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

11 PETER ENGLANDER, LAURENCE
12 VINOUCUR,
13 Plaintiffs,
14 v.
15 TAYMOR INDUSTRIES U.S.A, INC.; et
16 al.
17 Defendant.

Case No. RG 13-679489

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

**CONSENT JUDGMENT AS TO
DEFENDANT TAYMOR INDUSTRIES
U.S.A., INC. AND TAYMOR INDUSTRIES,
LTD.**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: May 14, 2013

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Plaintiffs Peter Englander and
4 Laurence Vinocur (“Plaintiffs”) and Defendant Taymor Industries U.S.A., Inc. and Taymor
5 Industries, Ltd., the Defendant identified in Exhibit A (collectively referred to as “Settling
6 Defendant”), with Plaintiffs and the Settling Defendant collectively referred to as the “Parties.”

7 **1.2 Plaintiffs**

8 Plaintiffs are individuals residing in the State of California who seeks to promote awareness
9 of exposures to toxic Chemicals and to improve human health by reducing or eliminating hazardous
10 substances contained in consumer and commercial products.

11 **1.3 Settling Defendant**

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

15 **1.4 General Allegations**

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

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

24 TDCPP is hereinafter referred to as the “Listed Chemical.” Plaintiffs allege that the Listed
25 Chemical escape from the 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 is 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
6 and shall not be identified by the Settling Defendant on Exhibit A as a Product.

7 **1.6 Notices of Violation**

8 On March 4, 2013, Plaintiffs served Settling Defendant and certain requisite public
9 enforcement agencies with “60-Day Notices of Violation” that provided the recipients with notice
10 of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers,
11 and workers in California that the Products expose users to the Listed Chemical. Based on his
12 further investigation, on March 4, 2013, Plaintiff issued a second 60-day notice to the Settling
13 Defendant alleging that the Products contain and expose Californians to di(2-ethylhexyl)phthalate
14 (“DEHP”). DEHP and other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl
15 phthalate (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and
16 other reproductive harm. (“Notices”) To the best of the Parties’ knowledge, no public enforcer has
17 commenced or is diligently prosecuting the allegations set forth in the Notices.

18 **1.7 Complaint**

19 On May 14, 2013, Plaintiffs filed a Complaint in the Superior Court in and for the County of
20 Alameda against the Settling Defendant, and Does 1 through 150, *Peter Englander and Laurence*
21 *Vinocur v. Taymor Industries U.S.A., Inc., et al.*, Case No. RG 13-679489, alleging violations of
22 Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the
23 Products.

24 **1.8 No Admission**

25 The Settling Defendant denies the material factual and legal allegations contained in
26 Plaintiffs’ Notices and Complaint and maintains that all products that it has manufactured,
27 imported, distributed, and/or sold in California, including the Products, have been and are in
28 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by

1 the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall
2 compliance with this Consent Judgment constitute or be construed as an admission by the Settling
3 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section
4 shall not diminish or otherwise affect the Settling Defendant's obligations, responsibilities, and
5 duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

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

12 **2. DEFINITIONS**

13 **2.1 California Customers**

14 "California Customer" shall mean any customer that the Settling Defendant reasonably
15 understands is located in California, has a California warehouse or distribution center, maintains a
16 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

17 **2.2 Detectable**

18 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
19 of .0025%) of any one Chemicals in any material, component, or constituent of a
20 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
21 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
22 determine the presence, and measure the quantity, of TDCPP and/or tris(2-chloroethyl) phosphate
23 ("TCEP") in a solid substance.

24 **2.3 Effective Date**

25 "Effective Date" shall mean October 15, 2013.

26 **2.4 Private Label Covered Products**

27 "Private Label Covered Products" means Products that bear a brand or trademark owned or
28 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of

1 California.

2 **2.5 Reformulated Products**

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

5 **2.6 Reformulation Standard**

6 The “Reformulation Standard” shall mean containing no more than 25 ppm for TDCPP and
7 TCEP.

8 **2.7 Retailer**

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

11 **3. INJUNCTIVE RELIEF: REFORMULATION**

12 **3.1 Reformulation Commitment**

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

16 **3.2 Vendor Notification/Certification**

17 On or before the Effective Date, the Settling Defendant shall provide written notices to all of
18 its then-current vendors of the Products that will be sold or offered for sale in California, or to
19 California Customers, instructing each such vendor to use reasonable efforts to provide only
20 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
21 preceding sentence, the Settling Defendant shall not employ statements that will encourage a
22 vendor to delay compliance with the Reformulation Standard. The Settling Defendant shall
23 subsequently obtain written certifications, no later than April 1, 2014, from such vendors, and any
24 newly engaged vendors, that the Products manufactured by such vendors are in compliance with the
25 Reformulation Standard. Certifications shall be held by the Settling Defendant for at least two
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27 ¹ As to this Settling Defendant’s receipt of the separate Notice concerning DEHP, the term
28 “Reformulated Products” further requires that the Products for which claims concerning DEHP
were Noticed (the “Phthalate Products”) contain no more than 1000 ppm each of DEHP, BBP, and
DBP.

1 years after their receipt and shall be made available to Plaintiffs upon request.

2 **3.3 Products No Longer in the Settling Defendant's Control**

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

20 **3.4 Current Inventory**

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

25 **3.5 Product Warnings**

26 **3.5.1 Product Labeling**

27 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
28 labeling, or directly on each Product. Each warning shall be prominently placed with such

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, a flame
7 retardant Chemical known to the State of California
8 to cause cancer, and DEHP, a Chemical known to the
9 State of California to cause birth defects and other
10 reproductive harm.²

11 Attached as Exhibit B are template warnings developed by Plaintiffs that are deemed to be
12 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
13 set forth in this Section are addressed, including as to the required warning statement and method of
14 transmission as set forth above, the Settling Defendant remains free not to utilize the template
15 warnings.

16 3.5.2 Internet Website Warning

17 A warning shall be given in conjunction with the sale of the Products to California, or
18 California Customers, via the internet, which warning shall appear on one or more web pages
19 displayed to a purchaser during the checkout process. The following warning statement shall be
20 used and shall: (a) appear adjacent to or immediately following the display, description, or price of

21 ² The regulatory safe harbor warning language specified in 27 CCR § 25601, 3.2 may also
22 be used if the Settling Defendant had begun to use it, prior to the Effective Date. The Settling
23 Defendant may seek to use alternative warning language, other than the language specified above or
24 the safe harbor warning specified in 27 CCR § 25603.2, or seek to use an alternate method of
25 transmission of the warning, but must obtain the Court's approval of its proposed alternative and
26 provide all Parties and the Office of the Attorney General with timely notice and the opportunity to
27 comment or object before the Court acts on the request. The Parties agree that the following
28 warning language shall not be deemed to meet the requirements of 27 CCR § 25601 and shall not
be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other reproductive harm";
and (b) "cancer, birth defects or other reproductive harm."

³ 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 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

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

3 **WARNING:** This product contains TDCPP, a flame
4 retardant Chemical known to the State
5 of California to cause cancer, and
6 DEHP, a Chemical known to the State
7 of California to cause birth defects and
8 other reproductive harm.⁴

7 **3.6 Alternatives to Interim Warnings**

8 The obligations of the Settling Defendant under Section 3.3 shall be relieved provided the
9 Settling Defendant certifies on or before December 15, 2013, that only Exemplar Products meeting
10 the Reformulation Standard will be offered for sale in California, or to California Customers for
11 sale in California, after December 31, 2013. The obligations of the Settling Defendant under
12 Section 3.4 shall be relieved provided the Settling Defendant certifies on or before December 15,
13 2013, that, after June 30, 2014, they will only distribute or cause to be distributed for sale in, or sell
14 in, California, or to California Customers for sale in California, Products (i.e., Products beyond the
15 Exemplar Product) meeting the Reformulation Standard. The certifications provided by this
16 Section are material terms and time is of the essence.

17 **4. MONETARY PAYMENTS**

18 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

19 In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant
20 shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.⁵ Each
21 penalty payment will be allocated in accordance with California Health & Safety Code §
22 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
23 Health Hazard Assessment (“OEHHA”), 12.5% of the penalty remitted to “The Chanler Group in
24 Trust for Peter Englander,” and 12.5% of the penalty remitted to “The Chanler Group in Trust for
25 Laurence Vinocur.” Each penalty payment shall be made within two business days of the date it is

26 ⁴ Footnote 3 applies in this context as well.

27 ⁵ For this Settling Defendant’s receipt of the Notice alleging violations of Proposition 65
28 concerning DEHP in Phthalate Products, the penalty amount shown on Exhibit A includes an
29 additional component to address the resolution of those additional claims.

1 due and be delivered to the addresses listed in Section 4.5 below. The Settling Defendant shall be
2 liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under
3 Section 4 that are not received within two business days of the due date.

4 4.1.1 Initial Civil Penalty. On or before the Effective Date, the Settling Defendant
5 shall make an initial civil penalty payment in the amount identified on the Settling Defendant's
6 Exhibit A.

7 4.1.2 Second Civil Penalty. On or before January 15, 2014, the Settling Defendant
8 shall make a second civil penalty payment in the amount identified on the Settling Defendant's
9 Exhibit A. The amount of the second penalty may be reduced according to any penalty waiver the
10 Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

11 4.1.3 Third Civil Penalty. On or before November 30, 2014, the Settling
12 Defendant shall make a third civil penalty payment in the amount identified on the Settling
13 Defendant's Exhibit A. The amount of the third penalty may be reduced according to any penalty
14 waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

15 4.1.4 Reductions to Civil Penalty Payment Amounts. The Settling Defendant may
16 reduce the amount of the second and/or third civil penalty payments identified on the Settling
17 Defendant's Exhibit A by providing Plaintiffs with certification of certain efforts undertaken to
18 reformulate its Products or limit the ongoing sale of non-reformulated Products in California. The
19 options to provide a written certification in lieu of making a portion of the Settling Defendant's
20 civil penalty payment constitute material terms of this Consent Judgment, and with regard to such
21 terms, time is of the essence.

22 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
23 **Products Sold or Offered for Sale in California.**

24 As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall
25 be waived, to the extent that it has agreed that, as of November 1, 2013, and continuing into the
26 future, it shall only manufacture or import for distribution or sale to California Customers or cause
27 to be manufactured or imported for distribution or sale to California Customers, Reformulated
28 Products. An officer or other authorized representative of the Settling Defendant that has exercised

1 this election shall provide Plaintiffs with a written certification confirming compliance with such
2 conditions, which certification must be received by Plaintiffs' counsel on or before December 15,
3 2013.

4 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

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

17 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated
18 Exemplar Products from the California Market.**

19 As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall
20 be waived, if an officer or other authorized representative of the Settling Defendant provides
21 Plaintiffs with written certification, by December 15, 2013, confirming that each individual or
22 establishment in California to which it supplied the Exemplar Product after October 28, 2011, has
23 elected, pursuant to Section 3.3, to return all Exemplar Products held for sale in California.⁶

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27 ⁶ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Plaintiffs has, prior to and including September 10, 2013, provided the Settling Defendant
with test results from a NVLAP accredited laboratory showing the presence of a Listed Chemicals
at a level in excess of 250 ppm pursuant to EPA testing methodologies 3545 or 8270C.

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

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

4.2 Representations Regarding Sales Volume

The Settling Defendant represents that the sales data and other information concerning its size, knowledge of the Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Plaintiffs was truthful to their knowledge and a material factor upon which Plaintiffs have relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment. If, within nine months of the Effective Date, Plaintiffs discover and presents to the Settling Defendant, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then the Settling Defendant shall have 30 days to meet and confer regarding the Plaintiffs' contention. Should this 30 day period pass without any such resolution between the Plaintiffs and the Settling Defendant, Plaintiffs shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract. The Settling Defendant further represents that in implementing the requirements set forth in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve reformulation of its Products and Additional Products on a nationwide basis and not employ statements that will encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for sale to California Consumers.

4.3 Penalties for Certain Violations of the Reformulation Standard.

If Plaintiffs provide notice and appropriate supporting information to the Settling Defendant that levels of the Listed Chemical in excess of the Reformulation Standard have been detected in one or more Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline for meeting the Reformulation Standard has arisen for the Settling

1 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated
2 penalty to relieve any further potential liability under Proposition 65 or sanction under this Consent
3 Judgment as to Products sourced from the vendor in question.⁷ The stipulated penalty shall be
4 \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm
5 and 249 ppm, this being applicable for any amount in excess of the Reformulation Standards but
6 under 250 ppm.⁸ Plaintiffs shall further be entitled to reimbursement of their associated expense in
7 an amount not to exceed \$5,000 regardless of the stipulated penalty level. The Settling Defendant
8 under this Section must provide notice and appropriate supporting information relating to the
9 purchase (e.g. vendor name and contact information including representative, purchase order,
10 certification (if any) received from vendor for the exemplar or subcategory of products), test results,
11 and a letter from a company representative or counsel attesting to the information provided, to
12 Plaintiffs within 30 calendar days of receiving test results from Plaintiffs' counsel. Any violation
13 levels at or above 250 ppm shall be subject to the full remedies provided pursuant to this Consent
14 Judgment and at law.

15 **4.4 Reimbursement of Fees and Costs**

16 The Parties acknowledge that Plaintiffs and their counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
18 this fee reimbursement issue to be resolved after the material terms of the agreement had been
19 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant
20 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay
21 Plaintiffs and their counsel under general contract principles and the private attorney general
22 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
23 through the mutual execution of this agreement, including the fees and costs incurred as a result of
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25 ⁷ This Section shall not be applicable where the vendor in question had previously been
26 found by the Settling Defendant to have provided unreliable certifications as to meeting the
27 Reformulation Standard in its Products on 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.

28 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 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in
2 the public interest, and seeking court approval of the same. In addition, the negotiated fee and cost
3 figure expressly includes the anticipated significant amount of time plaintiffs' counsel will incur to
4 monitor various provisions in this agreement over the next two years, with the exception of
5 additional fees that may be incurred pursuant to the Settling Defendant's election in Section 11.
6 The Settling Defendant more specifically agreed, upon the Court's approval and entry of this
7 Consent Judgment, to pay Plaintiffs' counsel the amount of fees and costs indicated on the Settling
8 Defendant's Exhibit A. The Settling Defendant further agrees to tender and shall tender their full
9 required payment under this Section to a trust account at The Chanler Group (made payable "In
10 Trust for The Chanler Group") within two business days of the Effective Date. Such funds shall be
11 released from the trust account upon the Court's approval and entry of this Consent Judgment.

12 **4.5 Payment Procedures**

13 **4.5.1 Issuance of Payments.**

14 (a) All payments owed to Plaintiffs and their counsel, pursuant to
15 Sections 4.1, 4.2 and 4.4 shall be delivered to the following payment address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

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

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 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

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2 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
3 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
4 Section 4.5.1(a) above, as proof of payment to OEHHA.

5 4.5.3 Tax Documentation. The Settling Defendant shall issue a separate 1099 form
6 for each payment required by this Section to: (a) Peter Englander, whose address and tax
7 identification number shall be furnished upon request after this Consent Judgment has been fully
8 executed by the Parties; (b) Laurence Vinocur, whose address and tax identification number shall be
9 furnished upon request after this Consent Judgment has been fully executed by the Parties; (c)
10 OEHHA, who shall be identified as "California Office of Environmental Health Hazard
11 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
12 4010, Sacramento, CA 95814, and (d) "The Chanler Group" (EIN: 94-3171522) to the address set
13 forth in Section 4.5.1(a) above.

14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Plaintiffs' Release of Proposition 65 Claims**

16 Plaintiffs, acting on their own behalf and in the public interest, release the Settling
17 Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
18 agents employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
19 distributes or sells Products, including, but not limited, to downstream distributors, wholesalers,
20 customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"),
21 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
22 exposures to the Listed Chemical in the Products, as set forth in the "Notices". Compliance with
23 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
24 exposures to the Listed Chemicals from the Products, as set forth in the Notices. The Parties further
25 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other
26 than the Settling Defendant, that manufactured the Products or any component parts thereof, or any
27 distributors or suppliers who sold the Products or any component parts thereof to a Settling
28 Defendant, except that entities upstream of the Settling Defendant that is a Retailer of a Private

1 Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for
2 sale in California, or to California Customers, by the Retailer in question.⁹

3 **5.2 Plaintiffs' Individual Releases of Claims**

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

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24 ⁹ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemical" shall
25 include DEHP with respect to this Settling Defendant who received a Notice alleging violations of
Proposition 65 as to exposures to DEHP.

26 ¹⁰ The injunctive relief requirements of Section 3 shall apply to Additional Products as
27 otherwise specified.

28 ¹¹ For purposes of this Section, as to the Phthalate Products, the term "Listed Chemical"
shall include DEHP, BBP and DBP with respect to this Settling Defendant, who received a Notice
alleging violations of Proposition 65 as to exposures to DEHP.

1 **5.3 Settling Defendant's Release of Plaintiffs**

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

8 **6. COURT APPROVAL**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of California.
26 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
27 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
28 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered

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

6 **8. NOTICES**

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

11 To Settling Defendant:

12 At the address shown on Exhibit A

To Plaintiffs:

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

18 Any Party, from time to time, may specify in writing to the other Party a change of address to
19 which all notices 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 Plaintiffs and their attorneys agree to comply with the reporting form requirements
27 referenced in California Health & Safety Code section 25249.7(f).

28 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

11.1 In addition to the Products, where the Settling Defendant has identified on Exhibit A
additional products that contain TDCPP, TCEP, TDBPP and/or any Proposition 65-listed

1 Chemicals(s) and that are sold or offered for sale by it in California, or to California Customers,
2 (“Additional Products”), then by no later than October 15, 2013, the Settling Defendant may
3 provide Plaintiffs with additional information or representations necessary to enable them to issue a
4 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety
5 Code section 25249.7, that includes the Additional Products. Polyurethane foam that is supplied,
6 shaped or manufactured for use as a component of a product, such as upholstered furniture, is
7 specifically excluded from the definition of Additional Products and shall not be identified by the
8 Settling Defendant on Exhibit A as an Additional Product. Except as agreed upon by Plaintiffs,
9 Settling Defendant shall not include a product, as an Additional Product, that is the subject of an
10 existing 60-day notice issued by Plaintiffs or any other private enforcer at the time of execution.

11 After receipt of the required information, Plaintiffs agree to issue a supplemental 60-day
12 notice in compliance with all statutory and regulatory requirements for the Additional Products.
13 Plaintiffs will, and in no event later than October 1, 2014, prepare and file an amendment to this
14 Consent Judgment to incorporate the Additional Products within the defined term “Products” and
15 serve a copy thereof and its supporting papers (including the basis for supplemental stipulated
16 penalties, if any) on the Office of the California Attorney General; upon the Court’s approval and
17 finding that the supplemental stipulated penalty amount, if any, is reasonable, the Additional
18 Products shall become subject to Sections 5.1 and 5.2. The Settling Defendant shall, at the time it
19 elects to utilize this Section and tender the additional information or representations regarding the
20 Additional Products to Plaintiffs, tender to The Chanler Group’s trust account an amount not to
21 exceed \$8,750 as stipulated penalties and attorneys’ fees and costs incurred by Plaintiffs in issuing
22 the new notice and engaging in other reasonably related activities, which may be released from the
23 trust as awarded by the Court upon Plaintiffs’ application. Any fee award associated with the
24 modification of the Consent Judgment to include Additional Products shall not offset any associated
25 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be
26 refunded to the Settling Defendant within 15 days). Such payment shall be made to “In trust for
27 The Chanler Group” and delivered as per Section 4.5.1(a) above.

28

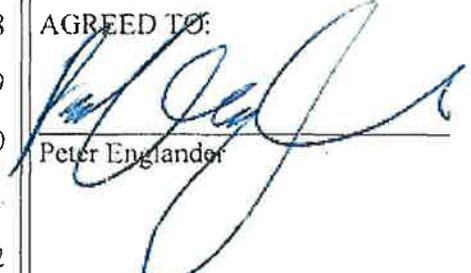
1 11.2 Plaintiffs and Settling Defendant agree to support the entry of this agreement as a
2 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
3 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
4 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiffs
5 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiffs and the
6 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.
7 This provision is a material component of the Consent Judgment and shall be treated as such in the
8 event of a breach.

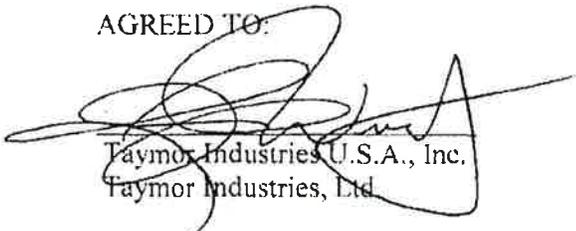
9 **12. MODIFICATION**

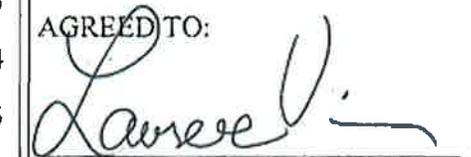
10 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
11 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
12 of any party and entry of a modified Consent Judgment by the Court.

13 **13. AUTHORIZATION**

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

17
18 AGREED TO:
19 
20 Peter Englander
21
22 October 8, 2013

AGREED TO:

Faymor Industries U.S.A., Inc.
Faymor Industries, Ltd.
October 3, 2013

23 AGREED TO:
24 
25 Laurence Vinocur
26

27
28 Date: October 8, 2013

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EXHIBIT A

I. Name of Settling Defendant: Taymor Industries, U.S.A., Inc. and Taymor Industries, Ltd.

II. Names of Releasees: TJX Companies, Inc.

III. Types of Covered Products Applicable to Settling Defendant:

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 benches; benches with vinyl/PVC seats

IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

V. Settling Defendant's Required Settlement Payments

A. Civil Penalties for Settling Defendant as follows:

\$10,000 initial payment due on or before the Effective Date;

\$24,000 second payment due on or before January 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$10,000 may be waived pursuant to Section 4.1.4(ii); and

\$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iv).

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

A. Fees and Costs for Settling Defendant: \$38,000.

B. Additional Fees and Costs:

1 \$7,000 supplemental fee for the 60-Day Notices issued by Plaintiffs before the
2 Effective Date, to TJX Companies, Inc., who is being released by the Settling Defendant'
3 participation in the Consent Judgment.

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

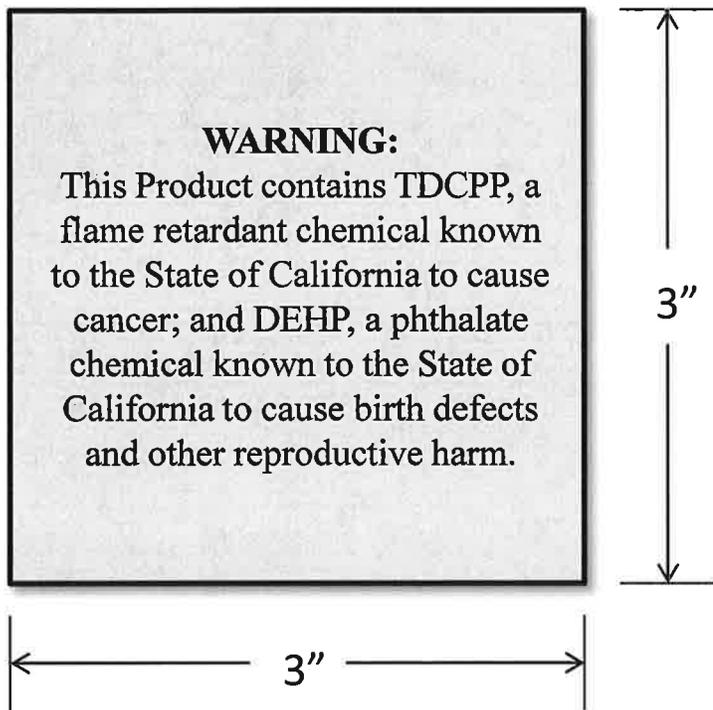
5 _____

6 Mark I. Schickman
7 Freeland Cooper & Foreman LLP
8 150 Spear Street, Suite 1800
 San Francisco, California 94105
 Schickman@Freelandlaw.com

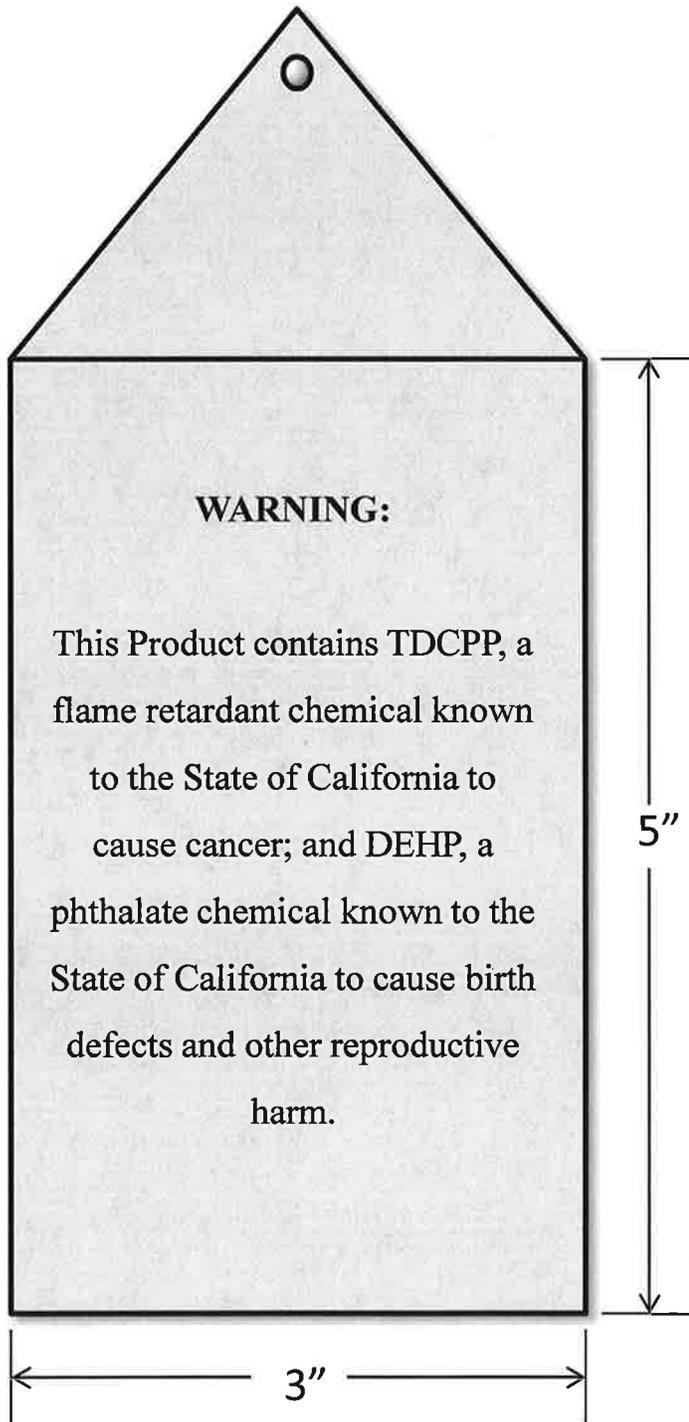
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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 chemical known to the State of California to cause cancer; and 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.