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

PETER ENGLANDER

Plaintiff,

v.

ELITE MFG. CORP., et al.

Defendants.

Case No. RG13676114

*Assigned for All Purposes to the Hon.
George C. Hernandez, Jr., Department 17*

**[PROPOSED] SETTLEMENT OF
DEFENDANT ELITE MFG. CORP.
PURSUANT TO C.C.P. SECTION 664.6**

(Health & Safety Code § 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This settlement agreement (“C.C.P. § 664.6 Settlement”) is made pursuant to California
4 Code of Civil Procedure (“C.C.P.”) section § 664.6, and entered into by and between Plaintiff
5 PETER ENGLANDER (“ENGLANDER” or PLAINTIFF) and Defendant ELITE MFG. CORP.
6 (“ELITE” or DEFENDANT) (collectively, PLAINTIFF and DEFENDANT shall be referred to as
7 the “PARTIES”).

8 **1.2 Plaintiff**

9 ENGLANDER is a resident of the State of California who seeks to promote awareness of
10 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
11 substances contained in consumer and commercial products.

12 **1.3 Defendant**

13 ELITE employs ten or more persons and is a person in the course of doing business for purposes of
14 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §
15 25249.5 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 ENGLANDER alleges, and ELITE disputes, that ELITE manufactured, imported, sold
18 and/or distributed for sale in California, upholstered furniture including stools with foam padding
19 containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), without providing the clear and
20 reasonable health hazard warnings required by Proposition 65. On October 28, 2011, California
21 listed TDCPP pursuant to Proposition 65 as a chemical known to cause cancer. TDCPP became
22 subject to the “clear and reasonable warning” requirements of the Act one year later on October
23 28, 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

24 **1.5 Product Description**

25 The category of products that is covered by this C.C.P. § 664.6 Settlement is upholstered
26 furniture with foam padding containing TDCPP, which is referred to hereinafter as “Products.”
27 Polyurethane foam that is supplied, shaped or manufactured for use as a component of another
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1 product, such as upholstered furniture, but which is not itself a finished product, is specifically
2 excluded from the definition of Products.

3 **1.6 Notice of Violation**

4 On February 8, 2013, ENGLANDER served ELITE and certain requisite public
5 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that ELITE violated
6 Proposition 65 when it failed to warn its customers, consumers, and workers in California that the
7 Products expose users to TDCPP. To the best of the PARTIES’ knowledge, no public enforcer has
8 commenced nor is diligently prosecuting the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On April 18, 2013, ENGLANDER filed the instant action (“Complaint”), naming ELITE as
11 a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

12 **1.8 No Admission**

13 ELITE denies the material, factual, and legal allegations contained in the Notice and
14 Complaint and maintains that all of the products that it has sold or distributed for sale in
15 California, including the Products, have been and are in compliance with all laws. Nothing in this
16 C.C.P. § 664.6 Settlement shall be construed as an admission by ELITE of any fact, finding,
17 conclusion of law, issue of law, or violation of law, nor shall compliance with this C.C.P. § 664.6
18 Settlement constitute or be construed as an admission by ELITE of any fact, finding, conclusion of
19 law, issue of law, or violation of law. ELITE specifically denies the allegations or that it violated
20 the warning requirement of Proposition 65. ENGLANDER and ELITE have agreed to settle this
21 case solely in order to avoid the cost and uncertainty of litigation.

22 This Section shall not, however, diminish or otherwise affect ELITE’s obligations,
23 responsibilities, and duties under this C.C.P. § 664.6 Settlement.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this C.C.P. § 664.6 Settlement only, the PARTIES stipulate that the Court
26 has jurisdiction over ELITE as to the allegations contained in the Complaint, that venue is proper
27 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
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1 of this C.C.P. § 664.6 Settlement pursuant to Proposition 65 and California Code of Civil
2 Procedure section 664.6.

3 **2. DEFINITIONS**

4 **2.1 California Customer**

5 “California Customer” shall mean any customer that ELITE reasonably understands is
6 located in California, has a California warehouse or distribution center, maintains a retail outlet in
7 California, or has distributed Products for sale in California, online via the internet or by any other
8 means, on or after January 1, 2011.

9 **2.2 No Detectable Amount**

10 The term “No Detectable Amount,” as used herein, shall mean no more than 25 parts per
11 million (“ppm”) each of TDCPP, tris(2-chloroethyl) phosphate (“TCEP”), and/or tris(2,3-
12 dibromopropyl)phosphate (“TDBPP”) in any material, component, or constituent of a subject
13 product, when analyzed by an accredited domestic laboratory pursuant to U.S. Environmental
14 Protection Agency testing methodologies 8141, 3545 and/or 8270C, or equivalent methodologies
15 utilized by federal or state agencies to determine the presence, or measure the amount of TDCPP,
16 TCEP, and/or TDBPP in a solid substance.

17 **2.3 Effective Date**

18 “Effective Date” shall mean the date that the Court grants the motion for approval of this
19 C.C.P. § 664.6 Settlement contemplated by Section 7.

20 **2.4 Private Label Covered Products**

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

24 **2.5 Reformulated Products**

25 “Reformulated Products” shall mean Products that contain No Detectable Amount of
26 TDCPP, TCEP, or TDBPP, as defined herein.

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1 **2.6 Reformulation Standard**

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

4 **2.7 Retailer**

5 “Retailer” means an individual or entity that offers a Product for sale to consumers in
6 California.

7 **2.8 The Listed Chemicals**

8 “Listed Chemicals” means TDCPP, TCEP, and/or TDBPP.

9 **3. INJUNCTIVE RELIEF: REFORMULATION**

10 **3.1 Reformulation Commitment**

11 Commencing on the Effective Date, and continuing thereafter, ELITE shall not
12 manufacture nor import for distribution or sale to California Customers, or cause to be
13 manufactured or imported for distribution or sale to California Customers, any Products that are
14 not Reformulated Products.

15 **3.2 Product Warnings**

16 **3.2.1 Product Labeling.** Any Product of ELITE that ELITE has reason to believe
17 does not meet the Reformulation Standard and which is shipped to a retailer or directly to a
18 customer by ELITE, on or after the Effective Date, shall have a warning as set forth herein. Each
19 warning shall be prominently placed with such conspicuousness when compared with other words,
20 statements, designs, or devices as to render it likely to be read and understood by an ordinary
21 individual under customary conditions before purchase. Each warning shall be provided in a
22 manner such that the consumer or user understands to which specific Product the warning applies,
23 so as to minimize the risk of consumer confusion.

24 A warning required to be provided pursuant to this C.C.P. § 664.6 Settlement shall
25 state, if the Product is not a Reformulated Product as defined in Section 2.5 herein:

1 **WARNING:** This product contains [TDCPP and/or
2 TCEP], a flame retardant chemical [or
3 chemicals] known to the State of
4 California to cause cancer.¹

5 3.2.2 **Internet Website Warning.** Any Product of ELITE that ELITE has reason
6 to believe does not meet the Reformulation Standard and which is shipped to a purchaser at a
7 California address, or to a California Customer as defined herein, by ELITE, on or after the
8 Effective Date, shall have a warning as set forth herein. A warning shall be given in conjunction
9 with the sale of the Products into California, or to California Customers online via the internet.
10 The warning shall appear on one or more web pages displayed to a purchaser prior to completing
11 payment and/or during the “checkout” process. The following warning statement shall be used and
12 shall: (a) appear adjacent to or immediately following the display, description, or price of the
13 Product; (b) be accessible via a hyperlink that appears adjacent to or immediately following the
14 display, description, or price of the Product; or (c) appear as a pop-up box. The warning, hyperlink
15 and/or pop-up box text shall be the same type size or larger than the Product description text, and
16 shall state:

17 **WARNING:** This product contains [TDCPP and/or
18 TCEP], a flame retardant chemical [or
19 chemicals] known to the State of
20 California to cause cancer.

21 **4. MONETARY PAYMENTS**

22 **4.1 Civil Penalties**

23 Pursuant to Health and Safety Code § section 25249.7(b), in settlement of all the claims
24 referred to in this C.C.P. § 664.6 Settlement, ELITE shall pay up to \$12,000 in civil penalties
25 reduced by the amount indicated in Section 4.1.2. Each penalty payment will be allocated in
26 accordance with California Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the

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28 ¹ The safe harbor warning published at 27 Cal. Code Regs. § 25603.2(a)(1) shall be deemed acceptable under
this C.C.P. § 664.6 Settlement if ELITE had employed it prior to the Effective Date. If ELITE elects to employ any
warning language or method of warning transmission other than that which is described herein or the warning
provided by 27 Cal. Code Regs. § 25603.2(a)(1), ELITE agrees that it will obtain Court approval of the alternate
warning/transmission method, and provide ENGLANDER and the Office of the Attorney General with appropriate
notice and an opportunity to comment or object before the Court acts on its request. The PARTIES agree that the
following hybrid warning language shall not be deemed to meet the requirements of 27 Cal. Code Regs. § 25601 et
seq. and shall not be used pursuant to this C.C.P. § 664.6 Settlement: (a) “cancer or birth defects or other reproductive
harm”; and (b) “cancer, birth defects or other reproductive harm.”

1 funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”),
2 and the remaining 25% of the penalty amount remitted to ENGLANDER.

3 **4.1.1 Initial Civil Penalty.** On or before the Effective Date, ELITE shall make an
4 initial civil penalty payment in the amount of four thousand dollars (\$4,000).

5 **4.1.2 Final Civil Penalty.** On or before November 15, 2014, ELITE would be
6 obligated to make a final civil penalty payment in the amount of seven thousand dollars (\$8,000).
7 As a result of ELITE’S representations that all of Products it is currently manufacturing for sale or
8 purchasing for sale in California are Reformulated Products, and its commitment to certify to the
9 same by and upon its execution of this C.C.P. § 664.6 Settlement, ENGLANDER agrees to waive
10 the final civil penalty payment in its entirety.

11 **4.2 Representations of ELITE**

12 ELITE represents that all current Products are in compliance with the Reformulation
13 Standards for TDCPP, TCEP, and TDBPP, and that the sales data and other information
14 concerning its size, knowledge of TDCPP presence, and prior compliance and/or warning efforts
15 provided to ENGLANDER is true and accurate based on its knowledge. Such representations have
16 been materially relied upon by ENGLANDER to determine the appropriate amount of civil
17 penalties to be imposed pursuant to Health and Safety Code § 25249.7(b). If, within nine months
18 of the Effective Date, ENGLANDER discovers and presents evidence to ELITE demonstrating
19 that any such representation by ELITE is materially inaccurate, then ELITE shall have 30 days to
20 meet and confer regarding ENGLANDER’s contention. Should this 30-day period pass without
21 any resolution between ENGLANDER and ELITE, ENGLANDER shall be entitled to file a
22 formal legal claim including, but not limited to, a claim for damages for breach of contract.

23 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

24 If ENGLANDER provides notice and appropriate supporting information to ELITE that
25 levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one or
26 more Products manufactured by ELITE after the Effective Date, then ELITE may elect to pay a
27 stipulated penalty of \$1,500 to relieve any further potential liability under Proposition 65 or
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1 sanction under this C.C.P. § 664.6 Settlement.² ENGLANDER shall further be entitled to
2 reimbursement of his associated expenses in an amount not to exceed \$2,500. If the PARTIES
3 proceed under this Section, ENGLANDER must provide notice and appropriate supporting
4 information relating to the purchase of the offending foam.

5 4.4 Reimbursement of Fees and Costs

6 Upon reaching an agreement as to all of the terms necessary to this C.C.P. § 664.6
7 Settlement, rather than litigate the amount of Plaintiff's fees and costs in a contested fee
8 application, the parties negotiated the amount of fees and costs to be reimbursed to ENGLANDER
9 by ELITE. As a result of these final and separate negotiations, ELITE agrees to reimburse
10 ENGLANDER and his counsel, pursuant to C.C.P. § 1021.5 and general contract principles, a total
11 of twenty-two thousand dollars (\$22,000) for all fees and costs incurred as a result of this
12 litigation. This figure includes those future fees and costs to be incurred in seeking judicial
13 approval of this C.C.P. § 664.6 Settlement as well as any other legal work performed after the
14 execution of this C.C.P. § 664.6 Settlement, but exclusive of fees and costs on appeal, if any,
15 which are incurred in an effort to obtain finality of the case.

16 ELITE represents that, as of the Effective Date, it lacks the financial capacity to
17 satisfy all of the monetary obligations provided by this C.C.P. § 664.6 Settlement, and must do so
18 in installments, as set forth below. The Parties agree, however, that in the event that ELITE fails
19 to make any payment required by this C.C.P. § 664.6 Settlement, or any payment is delayed by
20 more than ten days, all amounts owed will become due immediately.

21 4.5 Payment Procedures

22 The initial civil penalty and first portion of the attorneys' fee and cost reimbursement
23 payment due under this C.C.P. § 664.6 Settlement shall be delivered to the counsel for ELITE
24 within 10 days of the date that this agreement is fully executed by the Parties, and held in defense
25 counsel's attorney client trust account until such time as the Court grants the motion for approval of
26 the settlement contemplated by Section 6. ELITE or its counsel shall provide The Chanler Group
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28 ² Any stipulated penalty payments made pursuant to this Section shall be allocated and
remitted in the same manner as set forth in Section 4.1.

1 with written confirmation within five days of receipt that the funds have been deposited in the trust
2 account. The initial civil penalty and first portion of the attorneys' fee and cost reimbursement
3 payment shall be remitted to the counsel for ENGLANDER in accordance with this Section within
4 five days of the Court's approval of this C.C.P. § 664.6 Settlement.

5 **4.5.1 Payment Addresses.**

6 (a) All payments and tax documentation to be provided to
7 ENGLANDER and his counsel under this C.C.P. § 664.6 Settlement shall be delivered to
8 the following address:

9 The Chanler Group
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

14 (b) All payments and tax documentation to be provided to OEHHA under
15 this C.C.P. § 664.6 Settlement shall be delivered directly to OEHHA (Check Memo line
16 "Prop 65 Penalties") at one of the following addresses, as appropriate:

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery or Courier:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street
28 Sacramento, CA 95814

29 **4.5.2 Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
30 shall be mailed, simultaneous with payment to ENGLANDER, to the address provided Section
31 4.5.1(a).

32 **4.5.3 Payment Schedule**

33 All payments due under this C.C.P. § 664.6 Settlement shall be delivered according
34 to the following schedule. Within ten days of full execution of this C.C.P. § 664.6 Settlement,

1 ELITE shall deliver to its counsel to hold in trust the initial civil penalty payments to
2 ENGLANDER and OEHHA in two checks payable to (i) "OEHHA" in the amount of \$3,000; and
3 "PETER ENGLANDER, Client Trust Account" in the amount of \$1,000. On the same date (i.e.,
4 within 10 days of execution of the C.C.P. § 664.6 Settlement), ELITE will remit \$3,665 – a
5 portion of the total attorneys' fees and costs to be reimbursed – in a single check payable to "The
6 Chanler Group." Thereafter, on or before the 15th of each of the month following the Effective
7 Date, ELITE shall deliver an additional check to its counsel payable to "The "Chanler Group" in
8 the amount of \$3,667 until all of the fees to be reimbursed under Section 4.4 have been paid.
9 Following the approval of the Consent Judgment, any remaining fees and costs payments may be
10 tendered directly to The Chanler Group.

11 4.5.4 Acceleration of Payments

12 In the event that ELITE fails to make any payment under this C.C.P. § 664.6
13 Settlement within 10 days of the date that the obligation is due and owing, all sums payable under
14 this C.C.P. § 664.6 Settlement, including any civil penalty and/or attorneys' fee and cost
15 reimbursement amounts, shall become immediately due.

16 5. CLAIMS COVERED AND RELEASED

17 5.1 ENGLANDER's Release of Proposition 65 Claims

18 ENGLANDER, acting on his own behalf and in the public interest, releases ELITE, its
19 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
20 employees, attorneys, and each entity to whom ELITE directly or indirectly distributes or sells the
21 Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers,
22 franchisees, cooperative members, and licensees (collectively, "RELEASEES"), from all claims
23 alleging violations of Proposition 65 through the Effective Date a) based on unwarned exposures
24 to TDCPP in the Products, as set forth in the Notice. Compliance with the terms of this C.C.P. §
25 664.6 Settlement constitutes compliance with Proposition 65 with respect to exposures to TDCPP
26 from the Products, as set forth in the Notice. The PARTIES further understand and agree that this
27 Section 5.1 release shall extend upstream to any entity that provided any component parts for the
28 Products manufactured, distributed, or sold by ELITE, to the limited extent that said component

1 parts were used by ELITE in Products manufactured, distributed, or sold by ELITE prior to the
2 Effective Date. Further, this release shall extend downstream to any entity that retained any
3 Product of ELITE, but only as to Products of ELITE and to no others.

4 **5.2 ENGLANDER's Individual Release of Claims**

5 ENGLANDER, in his individual capacity only and *not* in any representative capacity,
6 hereby waives any and all rights and benefits which he now has, or in the future may have,
7 conferred upon him with respect to any and all legal or equitable actions that arise from or are
8 related to *Englander v. Elite Mfg. Corp.*, Alameda County Superior Court, Docket No.
9 RG13676114, the Products, or by virtue of the provisions of California Civil Code § 1542, which
10 provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
12 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
13 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
14 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
15 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

16 ENGLANDER understands and acknowledges the significance and consequence of this waiver
17 pursuant to California Civil Code §1542, and understands and acknowledges that the waiver
18 applies to any and all legal or equitable actions that arise from or are related directly or indirectly,
19 in whole or in part, to the Products, *Englander v. Elite Mfg. Corp.*, Alameda County Superior
20 Court, Docket No. RG13676114, statements made regarding *Englander v. Elite Mfg. Corp.*,
21 Alameda County Superior Court, Docket No. RG13676719, acts and omissions related to
22 investigating *Englander v. Elite Mfg. Corp.*, Alameda County Superior Court, Docket No.
23 RG13676114, and the underlying facts of the lawsuit or claims made in *Englander v. Elite Mfg.*
24 *Corp.*, Alameda County Superior Court, Docket No. RG13676114. Furthermore, ENGLANDER
25 acknowledges that he intends these consequences for any such claims related to the Products
26 which may exist as of the date of this release but which ENGLANDER does not know exist, and
27 which, if known, would materially affect his decision to enter into this Agreement, regardless of
28 whether the lack of knowledge is the result of ignorance, oversight, error, negligence or any other
cause. ENGLANDER further waives all rights to institute any form of legal or equitable action or
defense (including without limit contribution, indemnity, set-off and by right of subrogation)

1 against ELITE for any and all acts or omissions or statements made or activities directed to be
2 undertaken or activities that were undertaken by ELITE in the course of *Englander v. Elite Mfg.*
3 *Corp.*, Alameda County Superior Court, Docket No. RG13676114.

4 This release shall only apply to Products manufactured, distributed, or sold by ELITE prior
5 to the Effective Date.

6 The PARTIES further understand and agree that this Section 5.2 release shall not extend to
7 any Retailer to the extent they sell products not manufactured, distributed, or sold by any entity
8 other than ELITE, and then only as to the Products. Further, the PARTIES understand and agree
9 that this Section 5.2 release shall not extend to entities providing components for products
10 manufactured, distributed, or sold by entities other than ELITE.

11 5.3 ELITE'S Release of ENGLANDER

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

18 6. ENFORCEMENT OF SETTLEMENT TERMS

19 6.1 Actions in Event of Alleged Breach

20 In the event ENGLANDER believes ELITE has breached Section 2 of this Consent
21 Judgment, ENGLANDER shall provide written notice to ELITE setting forth the details of the
22 alleged breach, including the name and model number of the Product involved, the date of its
23 purchase, the specific location of its purchase, and the ppm of TDCPP, TCEP, and/or TDBPP
24 content ENGLANDER alleges to exist within the Product. ELITE shall have the opportunity to
25 respond to ENGLANDER's notice within 30 days after receipt of such written notice. Thereafter,
26 the Parties agree to reasonably cooperate, to meet and confer for a period of not less than 30 days,
27 and to use their best efforts, and that of their counsel, to resolve any dispute, prior to
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1 ENGLANDER taking any action to enforce the terms of this C.C.P. § 664.6 Settlement by motion,
2 application, or any other procedure available at law.

3 **7. COURT APPROVAL**

4 This C.C.P. § 664.6 Settlement is not effective until it is approved and entered by the Court
5 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
6 year after it has been fully executed by the PARTIES. ENGLANDER and ELITE agree to support
7 the entry and enforceability of this C.C.P. § 664.6 Settlement and to obtain approval of this C.C.P.
8 § 664.6 Settlement by the Court in a timely manner. The PARTIES acknowledge that, pursuant to
9 California Health and Safety Code § 25249.7(f), a noticed motion is required for judicial approval
10 of this C.C.P. § 664.6 Settlement, which ENGLANDER shall draft and file and ELITE shall
11 support, appearing at the hearing if so requested. If any third-party objection to the motion is filed,
12 ENGLANDER and ELITE agree to work together to file a reply and appear at any hearing. This
13 provision is a material component of the C.C.P. § 664.6 Settlement and shall be treated as such in
14 the event of a breach.

15 If the Court does not approve the C.C.P. § 664.6 Settlement, the PARTIES shall meet and
16 confer as to whether to modify the language or appeal the ruling. If the PARTIES do not jointly
17 agree on a course of action to take, then the case shall proceed in its normal course on the Court's
18 trial calendar. If the Court's approval is ultimately overturned by an appellate court, the PARTIES
19 shall meet and confer as to whether to modify the terms of this C.C.P. § 664.6 Settlement. If the
20 PARTIES do not jointly agree on a course of action to take, then the case shall proceed in its
21 normal course on the Court's trial calendar. In the event that this C.C.P. § 664.6 Settlement is
22 entered by the Court and subsequently overturned by any appellate court, any monies that have
23 been provided to OEHHA, ENGLANDER or his counsel pursuant to Section 3, above, shall be
24 refunded within 15 days of the appellate decision becoming final. If the Court does not approve
25 and enter the C.C.P. § 664.6 Settlement within one year of the Effective Date, any monies that
26 have been provided to OEHHA or held in trust for ENGLANDER or his counsel pursuant to
27 Section 3, above, shall be refunded to the ELITE within 15 days.

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1 **8. GOVERNING LAW**

2 The terms of this C.C.P. § 664.6 Settlement shall be governed by the laws of the State of
3 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
4 inapplicable by reason of law generally, or as to the Products, then ELITE may provide
5 ENGLANDER with notice of any asserted change in the law, and shall have no further obligations
6 pursuant to this C.C.P. § 664.6 Settlement with respect to, and to the extent that, the Products are
7 so affected. Nothing in this C.C.P. § 664.6 Settlement shall be interpreted to relieve ELITE from
8 its obligation to comply with any pertinent state or federal law or regulation.

9 **9. NOTICE**

10 Unless specified herein, all correspondence and notices required to be provided pursuant to
11 this C.C.P. § 664.6 Settlement shall be in writing and sent by: (i) personal delivery, (ii) first-class
12 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier at the
13 following addresses:

14 To ELITE:

15 Peter Luong, President
16 Elite Mfg Corp.
17 12143 Altamar Place
18 Santa Fe Springs, CA 90670

18 With a copy to:

19 Thomas H. Clarke, Jr.
20 Attn.: Roxana Riedell
21 RMKB
22 1001 Marshall St., Ste. 500
23 Redwood City, CA 94063-2052

To ENGLANDER:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

26 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

27 This C.C.P. § 664.6 Settlement may be executed in counterparts and by facsimile or portable
28 document format (pdf) signature, each of which shall be deemed, and as valid as, an original, and
all of which, when taken together, shall constitute one and the same document.

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11. COMPLIANCE WITH REPORTING REQUIREMENTS

ENGLANDER and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code §25249.7(f).

12. MODIFICATION

This C.C.P. § 664.6 Settlement may be modified only by: (i) a written agreement of the PARTIES and entry of a modified C.C.P. § 664.6 Settlement by the Court thereon; or (ii) upon a successful motion of any party and entry of a modified C.C.P. § 664.6 Settlement by the Court.

13. AUTHORIZATION

The undersigned are authorized to execute this C.C.P. § 664.6 Settlement on behalf of their respective PARTIES and have read, understood, and agree to all of the terms and conditions of this C.C.P. § 664.6 Settlement.

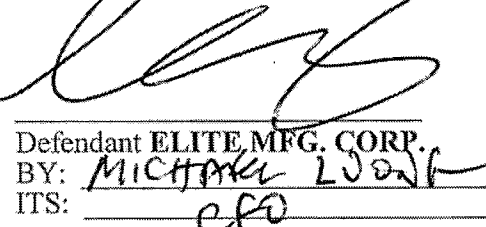
AGREED TO:



Plaintiff PETER ENGLANDER

Dated: October 20, 2014

AGREED TO:



Defendant ELITE MFG. CORP.
BY: MICHAEL LUSK
ITS: efo

Dated: 10/16/2014