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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 GRAND BASKET CO., 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 Grand Basket Co., Inc. (“Grand Basket”), with Englander and Grand Basket
5 collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

7 Englander is an individual residing in the State of California who seeks to promote
8 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Grand Basket Co., Inc.**

11 Grand Basket employs ten or more persons and is a person in the course of doing business
12 for 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 Grand Basket manufactured, imported, sold and/or
16 distributed for sale in California products with foam cushioned components containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings. Englander alleges that TDCPP escapes from foam padding, leading to human exposures.

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

23 **1.5 Product Description**

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

3 **1.6 Notice of Violation**

4 On or about February 15, 2013, Englander issued to Grand Basket and certain requisite
5 public enforcement agencies a “60-Day Notice of Violation” (“Notice”) that provided the recipients
6 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
7 consumers, and workers in California that the Products expose users to TDCPP. To the best of the
8 Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations
9 set forth in the Notice.

10 **1.7 Complaint**

11 On April 30, 2013, Englander filed a Complaint in the Superior Court in and for the County
12 of Alameda against Grand Basket, other defendants and Does 1 through 150, *Peter Englander v.*
13 *Grand Basket Co., Inc., et al.*, Case No. RG 13-677613 (“Complaint”), alleging violations of
14 Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the
15 Products.

16 **1.8 No Admission**

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

25 **1.9 Consent to Jurisdiction**

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

4 **2. DEFINITIONS**

5 **2.1 California Customers**

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

9 **2.2 Detectable**

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

16 **2.3 Effective Date**

17 “Effective Date” shall mean April 1, 2014.

18 **2.4 Private Label Covered Products**

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

22 **2.5 Reformulated Products**

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

25 **2.6 Reformulation Standard**

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

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1 **2.7 Retailer**

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

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 **3.1 Reformulation Commitment**

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

9 **3.2 Vendor Notification/Certification**

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

20 **3.3 Products No Longer in Grand Basket’s Control**

21 No later than 30 days after the Effective Date, Grand Basket shall send a letter, electronic or
22 otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after
23 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
24 Grand Basket received from Englander (“Exemplar Product”); and (2) any California Customer
25 and/or Retailer that Grand Basket reasonably understands or believes had any inventory for resale
26 in California of Exemplar Products as of the relevant Notice’s date. The Notification Letter shall
27 advise the recipient that the Exemplar Product contains TDCPP, a chemical known to the State of
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1 California to cause cancer and request that the recipient either: (a) label the Exemplar Products
2 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or
3 (b) return, at Grand Basket's sole expense, all units of the Exemplar Products held for sale in
4 California, or to California Customers, to Grand Basket or a party Grand Basket has otherwise
5 designated. The Notification Letter shall require a response from the recipient within 20 days
6 confirming whether the Exemplar Products will be labeled or returned. Grand Basket shall
7 maintain records of all correspondence or other communications generated pursuant to this Section
8 for two years after the Effective Date and shall promptly produce copies of such records upon
9 Englander's written request.

10 3.4 Current Inventory

11 Any Products in, or manufactured and en route to, Grand Basket's inventory as of or after
12 March 31, 2014, that do not qualify as Reformulated Products and that Grand Basket has reason to
13 believe may be sold or distributed for sale in California, shall contain a clear and reasonable
14 warning as set forth in Section 3.5 below unless Section 3.6 applies.

15 3.5 Product Warnings

16 3.5.1 Product Labeling

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

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

24 **WARNING:** This product contains TDCPP, a flame
25 retardant chemical known to the State
26 of California to cause cancer.
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1 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
2 clear and reasonable for purposes of this Consent Judgment.¹ Provided that the other requirements
3 set forth in this Section are addressed, including obtaining Englander's approval where required, if
4 Grand Basket elects not to utilize the template warnings, Grand Basket remains free to provide a
5 warning in any other manner meeting the requirements of 27 CCR § 25601.

6 3.5.2 Internet Website Warning

7 A warning shall be given in conjunction with the sale of the Products to California, or
8 California Customers, via the internet, which warning shall appear on one or more web pages
9 displayed to a purchaser during the checkout process. The following warning statement shall be
10 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
11 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

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

13 **WARNING:** This product contains TDCPP, a flame
14 retardant chemical known to the State
if California to cause cancer.

15 3.6 Alternatives to Interim Warnings

16 The obligations of Grand Basket under Section 3.3 shall be relieved provided Grand Basket
17 certifies on or before April 1, 2014 that only Exemplar Products meeting the Reformulation
18 Standard will be offered for sale in California, or to California Customers for sale in California,
19 after April 1, 2014. The obligations of Grand Basket under Section 3.4 shall be relieved provided
20 Grand Basket certifies on or before April 1, 2014 that, after June 30, 2014, it will only distribute or
21 cause to be distributed for sale in, or sell in, California, or to California Customers for sale in
22 California, Products (i.e., Products beyond the Exemplar Products) meeting the Reformulation
23 Standard. The certifications provided by this Section are material terms and time is of the essence.

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25 ¹ The characteristics of the template warnings are as follows: (a) a yellow hang tag
26 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
27 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
28 8.5" x. 11", with no less that 32 point font, with the warning language printed on each side, which
shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a
yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed
directly to the Product packaging.

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

12 4.1.1 Initial Civil Penalty. Within five days of the mutual execution of this
13 Consent Judgment, Grand Basket shall issue a check for its initial civil penalty payment in the
14 amount identified on Exhibit A to “Wilson Elser Moskowitz Edelman & Dicker LLP.” Wilson
15 Elser Moskowitz Edelman & Dicker LLP shall provide The Chanler Group with written
16 confirmation within five days of receipt that the funds have been deposited in a trust account.
17 Within two days of the date that this Consent Judgment is approved by the Court, Wilson Elser
18 Moskowitz Edelman & Dicker LLP shall issue two separate checks for the initial civil penalty
19 payment to “OEHHA” and “The Chanler Group in Trust for Peter Englander.”

20 4.1.2 Second Civil Penalty. On or before June 15, 2014, Grand Basket shall make
21 a second civil penalty payment in the amount identified on Exhibit A. The amount of the second
22 penalty may be reduced according to any penalty waiver Grand Basket is eligible for under Sections
23 4.1.4(i) and 4.1.4(iii), below.

24 4.1.3 Third Civil Penalty. On or before December 30, 2014, Grand Basket shall
25 make a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
26 penalty may be reduced according to any penalty waiver Grand Basket is eligible for under Sections
27 4.1.4(ii) and 4.1.4(iv), below.

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1 4.1.4 Reductions to Civil Penalty Payment Amounts. Grand Basket may reduce
2 the amount of the second and/or third civil penalty payments identified on Exhibit A by providing
3 Englander with certification of certain efforts undertaken to reformulate their Products or limit the
4 ongoing sale of non-reformulated Products in California. The options to provide a written
5 certification in lieu of making a portion of a civil penalty payment constitute material terms of this
6 Consent Judgment, and with regard to such terms, time is of the essence.

7 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**
8 **Products Sold or Offered for Sale in California.**

9 If Grand Basket so elects on Exhibit A, a portion of the second civil penalty shall be waived,
10 to the extent that it has agreed that, as of April 15, 2014, and continuing into the future, it shall only
11 manufacture or import for distribution or sale to California Customers or cause to be manufactured
12 or imported for distribution or sale to California Customers, Reformulated Products. If this option
13 is exercised, an officer or other authorized representative of Grand Basket shall provide Englander
14 with a written certification confirming compliance with such conditions, which certification must
15 be received by Englander’s counsel on or before April 1, 2014.

16 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation**

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

1 written certification confirming compliance with such conditions, which certification must be
2 received by Englander's counsel on or before December 15, 2014.

3 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
4 **Exemplar Products from the California Market.**

5 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
6 other authorized representative of Grand Basket provides Englander with written certification, by
7 April 15, 2014, confirming that each individual or establishment in California to which it supplied
8 the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products
9 held for sale in California.

10 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
11 **California of Unreformulated Inventory.**

12 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
13 other authorized representative of Grand Basket provides Englander with written certification, on or
14 before December 31, 2014, confirming that, as of July 1, 2014, it has and will continue to distribute,
15 offer for sale, or sell in California, or to California Customers, only Reformulated Products.

16 **4.2 Representation**

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

1 Grand Basket further represents that in implementing the requirements set forth in Section
2 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
3 reformulation of its Products and Additional Products on a nationwide basis and not employ
4 statements that will encourage a vendor to limit its compliance with the Reformulation Standards to
5 goods intended for sale to California Customers.

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

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

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26 ² This Section shall not be applicable where the vendor in question had previously been
27 found by Grand Basket to have provided unreliable certifications as to meeting the Reformulation
28 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
penalty for a second exceedance by Grand Basket's vendor at a level between 100 and 249 ppm
shall not be available after July 1, 2015.

³ 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.

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4.4 Reimbursement of Fees and Costs

The Parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Grand Basket expressed a desire to resolve the fee and cost issue. Grand Basket then agreed to pay Englander and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this agreement, including the fees and costs incurred as a result of investigating, bringing this matter to Grand Basket’s attention, negotiating a settlement in the public interest, and seeking court approval of the same. In addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of time Plaintiff’s counsel will incur to monitor various provisions in this agreement over the next two years, with the exception of additional fees that may be incurred pursuant to Grand Basket’s election in Section 11. Grand Basket more specifically agreed, upon the Court’s approval and entry of this Consent Judgment, to pay Englander’s counsel the amount of fees and costs indicated on Exhibit A. Grand Basket shall, within five days of the mutual execution of this Consent Judgment by the Parties, issue a check payable to “Wilson Elser Moskowitz Edelman & Dicker LLP” in the amount of fees and costs indicated on Exhibit A to be held in trust by Wilson Elser Moskowitz Edelman & Dicker LLP for The Chanler Group. Wilson Elser Moskowitz Edelman & Dicker LLP shall provide The Chanler Group with written confirmation within five days of receipt that the funds have been deposited in a trust account. Within two business days of the date this Consent Judgment is approved by the Court, Wilson Elser Moskowitz Edelman & Dicker LLP shall issue a check payable to “The Chanler Group” in amount indicated on Exhibit A to the address found in Section 8 below.

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4.5 Payment Procedures

4.5.1 Issuance of Payments.

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

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

4.5.3 Tax Documentation. Grand Basket shall issue a separate 1099 form for each payment required by this Section to: (a) Peter Englander, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box

1 4010, Sacramento, CA 95814; and (c) “The Chanler Group” (EIN: 94-3171522) to the address set
2 forth in Section 4.5.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Englander’s Release of Proposition 65 Claims**

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

19 **5.2 Englander’s Individual Releases of Claims**

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

10 5.3 Grand Basket's Release of Englander

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

17 6. COURT APPROVAL

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
20 after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment,
21 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
22 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
23 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
24 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
25 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
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27 ⁴ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

1 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by
2 the Court and subsequently overturned by any appellate court, any monies that have been provided
3 to OEHHA, Englander or his counsel pursuant to Section 4, above, shall be refunded within 15 days
4 of the appellate decision becoming final. If the Court does not approve and enter the Consent
5 Judgment within one year of the Effective Date, any monies that have been provided to OEHHA or
6 held in trust for Englander or his counsel pursuant to Section 4, above, shall be refunded to Grand
7 Basket within 15 days.

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of California.
10 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
11 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
12 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
13 inapplicable by reason of law generally as to the Products, then Grand Basket may provide written
14 notice to Englander of any asserted change in the law, and shall have no further obligations
15 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
16 affected. Nothing in this Consent Judgment shall be interpreted to relieve Grand Basket from any
17 obligation to comply with any pertinent state or federal law or regulation.

18 **8. NOTICES**

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

23 To Grand Basket:

24 At the address shown on Exhibit A

To Englander:

25 Proposition 65 Coordinator
26 The Chanler Group
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

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

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

7 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

10 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

11 11.1 In addition to the Products, where Grand Basket has identified on Exhibit A
12 additional products that contain TDCPP and/or TCEP and that are sold or offered for sale by it in
13 California, or to California Customers (“Additional Products”), then by no later than April 15,
14 2014, Grand Basket may provide Englander with additional information or representations
15 necessary to enable him to issue a 60-Day Notice of Violation and valid Certificate of Merit
16 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.
17 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
18 such as upholstered furniture, is specifically excluded from the definition of Additional Products
19 and shall not be identified by Grand Basket on Exhibit A as an Additional Product. Except as
20 agreed upon by Englander, Grand Basket shall not include a product, as an Additional Product, that
21 is the subject of an existing 60-day notice issued by Englander or any other private enforcer at the
22 time of execution. After receipt of the required information, Englander agrees to issue a
23 supplemental 60-day notice in compliance with all statutory and regulatory requirements for the
24 Additional Products. Englander will, and in no event later than October 1, 2014, prepare and file an
25 amendment to this Consent Judgment to incorporate the Additional Products within the defined
26 term “Products” and, upon the Court’s approval thereof, the Additional Products shall become
27 subject to Section 5.1 in addition to Section 5.2. Grand Basket shall, at the time it elects to utilize
28

1 this Section and tenders the additional information or representations regarding the Additional
2 Products to Englander, tender to The Chanler Group's trust account an amount not to exceed \$8,750
3 as stipulated penalties and attorneys' fees and costs incurred by Englander in issuing the new notice
4 and engaging in other reasonably related activities, which may be released from the trust as
5 awarded by the Court upon Englander's application. (Any tendered funds remaining in the trust
6 thereafter shall be refunded to Grand Basket within 15 days). Such payment shall be made payable
7 "In trust for The Chanler Group" and delivered as per Section 4.5.1(a) above.

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

16 **12. MODIFICATION**

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

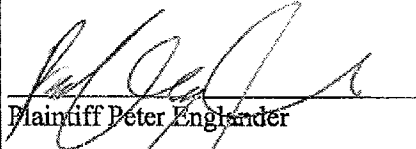
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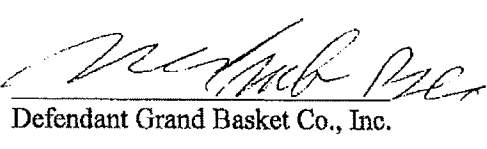
1 **13. AUTHORIZATION**

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

5
6 AGREED TO:

AGREED TO:

7
8 
9 Plaintiff Peter Englander


Defendant Grand Basket Co., Inc.

10 Date: March 21, 2014

Date: March 19, 2014

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EXHIBIT A

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I. Name of Settling Defendant (Mandatory)

Grand Basket Co., Inc.

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

III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

Foam-cushioned pads for children and infants to lie on, such as rest mats

Upholstered furniture

Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

Car seats, strollers

Other (specify): Padded Upholstered Patio Chairs

IV. Types of Additional Products Grand Basket Co., Inc. Elects to Address (if any):

V. Grand Basket Co, Inc.'s Required Settlement Payments

A. Civil Penalties for Grand Basket Co., Inc.: \$86,000, as follows:

\$20,000 initial payment due within two business days of the Court's approval of the Consent Judgment;

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

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

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

2 A. Fees and Costs for Grand Basket Co., Inc.: \$45,000.

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

4

5 _____
6 Jacob Gruber, President
7 Grand Basket Co., Inc.
8 5306 Grand Avenue, Suite 2
9 Maspeth, NY 11378

10 _____
11 Donald P. Eichhorn
12 Attorney at Law
13 Wilson Elser Moskowitz Edelman & Dicker LLP
14 525 Market Street - 17th Floor
15 San Francisco, CA 94105-2725

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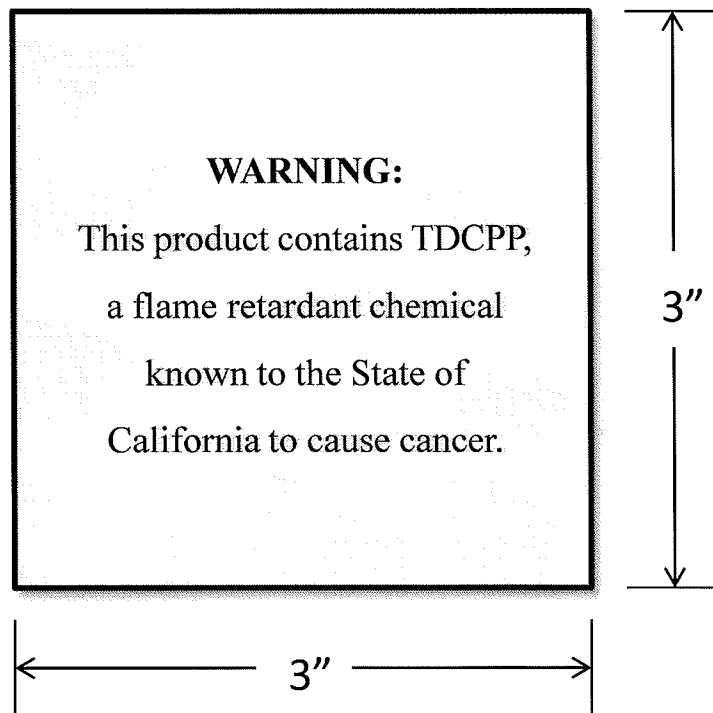
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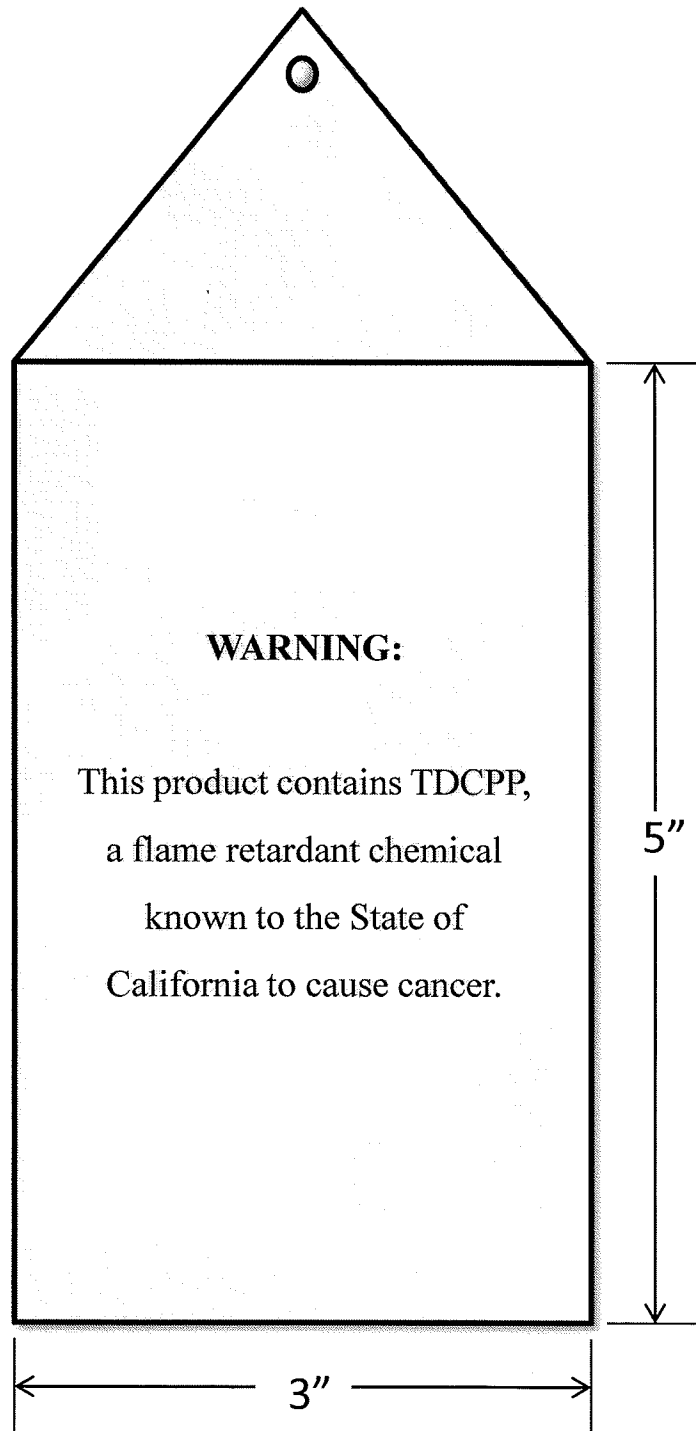
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



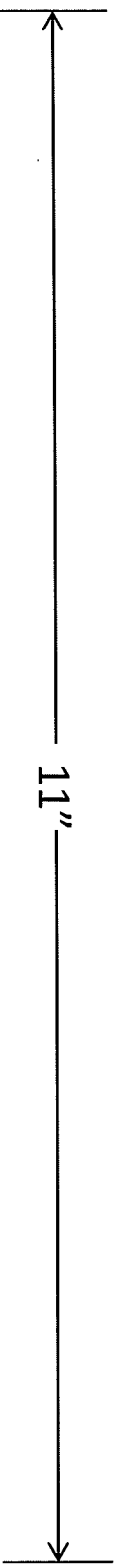
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



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

WARNING:

This product contains TDCPP, a flame retardant
8.5"
chemical known to the State of California to
cause cancer.



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