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7

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

11 PETER ENGLANDER)

12 Englander,)

13 v.)

14 HOOT JUDKINS, INC.; et al.)

15 Defendants.)

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Case No. RG 13681899

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

) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT WHITEWOOD**
) **INDUSTRIES, INC.**

) **(Health & Safety Code § 25249.6 et seq.**
) **Complaint Filed: June 26, 2013)**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and the defendant Whitewood Industries, Inc. (“Whitewood”) with Englander and
5 Whitewood 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 Whitewood Industries, Inc.**

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

14 **1.4 General Allegations**

15 **1.4.1** Englander alleges that Whitewood manufactured, imported, sold and/or
16 distributed for sale in California, padded upholstered chairs containing tris(1,3-dichloro-2-propyl)
17 phosphate (“TDCPP”) without the requisite Proposition 65 health hazard warnings.

18 **1.4.2** Pursuant to Proposition 65, on October 28, 2011, California identified and
19 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
20 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
21 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges
22 that TDCPP escapes from foam padding, leading to human exposures. TDCPP shall hereinafter be
23 referred to as the “Listed Chemical.”

24 **1.5 Product Description**

25 The categories of products that are covered by this Consent Judgment as to Whitewood are
26 identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
27 manufactured for use as a component of another product, such as upholstered furniture, but which is
28

1 not itself a finished product, is specifically excluded from the definition of Products and shall not be
2 identified by Whitewood on Exhibit A as a Product.

3 **1.6 Notice of Violation**

4 On March 18, 2013, Englander served Whitewood, others, and certain requisite public
5 enforcement agencies with a “60-Day Notices 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.

8 To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
9 prosecuting the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On May 31, 2013, Englander filed a Complaint in the Superior Court in and for the County
12 of Alameda against Whitewood, among others, and Does 1 through 150, *Peter Englander v. Hoot*
13 *Judkins, Inc., et al.*, Case No. RG 13681899, alleging violations of Proposition 65, based in part on
14 the alleged unwarned exposures to TDCPP contained in the Products (“Complaint”).

15 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Whitewoods as to the allegations contained in the Complaints, that venue is proper
27 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
28 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 “California Customer” shall mean any customer that Whitewood reasonably understands is
4 located in California, has a California warehouse or distribution center, maintains a retail outlet in
5 California, or has made internet sales into California on or after January 1, 2011.

6 **2.2 Detectable**

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

13 **2.3 Effective Date**

14 “Effective Date” shall mean October 15, 2013.

15 **2.4 Private Label Covered Products**

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

19 **2.5 Reformulated Products**

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

22 **2.6 Reformulation Standard**

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

25 **2.7 Retailer**

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

28

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on March 31, 2014, Whitewood shall not manufacture or import for
4 distribution or sale to California Customers, or cause to be manufactured or imported for
5 distribution or sale to California Customers, any Products that are not Reformulated Products.

6 **3.2 Vendor Notification/Certification**

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

17 **3.3 Products No Longer in Whitewood's Control**

18 No later than 45 days after the Effective Date, Whitewood shall send a letter, electronic or
19 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
20 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
21 received by Whitewood from Englander ("Exemplar Product"); and (2) any California Customer
22 and/or Retailer that Whitewood reasonably understands or believes had any inventory for resale in
23 California of Exemplar Products as of the relevant Notice's dates. The Notification Letter shall
24 advise the recipient that the Exemplar Product "contains TDCPP, a chemical known to the State of
25 California to cause cancer," and request that the recipient either: (a) label the Exemplar Products
26 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or
27 (b) return, at Whitewood's sole expense, all units of the Exemplar Product held for sale in
28 California, or to California Customers, to Whitewood or a party Whitewood has otherwise

1 designated. The Notification Letter shall require a response from the recipient within 15 days
2 confirming whether the Exemplar Product will be labeled or returned. Whitewood shall maintain
3 records of all correspondence or other communications generated pursuant to this Section for two
4 years after the Effective Date and shall promptly produce copies of such records upon Englander's
5 written request.

6 3.4 Current Inventory

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

11 3.5 Product Warnings

12 3.5.1 Product Labeling

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

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

20 **WARNING:** This product contains TDCPP, a flame
21 retardant chemical known to the State
22 of California to cause cancer.¹

23
24 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
25 used if Whitewood had begun to use it, prior to the Effective Date. If Whitewood seeks to use
26 alternative warning language, other than the language specified above or the safe harbor warning
27 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,
28 it must obtain the Court's approval of its proposed alternative and provide all Parties and the Office
of the Attorney General with timely notice and the opportunity to comment or object before the
Court acts on the request. The Parties agree that the following warning language shall not be
deemed to meet the requirements of 27 CCR § 25601 *et seq.* 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."

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.² Provided that the other requirements
3 set forth in this Section are addressed, including as to the required warning statement and method of
4 transmission as set forth above, Whitewood remains free not to utilize the template warnings.

5 3.5.2 Internet Website Warning

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

12 **WARNING:** This product contains TDCPP, a flame
13 retardant chemical known to the State
of California to cause cancer.³

14 3.6 Alternatives to Interim Warnings

15 The obligations of Whitewood under Section 3.3 shall be relieved provided Whitewood
16 certifies on or before December 15, 2013 that only Exemplar Products meeting the Reformulation
17 Standard will be offered for sale in California, or to California Customers for sale in California,
18 after December 31, 2013. The obligations of Whitewood under Section 3.4 shall be relieved
19 provided Whitewood certifies on or before December 15, 2013 that, after June 30, 2014, it will only
20 distribute or cause to be distributed for sale in, or sell in California, or to California Customers for
21 sale in California, Products (i.e., Products beyond the Exemplar Product) meeting the
22 Reformulation Standard. The certifications provided by this Section are material terms and time is
23 of the essence.

24 _____
25 ² 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 than 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.

³ Footnote 1, *supra*, applies in this context as well.

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

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

14 4.1.2 Second Civil Penalty. On or before January 15, 2014, Whitewood shall
15 make a second civil penalty payment in the amount identified on Whitewood’s Exhibit A. The
16 amount of the second penalty may be reduced according to any penalty waiver Whitewood is
17 eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

18 4.1.3 Third Civil Penalty. On or before November 30, 2014, Whitewood shall
19 make a third civil penalty payment in the amount identified on Whitewood’s Exhibit A. The
20 amount of the third penalty may be reduced according to any penalty waiver Whitewood is eligible
21 for under Sections 4.1.4(ii) and 4.1.4(iv), below.

22 4.1.4 Reductions to Civil Penalty Payment Amounts. Whitewood may reduce the
23 amount of the second and/or third civil penalty payments identified on Whitewood’s Exhibit A by
24 providing Englander with certification of certain efforts undertaken to reformulate their Products or
25 limit the ongoing sale of non-reformulated Products in California. The options to provide a written
26 certification in lieu of making a portion of Whitewood’s civil penalty payment constitute material
27 terms of this Consent Judgment, and with regard to such terms, time is of the essence.
28

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

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

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

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

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

25 As shown on Whitewood’s Exhibit A, a portion of the second civil penalty shall be waived,
26 if an officer or other authorized representative of Whitewood provides Englander with written
27 certification, by December 15, 2013, confirming that each individual or establishment in California
28

1 to which it supplied the Exemplar Product after October 28, 2011, has elected to return all
2 remaining Exemplar Products held for sale in California.⁴

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

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

10 **4.2 Representations**

11 Whitewood represents that the sales data and other information concerning its size,
12 knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Englander was
13 truthful to its knowledge and a material factor upon which Englander has relied to determine the
14 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
15 Judgment.

16 If, within nine months of the Effective Date, Englander discovers and presents to
17 Whitewood, evidence demonstrating that the preceding representation and warranty was materially
18 inaccurate, then Whitewood shall have 30 days to meet and confer regarding Englander's
19 contention. Should this 30 day period pass without any such resolution between Englander and
20 Whitewood, Englander shall be entitled to file a formal legal claim including, but not limited to, a
21 claim for damages for breach of contract.

22 Whitewood further represents that in implementing the requirements set forth in Sections
23 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
24 reformulation of its Products and Additional Products on a nationwide basis and not employ
25

26
27 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander has, prior to August 31, 2013, provided Whitewood with test results from a
NVLAP accredited laboratory showing the presence of a TDCPP at a level in excess of 250 ppm
pursuant to EPA testing methodologies 3545 or 8270C.

1 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
2 goods intended for sale to California Consumers.

3 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
4 **Standard.**

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

22
23
24
25 ⁵ This Section shall not be applicable where the vendor in question had previously been
26 found by Whitewood to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
28 penalty for a second exceedance by Whitewood'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 Englander and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 this fee reimbursement issue to be resolved after the material terms of the agreement had been
5 settled. Shortly after the other settlement terms had been finalized, Whitewood expressed a desire
6 to resolve the fee and cost issue. Whitewood then agreed to pay Englander and his counsel under
7 general contract principles and the private attorney general doctrine codified at California Code of
8 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 Whitewood’s attention, negotiating a settlement in the public interest, and seeking court approval of
11 the same. In addition, the negotiated fee and cost figure expressly includes the anticipated
12 significant amount of time Englander’s counsel will incur to monitor various provisions in this
13 agreement over the next two years, with the exception of additional fees that may be incurred
14 pursuant to Whitewood’s election in Section 11. Whitewood more specifically agreed, upon the
15 Court’s approval and entry of this Consent Judgment, to pay Englander’s counsel the amount of
16 fees and costs indicated on Whitewood’s Exhibit A. Whitewood further agreed to tender and shall
17 tender its full required payment under this Section to “trust account at The Chanler Group” (made
18 payable “In Trust for The Chanler Group”) within two business days of the Effective Date. Such
19 funds shall be released from the trust account upon the Court’s approval and entry of this Consent
20 Judgment.

21 **4.5 Payment Procedures**

22 **4.5.1 Issuance of Payments.**

23 (a) All payments owed to Englander and his counsel, pursuant to
24 Sections 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") at one
3 of the following addresses, as appropriate:

4 For United States Postal Service Delivery:

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

8 For Non-United States Postal Service Delivery:

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

12 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
14 Section 4.5.1(b) above, as proof of payment to OEHHA.

15 4.5.3 Tax Documentation. Whitewood shall issue a separate 1099 form for each
16 payment required by this Section to: (a) Peter Englander, whose address and tax identification
17 number shall be furnished upon request after this Consent Judgment has been fully executed by the
18 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health
19 Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA,
20 P.O. Box 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the
21 address set forth in Section 4.5.1(a) above.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Englander's Release of Proposition 65 Claims**

24 Englander, acting on his own behalf and in the public interest, releases Whitewood, its
25 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
26 employees, attorneys, and each entity to whom Whitewood directly or indirectly distribute or sell
27 Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers,
28 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for

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

10 **5.2 Englander's Individual Releases of Claims**

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

27 _____
28 ⁷ The injunctive relief requirements of Section 3 shall apply to Additional Products as
otherwise specified.

1 **5.3 Whitewood’s Release of Englander**

2 Whitewood, on behalf of itself, its past and current agents, representatives, attorneys,
3 successors, and assignees, hereby waives any and all claims against Englander and his attorneys and
4 other representatives, for any and all actions taken or statements made (or those that could have
5 been taken or made) by Englander and his attorneys and other representatives, whether in the course
6 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
7 respect to the Products or 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, Englander or his 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 Englander or his counsel pursuant to Section 4,
23 above, shall be refunded to Whitewood 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 Whitewood may provide written
2 notice to Englander 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 Whitewood from any
5 obligation to comply with any pertinent state or federal law or regulation.

6 **8. NOTICES**

7 Unless specified herein, all correspondence and notices 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 Whitewood:

12 At the address shown on Exhibit A

To Englander:

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 pdf signature,
22 each of which shall be deemed an original, and all of which, when taken together, shall constitute
23 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

27 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

28 11.1 In addition to the Products, where Whitewood has identified on Exhibit A additional
products that contain TDCPP and that are sold or offered for sale by it in California, or to California
Customers, ("Additional Products"), then by no later than October 15, 2013, Whitewood may

1 provide Englander with additional information or representations necessary to enable him to issue a
2 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety
3 Code section 25249.7, that includes the Additional Products. Polyurethane foam that is supplied,
4 shaped or manufactured for use as a component of a product, such as upholstered furniture, is
5 specifically excluded from the definition of Additional Products and shall not be identified by
6 Whitewood on Exhibit A as an Additional Product. Except as agreed upon by Englander,
7 Whitewood shall not include a product, as an Additional Product, that is the subject of an existing
8 60-day notice issued by Englander or any other private enforcer at the time of execution. After
9 receipt of the required information, Englander agrees to issue a supplemental 60-day notice in
10 compliance with all statutory and regulatory requirements for the Additional Products. Englander
11 will, and in no event later than October 1, 2014, prepare and file an amendment to this Consent
12 Judgment to incorporate the Additional Products within the defined term "Products" and serve a
13 copy thereof and its supporting papers (including the basis for supplemental stipulated penalties, if
14 any) on the Office of the California Attorney General upon the Court's approval and finding that
15 the supplemental stipulated penalty amount, if any, is reasonable, the Additional Products shall
16 become subject to Section 5.1 in addition to Section 5.2. Whitewood shall, at the time it elects to
17 utilize this Section and tenders the additional information or representations regarding the
18 Additional Products to Englander, tender to The Chanler Group's trust account, an amount not to
19 exceed \$8,750 as stipulated penalties and attorneys' fees and costs incurred by Englander in issuing
20 the new notice and engaging in other reasonably related activities, which may be released from the
21 trust as awarded by the Court upon Englander's application. Any fee award associated with the
22 modification of the Consent Judgment to include Additional Products shall not offset any associated
23 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be
24 refunded to Whitewood within 15 days). Such payment shall be made to "in trust for The Chanler
25 Group" and delivered as per Section 4.5.1(a) above.

26 11.2 Englander and Whitewood agree to support the entry of this agreement as a Consent
27 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
28 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed

1 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall
2 draft and file. If any third party objection to the noticed motion is filed, Englander and Whitewood
3 shall work together to file a reply and appear at any hearing before the Court. This provision is a
4 material component of the Consent Judgment and shall be treated as such in the event of a breach.

5 **12. MODIFICATION**

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

9 **13. AUTHORIZATION**

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

14 AGREED TO:

AGREED TO:

Defendant:
Whitewood Industries, Inc.

17 _____
18 Plaintiff, Peter Englander

By: _____
Name:
It's:

19 Date: October __, 2013

Date: October __, 2013

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2 draft and file. If any third party objection to the noticed motion is filed, Englander and Whitewood
3 shall work together to file a reply and appear at any hearing before the Court. This provision is a
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12 Consent Judgment.

14 AGREED TO:

AGREED TO:
Defendant:
Whitewood Industries, Inc.

15
16
17 
18 _____
Plaintiff, Peter Englander

By: 
Name: Bob Lamar
It's: Vice President

19 Date: November 8, 2013

Date: October 24, 2013

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EXHIBIT A

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- I. Name of Settling Defendant (Mandatory): WHITEWOOD INDUSTRIES, INC.
- II. Names of Releasees (Optional; May be Partial):
HOOT JUDKINS, INC. as to the Products manufactured, imported, distributed and/or sold
by WHITEWOOD INDUSTRIES, INC.
- III. Types of Covered Products Applicable to Whitewood Industries, Inc.:
Padded upholstered chairs containing TDCPP
- IV. Types of Additional Products Whitewood Industries, Inc. Elects to Address (if any):
- V. Whitewood Industries, Inc.'s Required Settlement Payments
 - A. Penalties for Whitewood Industries, Inc.: \$40,500, as follows:
\$2,500 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(iii); 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).
 - B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
attributable to Whitewood Industries, Inc.: \$13,500.
- VI. Person(s) to receive Notices pursuant to Section 8

Bob Lamar, VP - Operations
Name

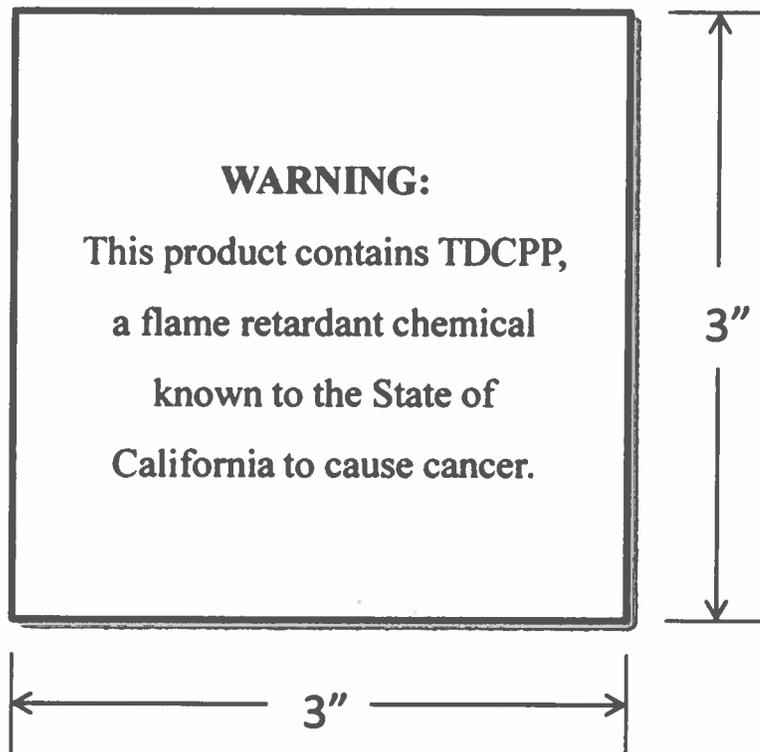
Whitewood Industries, Inc.

Address

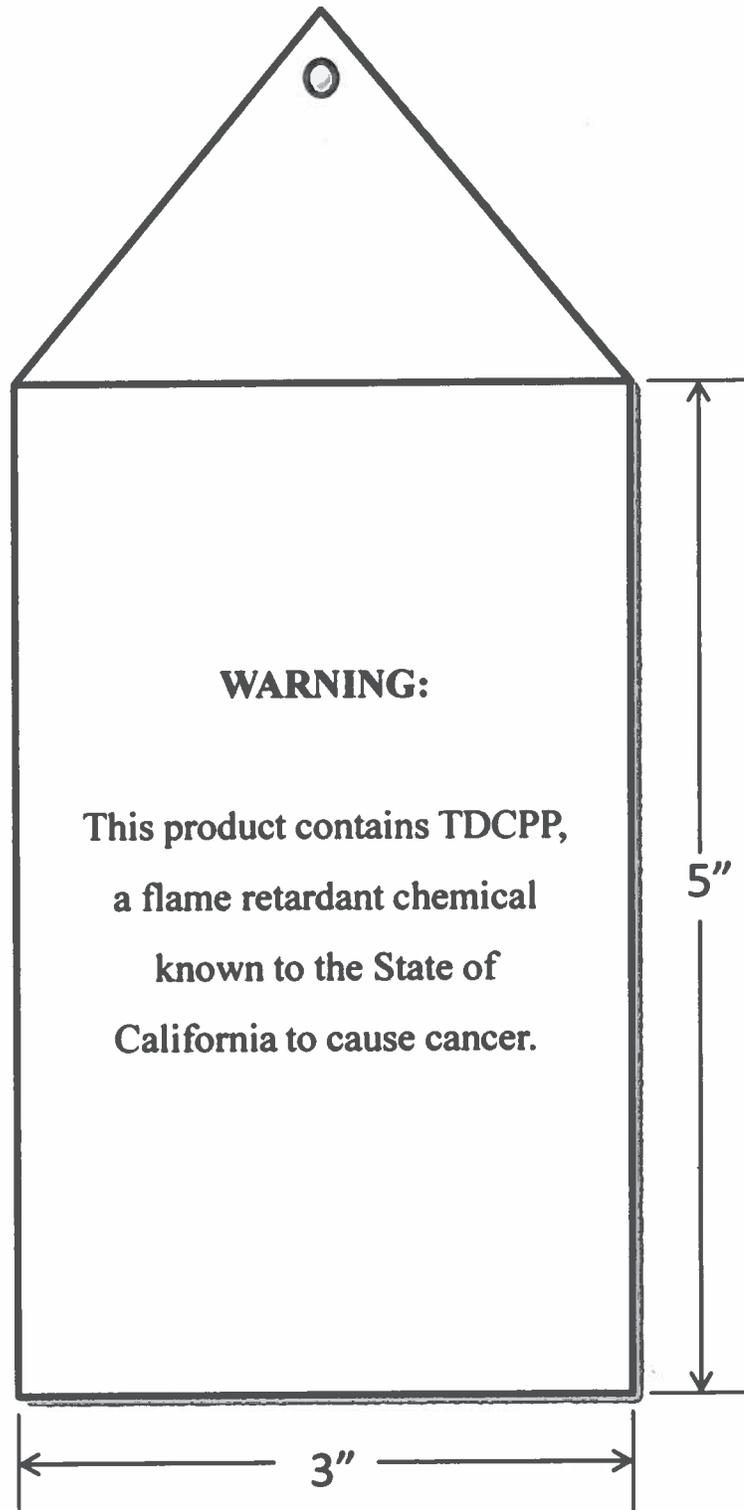
PO Box 1087

Thomasville, NC 27361-1087





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.