander’s Individual Releases of Claims**

10 Englander, in his individual capacity only and *not* in his representative capacity, provides a
11 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
12 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
13 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,
14 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
15 TCEP, TDBPP in the Products manufactured, imported, distributed, or sold by Riverside prior to
16 the Effective Date. The Parties further understand and agree that this Section 5.2 release shall not
17 extend upstream to any entities that manufactured the Products or any component parts thereof, or
18 any distributors or suppliers who sold the Products or any component parts thereof to Riverside.
19 Nothing in this Section affects Englander’s right to commence or prosecute an action under
20 Proposition 65 against a Releasee that does not involve Riverside’s Products.

21 **5.3 Riverside’s Release of Englander**

22 Riverside, on behalf of itself, its past and current agents, representatives, attorneys,
23 successors, and assignees, hereby waives any and all claims against Englander and his attorneys and
24 other representatives, for any and all actions taken or statements made (or those that could have
25 been taken or made) by Englander and his attorneys and other representatives, whether in the course
26 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
27 respect to the Products.
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1 **6. 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 Riverside within 15 days.

17 **7. 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 Riverside 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 Riverside from any
26 obligation to comply with any pertinent state or federal law or regulation.

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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 Riverside:

7 At the address shown on Exhibit A

To Englander:

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 § 25249.7(f)**

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

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

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

5 **13. AUTHORIZATION**

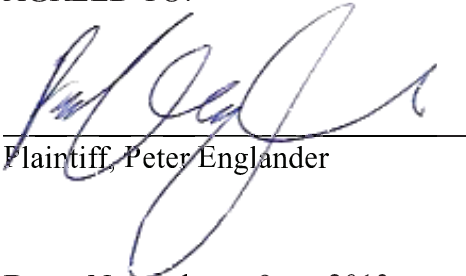
6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9

10 AGREED TO:

AGREED TO:

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Plaintiff, Peter Englander

Defendant, Riverside Furniture Corporation

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Date: November 8, 2013

Date: October __, 2013

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1 together to file a reply and appear at any hearing before the Court. This provision is a material
2 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:

AGREED TO:

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14 _____
15 Plaintiff, Peter Englander


15 Defendant, Riverside Furniture Corporation

16 Date: October __, 2013

Date: October 29, 2013

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1 EXHIBIT A

2 I. Name of Settling Defendant: RIVERSIDE FURNITURE CORPORATION

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

4 CRAZY BERNIE as to the Products manufactured, imported, distributed, and/or sold by
5 RIVERSIDE FURNITURE CORPORATION

6 III. Types of Covered Products Applicable to Riverside Furniture Corporation:

7 Padded upholstered furniture including chairs containing TDCPP

8 IV. Types of Additional Products Riverside Furniture Corporation Elects to Address (if
9 any):

10 V. Riverside Furniture Corporation's Required Settlement Payments

11 A. Penalties of \$86,000, as follows:

12 \$20,000 initial payment due on or before the Effective Date;

13 \$42,000 second payment due on or before January 15, 2014, of which
14 \$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

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

17 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
18 attributable to Riverside Furniture Corporation.: \$45,000.

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

20 Name:

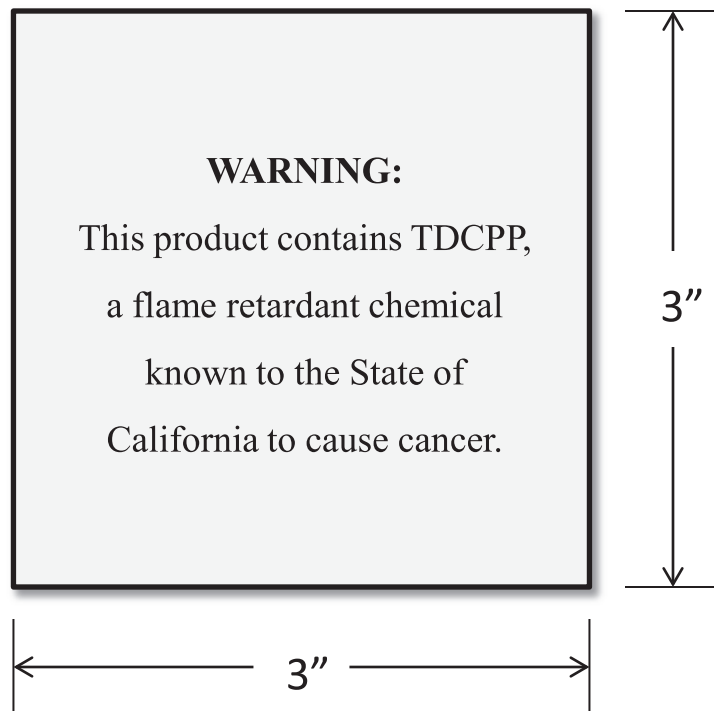
21 Greg Adams
22 Sr VP Operations/Administration
23 Riverside Furniture Corporation
1400 S 6th Street
24 PO Box 1427
Fort Smith, AR 72902-1427

25 With a copy to:

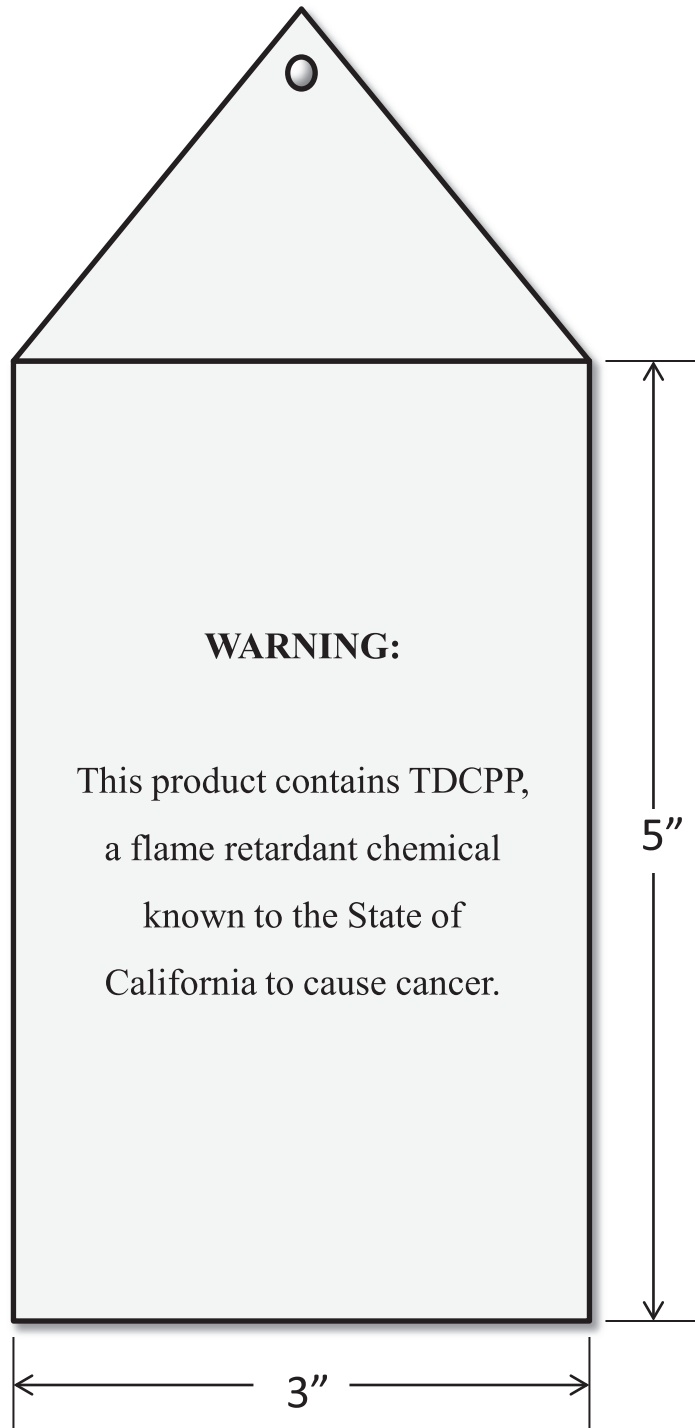
26 Jeffrey B. Margulies
27 Norton Rose Fulbright
555 South Flower Street, 41st Floor
28 Los Angeles, CA 90071

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.

11"

INSTRUCTIONS:

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