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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 PETER ENGLANDER

17 Plaintiff,

18 v.

19 BENETTI'S ITALIA, INC., et al.

20 Defendants.

Case No. RG13676719

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

**[PROPOSED] SETTLEMENT OF
DEFENDANT GOMEN FURNITURE
MANUFACTURING, INC. PURSUANT TO
C.C.P. SECTION 664.6**

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

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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 GOMEN FURNITURE
6 MANUFACTURING, INC.- (“GOMEN” or DEFENDANT) (collectively, PLAINTIFF and
7 DEFENDANT shall be referred to as 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 GOMEN employs ten or more persons and is a person in the course of doing business for
14 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
15 Safety Code § 25249.5 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 ENGLANDER alleges, and GOMEN disputes, that GOMEN manufactured, imported, sold
18 and/or distributed for sale in California, upholstered furniture, including chairs and ottomans, with
19 foam padding containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), and ottomans with
20 vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”), without providing the clear
21 and reasonable health hazard warnings required by Proposition 65. On October 28, 2011,
22 California listed TDCPP pursuant to Proposition 65, as a chemical known to cause cancer. TDCPP
23 became subject to the “clear and reasonable warning” requirements of the Act one year later on
24 October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and
25 25249.10(b). On October 24, 2003, California identified and listed DEHP as a chemical known to
26 cause birth defects and other reproductive harm. DEHP became subject to the “clear and
27 reasonable warning” requirements of the Act one year later on October 24, 2004. Cal. Code Regs.,
28 tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

1 **1.5 Product Description**

2 The categories of products that are covered by this C.C.P. § 664.6 Settlement are
3 upholstered furniture with foam padding containing TDCPP (“TDCPP Products”), and ottomans
4 with vinyl/PVC upholstery containing DEHP (“DEHP Products”). TDCPP Products and
5 TDCPP/DEHP Products are collectively referred to hereinafter as “Products”, and the categories are
6 not mutually exclusive. Polyurethane foam that is supplied, shaped or manufactured for use as a
7 component of another product, such as upholstered furniture, but which is not itself a finished
8 product, is specifically excluded from the definition of Products.

9 **1.6 Notices of Violation**

10 On February 15, 2013, ENGLANDER served GOMEN and certain requisite public
11 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that GOMEN violated
12 Proposition 65 when it failed to warn its customers, consumers, and workers in California that the
13 TDCPP Products expose users to TDCPP. To the best of the PARTIES’ knowledge, no public
14 enforcer has commenced nor is diligently prosecuting the allegations set forth in the Notice.

15 On May 24, 2013, ENGLANDER served GOMEN and certain requisite public enforcement
16 agencies with a 60-Day Notice of Violation (“Second Notice”) alleging that GOMEN violated
17 Proposition 65 when it failed to warn its customers, consumers, and workers in California that the
18 DEHP/TDCPP Products expose users to TDCPP and/or DEHP. To the best of the PARTIES’
19 knowledge, no public enforcer has commenced nor is diligently prosecuting the allegations set forth
20 in the Second Notice. The Notice and Second Notice are referred to collectively as the Notices.

21 **1.7 Complaint**

22 On April 23, 2013, ENGLANDER filed the instant action (“Complaint”), naming GOMEN
23 as a defendant for the alleged violations that are the subject of the Notice. At the time the
24 Complaint was filed, however, ENGLANDER did not have standing to bring an action to enforce
25 the alleged violations that are the subject of the Second Notice. The Parties hereby stipulate and
26 agree that upon the Court’s approval and entry of this C.C.P. § 664.6 Settlement, the Complaint
27 shall be deemed amended *nunc pro tunc* to include the allegations as to the products, chemicals, and
28 violations alleged in the Second Notice.

1 **1.8 No Admission**

2 GOMEN denies each material, factual, and legal allegation contained in the Notices and
3 Complaint and maintains that all of the products that it has sold or distributed for sale in California,
4 including the Products, have been and are in compliance with all laws. Nothing in this C.C.P. §
5 664.6 Settlement shall be construed as an admission by GOMEN of any fact, finding, conclusion of
6 law, issue of law, or violation of law, nor shall compliance with this C.C.P. § 664.6 Settlement
7 constitute or be construed as an admission by GOMEN of any fact, finding, conclusion of law, issue
8 of law, or violation of law. GOMEN specifically denies the allegations or that it violated the
9 warning requirement of Proposition 65. ENGLANDER and GOMEN have agreed to settle this
10 case solely in order to avoid the cost and uncertainty of litigation.

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

13 **1.9 Consent to Jurisdiction**

14 For purposes of this C.C.P. § 664.6 Settlement only, the PARTIES stipulate that the Court
15 has jurisdiction over GOMEN as to the allegations contained in the Complaint, that venue is proper
16 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
17 this C.C.P. § 664.6 Settlement pursuant to Proposition 65 and California Code of Civil Procedure
18 section 664.6.

19 **2. DEFINITIONS**

20 **2.1 California Customer**

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

25 **2.2 No Detectable Amount**

26 The term “No Detectable Amount,” as used herein, shall mean no more than 25 parts per
27 million (“ppm”) each of TDCPP, tris(2-chloroethyl) phosphate (“TCEP”), and/or tris (2,3-
28 dibromopropyl)phosphate (“TDBPP”) in any material, component, or constituent of a subject

1 product, when analyzed by an accredited domestic laboratory pursuant to U.S. Environmental
2 Protection Agency testing methodologies 8141, 3545 and/or 8270C, or equivalent methodologies
3 utilized by federal or state agencies to determine the presence, or measure the amount, of TDCPP,
4 TCEP, and/or TDBPP in a solid substance.¹

5 2.3 Effective Date

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

8 2.4 Private Label Covered Products

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

12 2.5 Reformulated Products

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

15 2.6 Reformulation Standard

16 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
17 TDCPP, TCEP, and TDBPP, and no more than 1,000 ppm DEHP content.

18 2.7 Retailer

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

21 2.8 The Listed Chemicals

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

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26 ¹ For DEHP a Reformulated Product is a Product that contains “No Detectable Amount” of
27 DEHP. As to DEHP, No Detectable Amount is defined as no more than 1,000 ppm DEHP content
28 in any component analyzed pursuant to U.S. EPA testing methodologies 3580A and 8270C, or
equivalent methodologies utilized by any government agencies for the purpose of determining
DEHP content in a solid substance.

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on the Effective Date, and continuing thereafter, GOMEN shall not
4 manufacture nor import for distribution or sale to California Customers, or cause to be
5 manufactured or imported for distribution or sale to California Customers, any Products that are not
6 Reformulated Products.

7 **3.2 Product Warnings**

8 **3.2.1 Product Labeling.** Any Product of GOMEN that GOMEN has reason to
9 believe does not meet the Reformulation Standard and which is shipped to a retailer or directly to a
10 customer by GOMEN, on or after the Effective Date, shall have a warning as set forth herein. Each
11 warning shall be prominently placed with such conspicuousness when compared with other words,
12 statements, designs, or devices as to render it likely to be read and understood by an ordinary
13 individual under customary conditions before purchase. Each warning shall be provided in a
14 manner such that the consumer or user understands to which specific Product the warning applies,
15 so as to minimize the risk of consumer confusion.

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

18 For TDCPP Products (or Products containing TCEP):

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

22 For DEHP Products that do not contain TDCPP/TCEP:

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25 ² The safe harbor warning published at 27 Cal. Code Regs. § 25603.2(a)(1) shall be deemed acceptable under
26 this C.C.P. § 664.6 Settlement if GOMEN had employed it prior to the Effective Date. If GOMEN elects to employ
27 any warning language or method of warning transmission other than that which is described herein or the warning
28 provided by 27 Cal. Code Regs. § 25603.2(a)(1), GOMEN 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.”

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WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.

For Products which are both DEHP Products and TDCPP Products:

WARNING: This product contains TDCPP and DEHP, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

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

For TDCPP/TCEP Products:

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

For DEHP Products:

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.

For Products which are both DEHP Products and TDCPP Products:

WARNING: This product contains [TDCPP and/or DEHP], chemicals known to the State

of California to cause cancer or other reproductive harm.

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2 **4. MONETARY PAYMENTS**

3 **4.1 Civil Penalties**

4 Pursuant to Health and Safety Code § section 25249.7(b), in settlement of all the claims
5 referred to in this C.C.P. § 664.6 Settlement, GOMEN shall pay up to \$7,500 in civil penalties
6 reduced by the amount indicated in Section 4.1.2. Each penalty payment will be allocated in
7 accordance with California Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the
8 funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”),
9 and the remaining 25% of the penalty amount remitted to ENGLANDER.

10 **4.1.1 Initial Civil Penalty.** On or before the Effective Date, GOMEN shall make
11 an initial civil penalty payment in the amount of two thousand five hundred dollars (\$2,500).
12 GOMEN shall provide its payment in two checks for the following amounts made payable to: (a)
13 “OEHHA” in the amount of \$1,875; and (b) “The Chanler Group in Trust for Peter Englander” in
14 the amount of \$625.

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

21 **4.2 Representations of GOMEN**

22 GOMEN represents that all current Products are in compliance with Reformulation
23 Standards for TDCPP, TCEP, DEHP and TDBPP, and that the sales data and other information
24 concerning its size, knowledge of TDCPP/DEHP presence, and prior compliance and/or warning
25 efforts, provided to ENGLANDER is true and accurate based on its knowledge, and such
26 representations have been materially relied upon by ENGLANDER to determine the appropriate
27 amount of civil penalties to be imposed pursuant to Health and Safety Code § 25249.7(b). If,
28 within nine months of the Effective Date, ENGLANDER discovers and presents evidence to

1 GOMEN demonstrating that any such representation by GOMEN is materially inaccurate, then
2 GOMEN shall have 30 days to meet and confer regarding ENGLANDER's contention. Should this
3 30-day period pass without any resolution between ENGLANDER and GOMEN, ENGLANDER
4 shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for
5 breach of contract.

6 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

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

15 **4.4 Reimbursement of Fees and Costs**

16 Upon reaching an agreement as to all of the terms necessary to this C.C.P. § 664.6
17 Settlement, rather than litigate the amount of Plaintiff's fees and costs in a contested fee
18 application, the parties negotiated the amount of fees and costs to be reimbursed to ENGLANDER
19 by GOMEN. As a result of these final and separate negotiations, GOMEN agrees to reimburse
20 ENGLANDER and his counsel, pursuant to C.C.P. § 1021.5 and general contract principles, a total
21 of nine thousand dollars (\$9,000) for all fees and costs incurred as a result of this litigation. This
22 figure includes those future fees and costs to be incurred in seeking judicial approval of this C.C.P.
23 § 664.6 Settlement as well as any other legal work performed after the execution of this C.C.P. §
24 664.6 Settlement, but exclusive of fees and costs on appeal, if any, which is incurred in an effort to
25 obtain finality of the case.

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28 ³ 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 GOMEN represents that, as of the Effective Date, it lacks the financial capacity to satisfy all
2 of the monetary obligations provided by this C.C.P. § 664.6 Settlement, and must do so in
3 installments, as set forth below. The Parties agree, however, that in the event that GOMEN fails to
4 make any payment required by this C.C.P. § 664.6 Settlement, or any payment is delayed by more
5 than ten days, all amounts owed will become due immediately.

6 **4.5 Payment Procedures**

7 All payments under this C.C.P. § 664.6 Settlement shall be delivered to GOMEN'S counsel
8 within 10 days of the date that this agreement is fully executed by the Parties, and held in defense
9 counsel's attorney client trust account until such time as the Court grants the motion for approval of
10 the settlement contemplated by Section 6. The initial civil penalty and a portion of the attorneys'
11 fee and cost reimbursement payment shall be remitted to ENGLANDER'S counsel in accordance
12 with this Section within five days of the Court's approval of this C.C.P. § 664.6 Settlement. The
13 payments shall be as follows: within five days of the Court approving the C.C.P. § 664.6
14 Settlement, GOMEN shall provide ENGLANDER and OEHHA with their respective portions of
15 the initial civil penalty. Additionally, GOMEN shall provide ENGLANDER'S counsel with a
16 check for \$1,000 made payable to "The Chanler Group." This payment represents a portion of the
17 total fee and cost reimbursement GOMEN is required to make pursuant to Section 4.4. Thereafter,
18 on or before the 15th of each subsequent month, GOMEN shall provide ENGLANDER'S counsel
19 with a check for \$1,000 until the fees and costs enumerated in Section 4.4. have been paid in full.

20 **4.5.1 Payment Addresses.**

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

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

1 (b) All payments and tax documentation to be provided to OEHHA under
2 this C.C.P. § 664.6 Settlement shall be delivered directly to OEHHA (Check Memo line
3 “Prop 65 Penalties”) at one 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 or Courier:

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 ENGLANDER, to the address provided Section
14 4.5.1(a).

15 **5. CLAIMS COVERED AND RELEASED**

16 5.1 **ENGLANDER’s Release of Proposition 65 Claims**

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

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

5 **5.2 ENGLANDER's Individual Release of Claims**

6 ENGLANDER, in his individual capacity only and *not* in any representative capacity,
7 hereby waives any and all rights and benefits which he now has, or in the future may have,
8 conferred upon him with respect to any and all legal or equitable actions that arise from or are
9 related to *Englander v. Benetti's Italia, Inc., et al.*, Alameda County Superior Court, Docket No.
10 RG13676719, the Products, or by virtue of the provisions of California Civil Code § 1542, which
11 provides as follows:

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

15 ENGLANDER understands and acknowledges the significance and consequence of this waiver
16 pursuant to California Civil Code §1542, and understands and acknowledges that the waiver applies
17 to any and all legal or equitable actions that arise from or are related directly or indirectly, in whole
18 or in part, to the Products, *Englander v. Benetti's Italia, Inc.*, Alameda County Superior Court,
19 Docket No. RG13676719, statements made regarding *Englander v Benetti's Italia, Inc.*, Alameda
20 County Superior Court, Docket No. RG13676719, acts and omissions related to investigating
21 *Englander v. Benetti's Italia, Inc.*, Alameda County Superior Court, Docket No. RG13676719, and
22 the underlying facts of the lawsuit or claims made in *Englander v. Benetti's Italia, Inc.*, Alameda
23 County Superior Court, Docket No. RG13676719. Furthermore, ENGLANDER acknowledges that
24 he intends these consequences for any such claims related to the Products which may exist as of the
25 date of this release but which ENGLANDER does not know exist, and which, if known, would
26 materially affect his decision to enter into this Agreement, regardless of whether the lack of
27 knowledge is the result of ignorance, oversight, error, negligence or any other cause.

28 ENGLANDER further waives all rights to institute any form of legal or equitable action or defense

1 (including without limit contribution, indemnity, set-off and by right of subrogation) against
2 GOMEN for any and all acts or omissions or statements made or activities directed to be
3 undertaken or activities that were undertaken by GOMEN in the course of *Englander v. Benetti's*
4 *Italia, Inc.*, Alameda County Superior Court, Docket No. RG13676719.

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

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

12 5.3 GOMEN'S Release of ENGLANDER

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

19 6. ENFORCEMENT OF SETTLEMENT TERMS

20 6.1 Actions in Event of Alleged Breach

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

1 taking any action to enforce the terms of this C.C.P. § 664.6 Settlement by motion, application, or
2 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 GOMEN agree to
7 support the entry and enforceability of this C.C.P. § 664.6 Settlement and to obtain approval of this
8 C.C.P. § 664.6 Settlement by the Court in a timely manner. The PARTIES acknowledge that,
9 pursuant to California Health and Safety Code § 25249.7(f), a noticed motion is required for
10 judicial approval of this C.C.P. § 664.6 Settlement, which ENGLANDER shall draft and file and
11 GOMEN shall support, appearing at the hearing if so requested. If any third-party objection to the
12 motion is filed, ENGLANDER and GOMEN agree to work together to file a reply and appear at
13 any hearing. This provision is a material component of the C.C.P. § 664.6 Settlement and shall be
14 treated as such in 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 4, 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 have
26 been provided to OEHHA or held in trust for ENGLANDER or his counsel pursuant to Section 4,
27 above, shall be refunded to GOMEN 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 GOMEN 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 so
7 affected. Nothing in this C.C.P. § 664.6 Settlement shall be interpreted to relieve GOMEN from its
8 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 GOMEN:

15 Leonardo Gonzalez, President
16 Gomen Furniture Manufacturing, Inc.
17 11612 Wright Road
18 Lynwood, CA 90262

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 which
25 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.

1 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **12. MODIFICATION**

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

8 **13. AUTHORIZATION**

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

12 **AGREED TO:**

13 
14 _____
15 Plaintiff PETER ENGLANDER

16 Dated: September 22, 2014

AGREED TO:



Defendant GOMEN FURNITURE
MANUFACTURING, INC.
BY: _____
ITS: _____

Dated: 09-03-14