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PETER ENGLANDER

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

11 PETER ENGLANDER,

12 Plaintiff,

13 v.

14 CORINTHIAN, INC.; et al.

15 Defendants.

Case No. RG 13-684712

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**CONSENT JUDGMENT AS TO
DEFENDANT OFS BRANDS HOLDINGS, INC.**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: June 21, 2013

1 **I. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander (“Plaintiff”)
4 and defendant OFS Brands Holdings, Inc., the defendant identified in Exhibit A (“Settling
5 Defendant”), with Plaintiff and the Settling Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Settling Defendant**

11 The Settling Defendant employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 **1.4.1** Plaintiff alleges that the Settling Defendant manufactured, imported, sold
16 and/or distributed for sale in California, products with foam cushioned components containing
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings.

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

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1 **1.5 Product Description**

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

7 **1.6 Notice of Violation**

8 On March 4, 2013, Plaintiff served the Settling Defendant and certain requisite public
9 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients
10 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
11 consumers, and workers in California that the Products expose users to the Listed Chemical. To the
12 best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the
13 allegations set forth in the Notice.

14 **1.7 Complaint**

15 On June 21, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County of
16 Alameda against the Settling Defendant, and Does 1 through 150, *Peter Englander v. Corinthian,*
17 *Inc., et al.*, Case No. RG 13-684712, alleging violations of Proposition 65, based in part on the
18 alleged unwarned exposures to TDCPP contained in the Products.

19 **1.8 No Admission**

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

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over the Settling Defendant as to the allegations contained in the Complaint, that venue
4 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
6 Procedure § 664.6.

7 **2. DEFINITIONS**

8 **2.1 California Customers**

9 “California Customer” shall mean any customer that the Settling Defendant reasonably
10 understands is located in California, has a California warehouse or distribution center, maintains a
11 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

12 **2.2 Detectable**

13 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent of
14 .0025%) of any one chemical in any material, component, or constituent of a subject product, when
15 analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
16 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
17 and measure the quantity, of TDCPP, tris(2-chloroethyl) phosphate (“TCEP”), and/or tris(2,3-
18 dibromopropyl)phosphate (“TDBPP”) in a solid substance.

19 **2.3 Effective Date**

20 “Effective Date” shall mean October 9, 2014.

21 **2.4 Private Label Covered Products**

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

25 **2.5 Reformulated Products**

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

1 **2.6 Reformulation Standard**

2 The "Reformulation Standard" shall mean containing no more than 25 ppm for TDCPP or
3 TCEP.

4 **2.7 Retailer**

5 "Retailer" means an individual or entity that offers a Product for retail sale to consumers in
6 the State of California.

7 **3. INJUNCTIVE RELIEF: REFORMULATION**

8 **3.1 Reformulation Commitment**

9 Commencing on December 31, 2014, the Settling Defendant shall not manufacture or import
10 for distribution or sale to California Customers, or cause to be manufactured or imported for
11 distribution or sale to California Customers, any Products that are not Reformulated Products.

12 **3.2 Vendor Notification/Certification**

13 On or before October 9, 2014, the Settling Defendant shall provide written notice to all of its
14 then-current vendors of the Products that will be sold or offered for sale in California, or to
15 California Customers, instructing each such vendor to use reasonable efforts to provide only
16 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
17 preceding sentence, the Settling Defendant shall not employ statements that will encourage a vendor
18 to delay compliance with the Reformulation Standard. The Settling Defendant shall subsequently
19 obtain written certifications, no later than December 31, 2014, from such vendors, and any newly
20 engaged vendors, that the Products manufactured by such vendors are in compliance with the
21 Reformulation Standard. Certifications shall be held by the Settling Defendant for at least two years
22 after their receipt and shall be made available to Plaintiff upon request.

23 **3.3 Products No Longer in the Settling Defendant's Control**

24 No later than 30 days after the Effective Date, the Settling Defendant shall send a letter,
25 electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer
26 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
27 in the Notice the Settling Defendant received from Plaintiff ("Exemplar Product"); and (2) any
28 California Customer and/or Retailer that the Settling Defendant reasonably understands or believes

1 had any inventory for resale in California of Exemplar Products as of the Notice date. The
2 Notification Letter shall advise the recipient that the Exemplar Product “contains TDCPP, a
3 chemical known to the State of California to cause cancer,” and request that the recipient either: (a)
4 label the Exemplar Products remaining in inventory for sale in California, or to California
5 Customers, pursuant to Section 3.5; or (b) return, at the Settling Defendant’s sole expense, all units
6 of the Exemplar Product held for sale in California, or to California Customers, to the Settling
7 Defendant or a party the Settling Defendant has otherwise designated. The Notification Letter shall
8 require a response from the recipient within 20 days confirming whether the Exemplar Product will
9 be labeled or returned. The Settling Defendant shall maintain records of all correspondence or other
10 communications generated pursuant to this Section for two years after the Effective Date and shall
11 promptly produce copies of such records upon Plaintiff’s written request.

12 **3.4 Current Inventory**

13 Any Products in, or manufactured and reroute to, the Settling Defendant’s inventory as of or
14 after October 9, 2014, that do not qualify as Reformulated Products and that the Settling Defendant
15 has reason to believe may be sold or distributed for sale in California, shall contain a clear and
16 reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.

17 **3.5 Product Warnings**

18 **3.5.1 Product Labeling**

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

25 A warning provided pursuant to this Consent Judgment shall state:
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1 3.6 **Alternatives to Interim Warnings**

2 The obligations of the Settling Defendant under Section 3.3 shall be relieved provided the
3 Settling Defendant certifies on or before October 9, 2014, that only Exemplar Products meeting the
4 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
5 California, after December 31, 2014. The obligations of the Settling Defendant under Section 3.4
6 shall be relieved provided the Settling Defendant certifies on or before October 9, 2014, that, after
7 December 31, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California,
8 or to California Customers for sale in California, Products (i.e., Products beyond the Exemplar
9 Product) meeting the Reformulation Standard. The certifications provided by this Section are
10 material terms and time is of the essence.

11 **4. MONETARY PAYMENTS**

12 4.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

13 In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant
14 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
15 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and
16 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
17 Assessment (“OEHHA”) and 25% of the penalty remitted to “The Chanler Group in Trust for Peter
18 Englander.” Each penalty payment shall be made no later than the date it is due and be delivered to
19 the addresses listed in Section 4.5 below. The Settling Defendant shall be liable for payment of
20 interest, at a rate of 10% simple interest, for all amounts due and owing under Section 4 that are not
21 received within two business days of the due date.

22 4.1.1 Initial Civil Penalty. On or before October 9, 2014, the Settling Defendant
23 shall make an initial civil penalty payment in the amount identified on the Settling Defendant’s
24 Exhibit A.

25 4.1.2 Second Civil Penalty. On or before December 15, 2014, the Settling
26 Defendant shall make a second civil penalty payment in the amount identified on the Settling
27 Defendant’s Exhibit A. The amount of the second penalty may be reduced according to any penalty
28 waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

1 4.1.3 Third Civil Penalty. On or before March 15, 2015, the Settling Defendant
2 shall make a third civil penalty payment in the amount identified on the Settling Defendant's Exhibit
3 A. The amount of the third penalty may be reduced according to any penalty waiver the Settling
4 Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

5 4.1.4 Reductions to Civil Penalty Payment Amounts. The Settling Defendant may
6 reduce the amount of the second and/or third civil penalty payments identified on the Settling
7 Defendant's Exhibit A by providing Plaintiff with certification of certain efforts undertaken to
8 reformulate their Products or limit the ongoing sale of non-reformulated Products in California. The
9 options to provide a written certification in lieu of making a portion of the Settling Defendant's civil
10 penalty payment constitute material terms of this Consent Judgment, and with regard to such terms,
11 time is of the essence.

12 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
13 **Products Sold or Offered for Sale in California.**

14 As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall
15 be waived, to the extent that it has agreed that, as of December 31, 2014, and continuing into the
16 future, it shall only manufacture or import for distribution or sale to California Customers or cause to
17 be manufactured or imported for distribution or sale to California Customers, Reformulated
18 Products. An officer or other authorized representative of the Settling Defendant that has exercised
19 this election shall provide Plaintiff with a written certification confirming compliance with such
20 conditions, which certification must be received by Plaintiff's counsel on or before December 1,
2014.

21 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

22 As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
23 waived, to the extent that it has agreed that, as of December 31, 2014, and continuing into the future,
24 it shall only manufacture or import for distribution or sale in California, or cause to be manufactured
25 or imported for distribution or sale in California, Reformulated Products which also do not contain
26 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
27 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject
28 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies

1 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
2 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
3 representative of the Settling Defendant that has exercised this election shall provide Plaintiff with a
4 written certification confirming compliance with such conditions, which certification must be
5 received by Plaintiff's counsel on or before December 1, 2014.

6 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
7 **Exemplar Products from the California Market.**

8 As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall
9 be waived, if an officer or other authorized representative of the Settling Defendant provides
10 Plaintiff with written certification, by December 1, 2014, confirming that each individual or
11 establishment in California to which it supplied the Exemplar Product after October 28, 2011, has
12 elected, pursuant to Section 3.3, to return all Exemplar Products held for sale in California.⁴

13 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
14 **California of Unreformulated Inventory.**

15 As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
16 waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff
17 with written certification, on or before December 1, 2014, confirming that, as of December 31, 2014,
18 it has and will continue to distribute, offer for sale, or sell in California, or to California Customers,
19 only Reformulated Products.

20 **4.2 Representations from Settling Defendant**

21 The Settling Defendant represents that the sales data and other information concerning its
22 size, knowledge of the Listed Chemical, and prior reformulation and/or warning efforts, it provided
23 to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiff has relied to
24 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
25 Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers and presents to
26 the Settling Defendant, evidence demonstrating that the preceding representation and warranty was

27 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiff has, prior to
28 January 31, 2014, provided the Settling Defendant with test results from an 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 materially inaccurate, then the Settling Defendant shall have 30 days to meet and confer regarding
2 the Plaintiff's contention. Should this 30 day period pass without any such resolution between the
3 Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal claim including,
4 but not limited to, a claim for damages for breach of contract.

5 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

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

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26 ⁵ This Section shall not be applicable where the vendor in question had previously been found by the Settling
27 Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on
28 more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling
Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

⁶ 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 **4.4 Reimbursement of Fees and Costs**

2 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 reimbursement issue to be resolved after the material terms of the agreement had been settled.
5 Shortly after the other settlement terms had been finalized, the Settling Defendant expressed a desire
6 to resolve the fee and cost issue. The Settling Defendant then agreed to pay Plaintiff and his counsel
7 under general contract principles and the private attorney general doctrine codified at California
8 Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this
9 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
10 the Settling Defendant's attention, negotiating a settlement in the public interest, and seeking court
11 approval of the same. In addition, the negotiated fee and cost figure expressly includes the
12 anticipated significant amount of time plaintiffs' counsel will incur to monitor various provisions in
13 this agreement over the next two years, with the exception of additional fees that may be incurred
14 pursuant to the Settling Defendant's election in Section 11. The Settling Defendant more
15 specifically agreed, upon the Court's approval and entry of this Consent Judgment, to pay Plaintiff's
16 counsel the amount of fees and costs indicated on the Settling Defendant's Exhibit A. The Settling
17 Defendant further agreed to tender and shall tender its full required payment under this Section to a
18 trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within two
19 business days of October 9, 2014. Such funds shall be released from the trust account upon the
20 Court's approval and entry of this Consent Judgment.

21 **4.5 Payment Procedures**

22 **4.5.1 Issuance of Payments.**

23 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
24 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

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

1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
2 Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties")
3 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

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
17 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section
18 4.5.1(a) above, as proof of payment to OEHHA.

19 4.5.3 Tax Documentation. The Settling Defendant shall issue a separate 1099 form
20 for each payment required by this Section to: (a) Peter Englander, whose address and tax
21 identification number shall be furnished upon request after this Consent Judgment has been fully
22 executed by the Parties; (b) OEHHA, who shall be identified as "California Office of
23 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered
24 directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) "The Chanler Group" (EIN:
25 94-3171522) to the address set forth in Section 4.5.1(a) above.

26 **5. CLAIMS COVERED AND RELEASED**

27 **5.1 Plaintiff's Release of Proposition 65 Claims**

28 Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant,
its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
distributes or sells Products, including, but not limited, to downstream distributors, wholesalers,
customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"),

1 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
2 exposures to the Listed Chemical in the Products, as set forth in the Notice. Compliance with the
3 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
4 exposures to the Listed Chemical from the Products, as set forth in the Notice. The Parties further
5 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other
6 than the Settling Defendant, that manufactured the Products or any component parts thereof, or any
7 distributors or suppliers who sold the Products or any component parts thereof to a Settling
8 Defendant, except that entities upstream of the Settling Defendant that is a Retailer of a Private
9 Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for
10 sale in California, or to California Customers, by the Retailer in question.

11 **5.2 Plaintiff's Individual Releases of Claims**

12 Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a
13 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
14 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
15 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
16 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP in the
17 Products or Additional Products (as defined in Section 11.1 and delineated on the Settling
18 Defendant's Exhibit A) manufactured, imported, distributed, or sold by Settling Defendant prior to
19 the Effective Date.⁷ The Parties further understand and agree that this Section 5.2 release shall not
20 extend upstream to any entities that manufactured the Products or Additional Products, or any
21 component parts thereof, or any distributors or suppliers who sold the Products or Additional
22 Products, or any component parts thereof to Settling Defendant, except that entities upstream of the
23 Settling Defendant that is a Retailer of a Private Labeled Covered (or Additional) Product shall be
24 released as to the Private Labeled Covered (or Additional) Products offered for sale in California by
25 the Retailer in question. Nothing in this Section affects Plaintiff's rights to commence or prosecute
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28 ⁷ The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

1 an action under Proposition 65 against a Releasee that does not involve the Settling Defendant's
2 Products or Additional Products.

3 **5.3 Settling Defendant's Release of Plaintiff**

4 The Settling Defendant, on behalf of itself, its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his
6 attorneys and other representatives, for any and all actions taken or statements made (or those that
7 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in
8 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
9 matter with respect to the Products and/or Additional Products.

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall
12 be null and void if, for any reason, it is not approved in its entirety and entered by the Court within
13 one year after it has been fully executed by all Parties. If the Court does not approve the Consent
14 Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the
15 ruling. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in
16 its normal course on the Court's trial calendar. If the Court's approval is ultimately overturned by an
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
18 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
19 proceed in its normal course on the Court's trial calendar. In the event that this Consent Judgment is
20 entered by the Court and subsequently overturned by any appellate court, any monies that have been
21 provided to OEHHA, Plaintiff or his counsel pursuant to Section 4, above, shall be refunded within
22 15 days of the appellate decision becoming final. If the Court does not approve and enter the
23 Consent Judgment within one year of the Effective Date, any monies that have been provided to
24 OEHHA or held in trust for Plaintiff or his counsel pursuant to Section 4, above, shall be refunded to
25 the associated Settling Defendant within 15 days.

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California.
28 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by

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

8 **8. NOTICE**

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

13
14 To Settling Defendant:

15 At the address shown on Exhibit A

To Plaintiff:

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

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

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

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

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

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

28

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 11.1 In addition to the Products, where the Settling Defendant has identified on Exhibit A
3 additional products that contain TDCPP, TCEP, TDBPP and/or any Proposition 65-listed
4 chemical(s) and that are sold or offered for sale by it in California, or to California Customers,
5 (“Additional Products”), then by no later than October 9, 2014, the Settling Defendant may provide
6 Plaintiff with additional information or representations necessary to enable him to issue a 60-Day
7 Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety Code
8 section 25249.7, that includes the Additional Products. Polyurethane foam that is supplied, shaped or
9 manufactured for use as a component of a product, such as upholstered furniture, is specifically
10 excluded from the definition of Additional Products and shall not be identified by the Settling
11 Defendant on Exhibit A as an Additional Product. Except as agreed upon by Plaintiff, Settling
12 Defendant shall not include a product, as an Additional Product, that is the subject of an existing 60-
13 day notice issued by Plaintiff or any other private enforcer at the time of execution.

14 After receipt of the required information, Plaintiff agrees to issue a supplemental 60-day
15 notice in compliance with all statutory and regulatory requirements for the Additional Products.
16 Plaintiff will, and in no event later than February 1, 2015, prepare and file an amendment to this
17 Consent Judgment to incorporate the Additional Products within the defined term “Products” and
18 serve a copy thereof and its supporting papers (including the basis for supplemental stipulated
19 penalties, if any) on the Office of the California Attorney General; upon the Court’s approval and
20 finding that the supplemental stipulated penalty amount, if any, is reasonable, the Additional
21 Products shall become subject to Sections 5.1 and 5.2. The Settling Defendant shall, at the time it
22 elects to utilize this Section and tenders the additional information or representations regarding the
23 Additional Products to Plaintiff, tender to The Chanler Group’s trust account an amount not to
24 exceed \$8,750 as stipulated penalties and attorneys’ fees and costs incurred by Plaintiff in issuing the
25 new notice and engaging in other reasonably related activities, which may be released from the trust
26 as awarded by the Court upon Plaintiff’s application. Any fee award associated with the
27 modification of the Consent Judgment to include Additional Products shall not offset any associated
28 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be

1 refunded to the Settling Defendant within 15 days). Such payment shall be made to "In trust for
2 The Chanler Group" and delivered as per Section 4.5.1(a) above.

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

11 **12. MODIFICATION**

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

15 **13. AUTHORIZATION**

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

19
20 AGREED TO:

AGREED TO:

21
22
23 
24 Peter Englander

OFS Brands Holdings, Inc.

25 Date: Sept. 22, 2014

Sept. __, 2014

1 refunded to the Settling Defendant within 15 days). Such payment shall be made to "In trust for The
2 Chanler Group" and delivered as per Section 4.5.1(a) above.

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

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18 Consent Judgment.

19
20 AGREED TO:

AGREED TO:

21
22
23 _____
24 Peter Englander

_____ 
OFS Brands Holdings, Inc.

25 Date: Sept. ____, 2014

Sept. 23, 2014

1 **EXHIBIT A**

2 I. Name of Settling Defendant: OFS Brands Holdings, Inc.
3

4 II. Names of Releasees: Crest Office Furniture Co., Inc.
5

6 III. Types of Covered Products Applicable to Settling Defendant:

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

8 Upholstered furniture

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

10 Car seats, strollers

11 Other (specify): padded upholstered sofas
12
13 _____

14 IV. Types of Additional Products the Settling Defendant Elects to Address (if any):
15 _____
16 _____
17 _____

18 V. Settling Defendant's Required Settlement Payments

19 A. Civil Penalties for Settling Defendant as follows:

20 \$20,000 initial payment due on or before October 9, 2014;

21 \$42,000 second payment due on or before December 15, 2014, of which
22 \$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

23 \$24,000 third payment due on or before March 15, 2015, of which \$14,000 may
24 be waived pursuant to Section 4.1.4(ii) and \$10,000 may be waived pursuant to
Section 4.1.4(iv).
25

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

27 A. Fees and Costs for Settling Defendant: \$42,000.

28 B. Additional Fees and Costs:

1 \$8,000 supplemental fee for the 60-Day Notice issued by Plaintiff before the
2 Effective Date, to Crest Office Furniture Co., Inc., who is being released by the
3 Settling Defendant's participation in the Consent Judgment.

4 VII. Person(s) to receive Notice pursuant to Section 8

5 JACK C. HENNING, ESQ.
6 Name

JOHN BECHER
Name

7 DILLINGHAM & MURPHY LLP
8 Title

SUP of HR & SALES ADMINISTRATION
Title

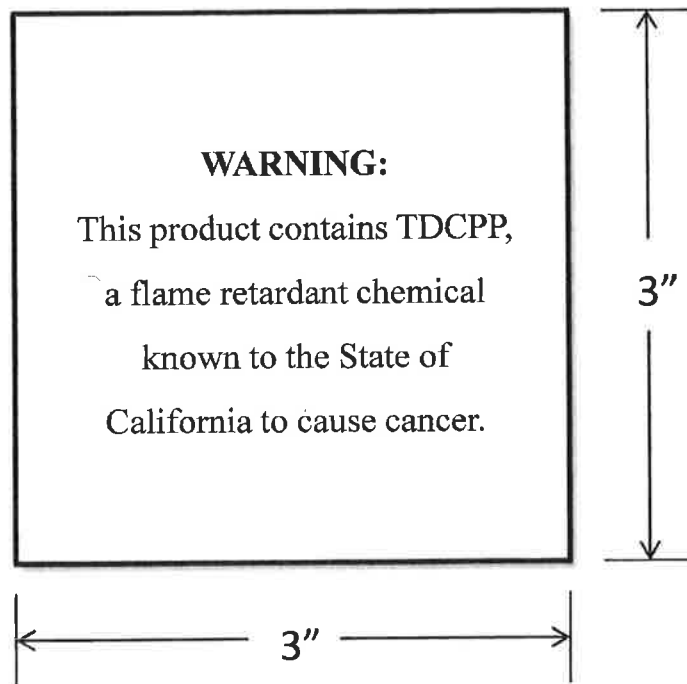
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10 Address
San Francisco, CA 94108

1204 EAST 6TH STREET
Address
HUNTINGBURG, IN 47542

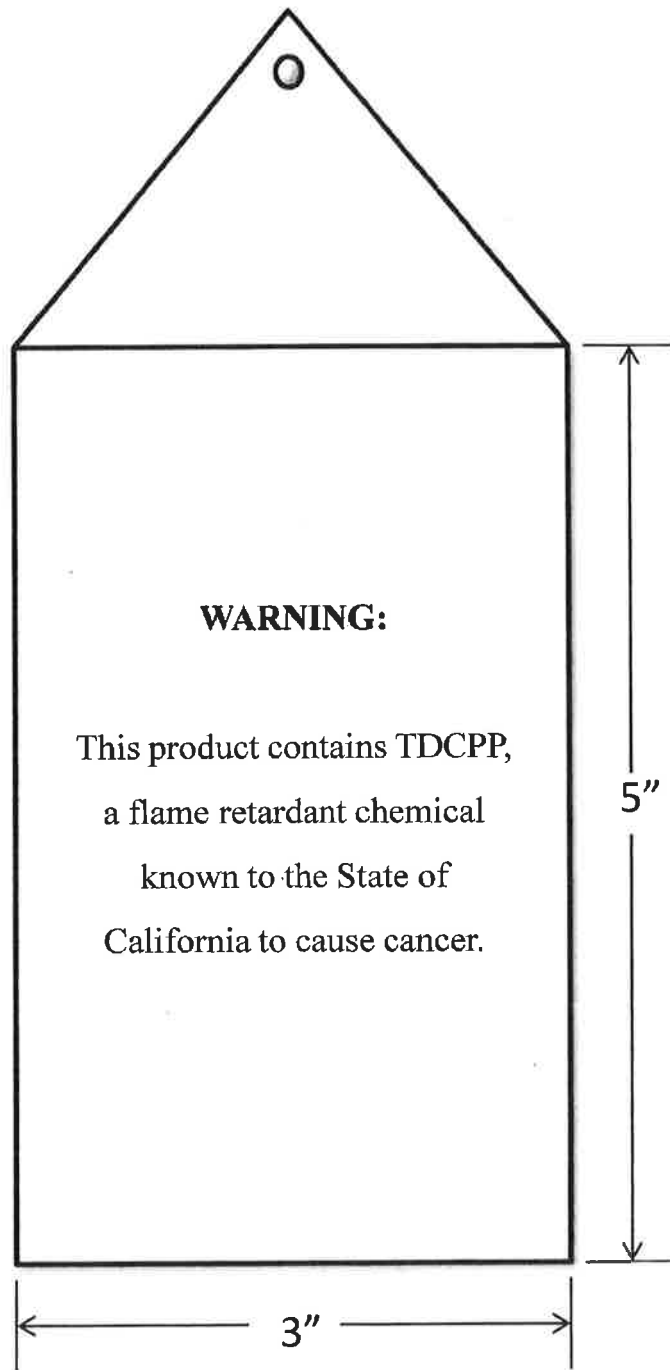
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12 William J. Kaiser, Jr.
13 Bingham Greenebaum Doll LLP
14 212 W. 6th Street
Jasper, IN 47546

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



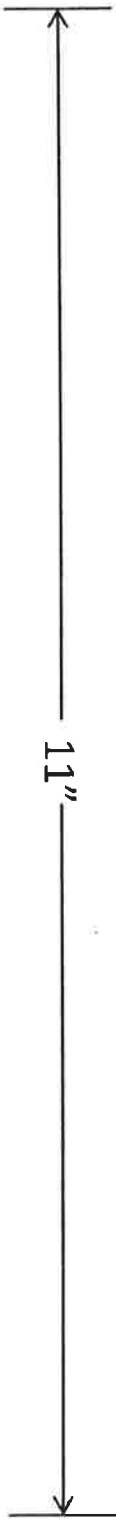
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

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.