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

PETER ENGLANDER,
Plaintiff,
v.
GRAND BASKET CO. INC.; et al.,
Defendants.

) Case No. RG 13-677613
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO JOFRAN SALES, INC.**
)
) **(Health & Safety Code § 25249.6 et seq.)**
)
)
) Complaint Filed: April 30, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

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

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

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

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1 1.4.4 Englander alleges that Jofran manufactured, imported, sold and/or distributed
2 for sale in California, stools with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate
3 (“DEHP”) without the requisite Proposition 65 health hazard warnings.

4 1.4.5 Pursuant to Proposition 65, on October 24, 2003, California identified and
5 listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP
6 became subject to the “clear and reasonable warning” requirements of Proposition 65 one year later
7 on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
8 25249.10(b).

9 TDCPP, TCEP and DEHP shall hereinafter be collectively referred to as the “Listed
10 Chemicals.”

11 1.5 **Product Description**

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

17 1.6 **Notices of Violation**

18 On or about February 15, 2013, Englander issued to Jofran and certain requisite public
19 enforcement agencies a “60-Day Notice of Violation” (“February 15, 2013 Notice”) that provided
20 the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to
21 warn customers, consumers, and workers in California that the Products expose users to TDCPP.

22 On or about April 19, 2013, Englander issued to Jofran and certain public enforcement
23 agencies a “Supplemental 60-Day Notice of Violation” (“April 19, 2013 Notice”) that provided the
24 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
25 customers, consumers and workers in California that the Products expose users to TDCPP and
26 TCEP.

1 Based on further investigation, Englander has also issued a Second Supplemental 60-day
2 notice to Jofran on July 12, 2013 (“July 12, 2013 Notice”), alleging that certain stools with
3 vinyl/PVC upholstery contain and expose Californians to di(2-ethylhexyl)phthalate (“Phthalate
4 Products”). DEHP and other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl
5 phthalate (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and
6 other reproductive harm.

7 The February 15, 2013 Notice, April 19, 2013 Notice and July 12, 2013 Notice shall
8 hereinafter collectively be referred to as the “Notices.” To the best of the Parties’ knowledge, no
9 public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

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 Jofran, other defendants and Does 1 through 150, *Peter Englander v. Grand*
13 *Basket Co., Inc., et al.*, Case No. RG 13-677613, alleging violations of Proposition 65, based in part
14 on the alleged unwarned exposures to TDCPP contained in the Products. On July 30, 2013,
15 Englander filed a First Amended Complaint (“Complaint”), alleging additional violations of
16 Proposition 65 against Jofran, including unwarned exposures to TCEP. Upon entry of this Consent
17 Judgment, the Complaint shall be deemed amended *nunc pro tunc* to include the violations of
18 Proposition 65 alleged by Englander in the July 12, 2013 Notice.

19 1.8 No Admission

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

1 **2.5 Reformulated Products**

2 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
3 or TCEP.¹

4 **2.6 Reformulation Standard**

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

7 **2.7 Retailer**

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

10 **3. INJUNCTIVE RELIEF: REFORMULATION**

11 **3.1 Reformulation Commitment**

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

15 **3.2 Vendor Notification/Certification**

16 On or before the Effective Date, Jofran shall provide written notice to all of its then-current
17 vendors of the Products that will be sold or offered for sale in California, or to California
18 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
19 Products for potential sale in California. In addressing the obligation set forth in the preceding
20 sentence, Jofran shall not employ statements that will encourage a vendor to delay compliance with
21 the Reformulation Standard. Jofran shall subsequently obtain written certifications, no later than
22 April 1, 2014, from such vendors, and any newly engaged vendors, that the Products manufactured
23 by such vendors are in compliance with the Reformulation Standard. Certifications shall be held by
24 Jofran for at least two years after their receipt and shall be made available to Englander upon
25 request.

26 _____
27 ¹ The term “Reformulated Products” also includes Phthalate Products which contain no
more than 1000 ppm each of DEHP, BBP, and DBP.

28 ² The term “Reformulated Standard” further requires that the Phthalate Products contain no
more than 1000 ppm each of DEHP, BBP, and DBP

1 **3.3 Products No Longer in Jofran's Control**

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

19 **3.4 Current Inventory**

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

24 **3.5 Product Warnings**

25 **3.5.1 Product Labeling**

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

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

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

10 Or, for Phthalate Products:

11 **WARNING:** This product contains DEHP, a
12 chemical known to the State of
13 California to cause birth defects and
14 reproductive harm.³

15 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
16 clear and reasonable for purposes of this Consent Judgment.⁴ Provided that the other requirements
17 set forth in this Section are addressed, including as to the required warning statement and method of
18 transmission as set forth above, Jofran remains free not to utilize the template warnings.

19 ³ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 *et seq.* may
20 also be used if Jofran had begun to use it, prior to the Effective Date. If Jofran seeks to use
21 alternative warning language, other than the language specified above or the safe harbor warning
22 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,
23 it must obtain the Court's approval of its proposed alternative and provide all Parties and the Office
24 of the Attorney General with timely notice and the opportunity to comment or object before the
25 Court acts on the request. The Parties agree that the following warning language shall not be
26 deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this
27 Consent Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth
28 defects or other reproductive harm."

⁴ The characteristics of the template warnings are as follows: (a) a yellow hang tag
measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
8.5" x 11", with no less that 32 point font, with the warning language printed on each side, which
shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a
yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed
directly to the Product packaging.

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

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

14 4.1.2 Second Civil Penalty. On or before January 15, 2014, Jofran 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 Jofran 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, Jofran shall make a
19 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
20 may be reduced according to any penalty waiver Jofran is eligible for under Sections 4.1.4(ii) and
21 4.1.4(iv), below.

22 4.1.4 Reductions to Civil Penalty Payment Amounts. Jofran 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.

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

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

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

11 If Jofran so elects on Exhibit A, a portion of the third civil penalty shall be waived, to the
12 extent that it has agreed that, as of March 31, 2014, and continuing into the future, it shall only
13 manufacture or import for distribution or sale in California or cause to be manufactured or imported
14 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-
15 dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per million
16 (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject product,
17 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
18 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
19 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
20 representative of Jofran that has exercised this election shall provide Englander with a written
21 certification confirming compliance with such conditions, which certification must be received by
22 Englander’s counsel on or before November 15, 2014.

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

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

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

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

9 **4.2 Representations**

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

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

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27 ⁶ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander has, prior to August 31, 2013, provided Jofran with test results from a NVLAP
accredited laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm
pursuant to EPA testing methodologies 3545 or 8270C.

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

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

20 4.4 **Reimbursement of Fees and Costs**

21 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
23 this fee reimbursement issue to be resolved after the material terms of the agreement had been
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25 ⁷ This Section shall not be applicable where the vendor in question had previously been
26 found by Jofran to have provided unreliable certifications as to meeting the Reformulation Standard
27 in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a
28 second exceedance by Jofran's vendor at a level between 100 and 249 ppm shall not be available
after July 1, 2015.

⁸ 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 settled. Shortly after the other settlement terms had been finalized, Jofran expressed a desire to
2 resolve the fee and cost issue. Jofran then agreed to pay Englander and his counsel under general
3 contract principles and the private attorney general doctrine codified at California Code of Civil
4 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,
5 including the fees and costs incurred as a result of investigating, bringing this matter to Jofran's
6 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In
7 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of
8 time Englander's counsel will incur to monitor various provisions in this agreement over the next
9 two years, with the exception of additional fees that may be incurred pursuant to Jofran's election in
10 Section 11. Jofran more specifically agreed, upon the Court's approval and entry of this Consent
11 Judgment, to pay Englander's counsel the amount of fees and costs indicated on Exhibit A. Jofran
12 further agreed to tender and shall tender its full required payment under this Section to a trust
13 account at The Chanler Group (made payable "In Trust for The Chanler Group") within two
14 business days of the Effective Date. Such funds shall be released from the trust account upon the
15 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

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

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

7 For Non-United States Postal Service Delivery:

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

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

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

23 **5. CLAIMS COVERED AND RELEASED**

24 **5.1 Englander's Release of Proposition 65 Claims**

25 Englander, acting on his own behalf and in the public interest, releases Jofran, its parents,
26 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
27 attorneys, and each entity to whom Jofran directly or indirectly distribute or sell Products,
28 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
Chemicals in the Products, as set forth in the Notices. Compliance with the terms of this Consent
Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed

1 Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree
2 that this Section 5.1 release shall not extend upstream to any entities, other than Jofran, that
3 manufactured the Products or any component parts thereof, or any distributors or suppliers who
4 sold the Products or any component parts thereof to Jofran, except that an entity upstream of Jofran
5 that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled
6 Covered Products offered for sale in California, or to California Customers, by the Retailer in
7 question.

8 **5.2 Englander's Individual Releases of Claims**

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

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27 ⁹ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

1 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
2 inapplicable by reason of law generally as to the Products, then Jofran may provide written notice
3 to Englander of any asserted change in the law, and shall have no further obligations pursuant to
4 this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing
5 in this Consent Judgment shall be interpreted to relieve Jofran from any obligation to comply with
6 any pertinent state or federal law or regulation.

7 **8. NOTICES**

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

12 To Jofran:

13 At the address shown on Exhibit A

To Englander:

14 Proposition 65 Coordinator
15 The Chanler Group
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710-2565

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

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

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

25 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

26 Englander and his attorneys agree to comply with the reporting form requirements
27 referenced in California Health & Safety Code § 25249.7(f).
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1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 11.1 In addition to the Products, where Jofran has identified on Exhibit A additional
3 products that contain Listed Chemicals and that are sold or offered for sale by it in California, or to
4 California Customers (“Additional Products”), then by no later than October 15, 2013, Jofran may
5 provide Englander with additional information or representations necessary to enable them to issue
6 a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety
7 Code § 25249.7, that includes the Additional Products. Polyurethane foam that is supplied, shaped
8 or manufactured for use as a component of a product, such as upholstered furniture, is specifically
9 excluded from the definition of Additional Products and shall not be identified by Jofran on Exhibit
10 A as an Additional Product. Except as agreed upon by Englander, Jofran shall not include a
11 product, as an Additional Product, that is the subject of an existing 60-day notice issued by
12 Englander or any other private enforcer at the time of execution. After receipt of the required
13 information, Englander agrees to issue a supplemental 60-day notice in compliance with all
14 statutory and regulatory requirements for the Additional Products. Englander will, and in no event
15 later than October 1, 2014, prepare and file an amendment to this Consent Judgment to incorporate
16 the Additional Products within the defined term “Products” and serve a copy thereof and its
17 supporting papers (including the basis for supplemental stipulated penalties, if any) on the Office of
18 the California Attorney General upon the Court’s approval and finding that the supplemental
19 stipulated penalty amount, if any, is reasonable, the Additional Products shall become subject to
20 Section 5.1 in addition to Section 5.2. Jofran shall, at the time it elects to utilize this Section and
21 tenders the additional information or representations regarding the Additional Products to
22 Englander, tender to The Chanler Group’s trust account an amount not to exceed \$8,750 as
23 stipulated penalties and attorneys’ fees and costs incurred by Englander in issuing the new notice
24 and engaging in other reasonably related activities, which may be released from the trust as
25 awarded by the Court upon Englander’s application. Any fee award associated with the
26 modification of the Consent Judgment to include Additional Products shall not offset any associated
27 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be
28

1 refunded to Jofran within 15 days). Such payment shall be made to “in trust for The Chanler
2 Group” and delivered as per Section 4.5.1(a) above.

3 11.2 Englander and Jofran agree to support the entry of this agreement as a Consent
4 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
5 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
6 is required to obtain judicial approval of this Consent Judgment, which Englander shall draft and
7 file. If any third party objection to the noticed motion is filed, Englander and Jofran shall work
8 together to file a reply and appear at any hearing before the Court. This provision is a material
9 component of the Consent Judgment and shall be treated as such in the event of a breach.

10 **12. MODIFICATION**

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

14 **13. AUTHORIZATION**

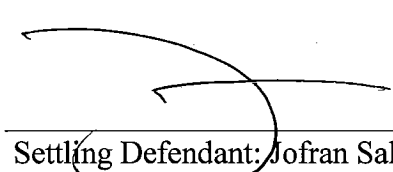
15 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood, and agree to all of the terms and conditions of this
17 Consent Judgment.


18
19 AGREED TO:

20 
21 _____
22 Plaintiff Peter Englander

23 Date: October 14, 2013

AGREED TO:

20 
21 _____
22 Settling Defendant: Jofran Sales, Inc.

23 
24 Date: October 9th, 2013

1 EXHIBIT A

2 I. Name of Settling Defendant: JOFRAN SALES, INC.

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

4 LIFESTYLE FURNITURE HOME STORE CORPORATION as to the Products sold,
5 manufactured, imported and/or distributed by JOFRAN SALES, INC.

6 III. Types of Covered Products Applicable to Jofran Sales, Inc.: Upholstered Furniture

- 7 a) Stools with Vinyl/PVC Upholstery containing DEHP
8 b) Upholstered Chairs with Foam Padding containing TDCPP and TCEP

9 IV. Types of Additional Products Jofran Sales, Inc. Elects to Address (if any):

10 V. Jofran Sales, Inc.'s Required Settlement Payments

11 A. Civil 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(ii); 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 Jofran Sales, Inc.: \$42,000.

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

20 Lynn R. Levitan
Name

21 Attorney
Title

22 Company /Firm Name

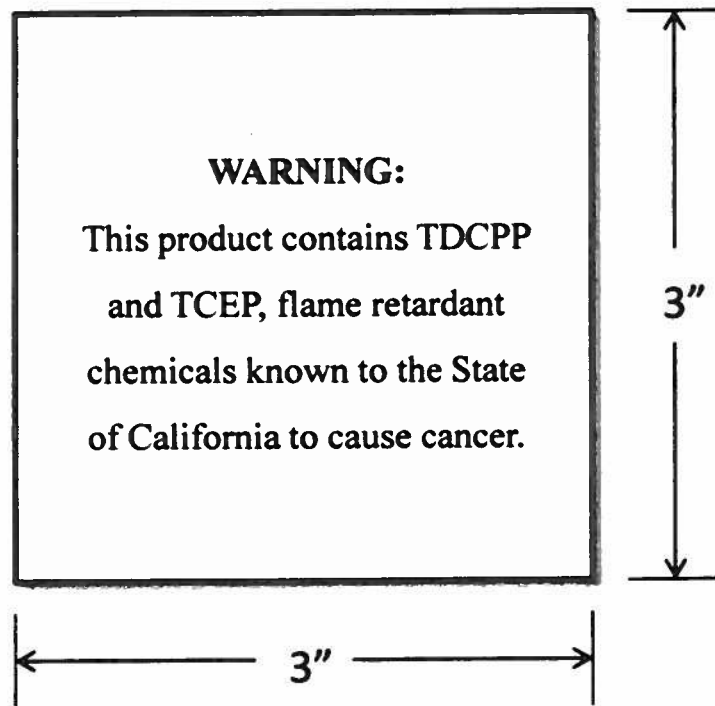
23 Address Crowell & Moring LLP

24 515 South Flower Street, 40th Floor

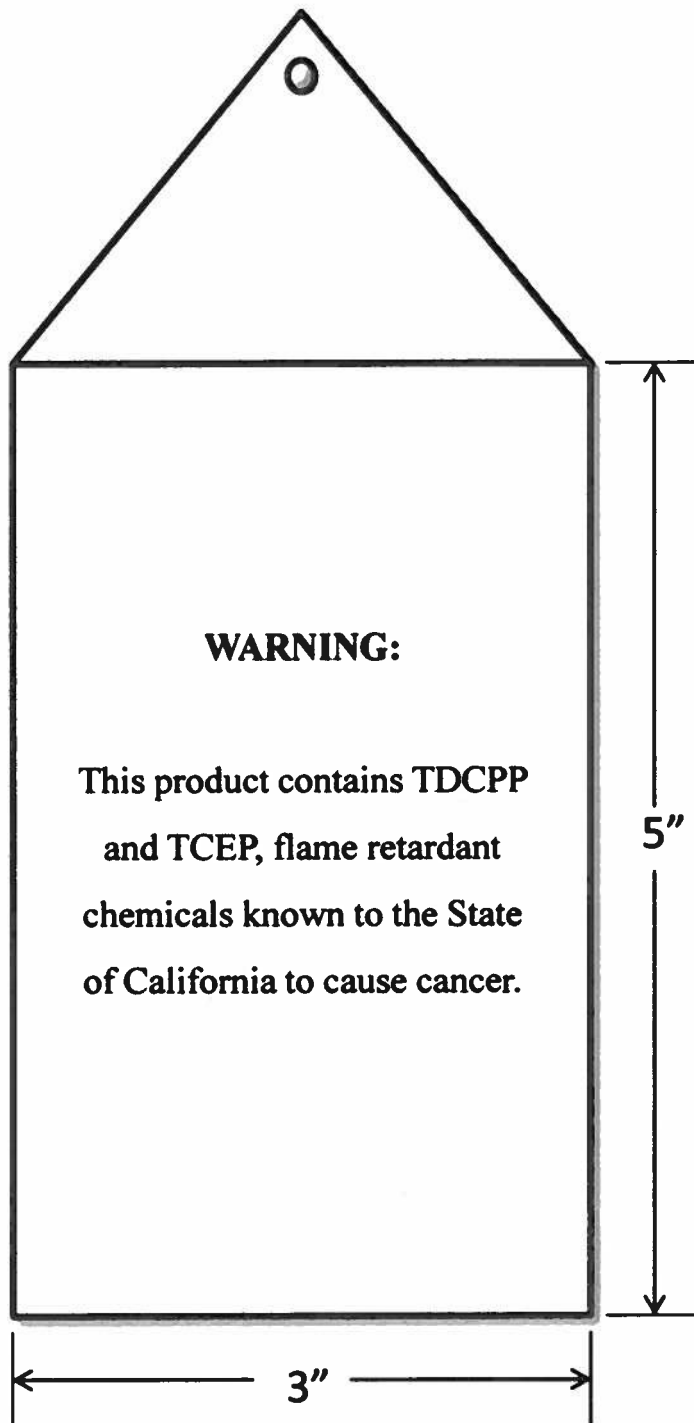
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



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

WARNING:

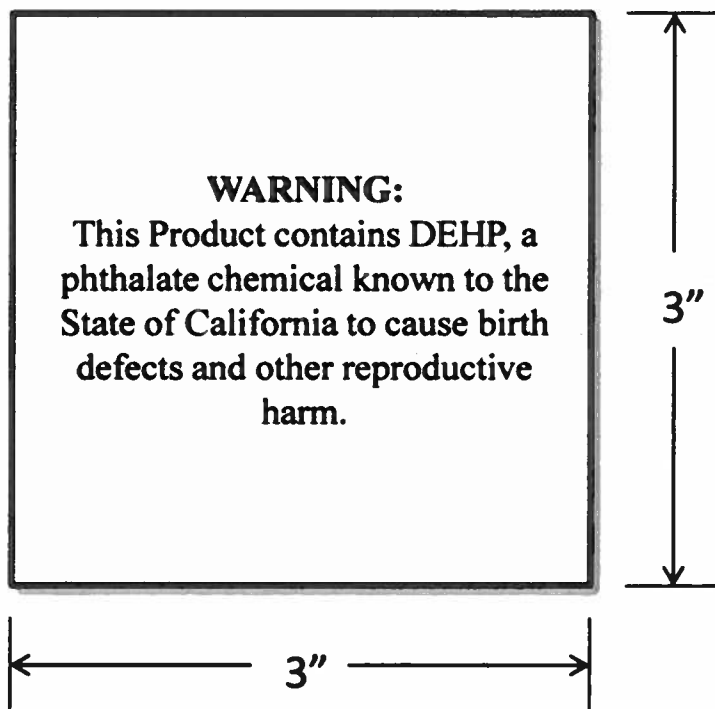
This product contains TDCCP and TCCEP, flame
retardant chemicals known to the State of
California to cause cancer.

8.5"

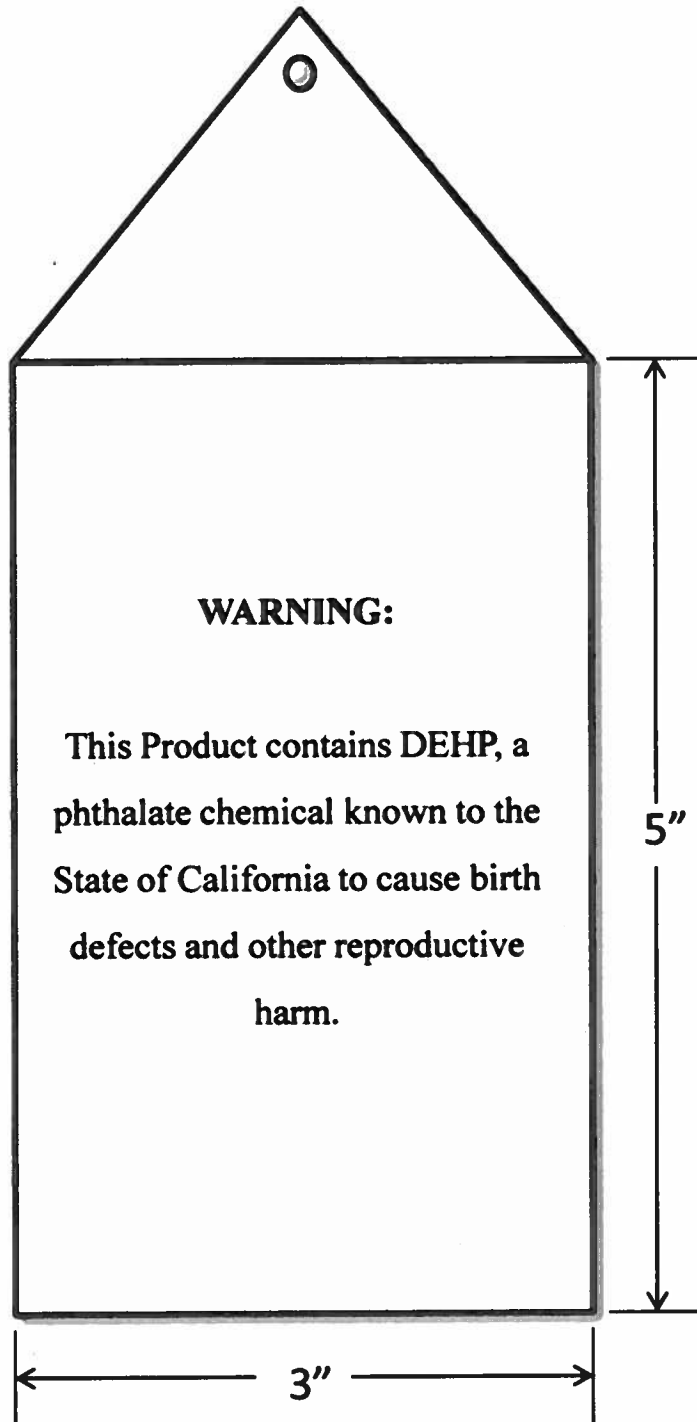
11"

INSTRUCTIONS:

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



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 DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

INSTRUCTIONS:

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