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

13 PETER ENGLANDER

14 Plaintiff,

15 v.

16 BEXCO ENTERPRISES, INC., et al.

17 Defendants.

Case No. RG13688520

*Assigned for All Purposes to
The Hon. George C. Hernandez, Jr.
Department 17*

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT A.R.T. FURNITURE,
INC.**

(Health & Safety Code § 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendant A.R.T. Furniture, Inc. (“A.R.T.”), with Englander and A.R.T. each
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 A.R.T. 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 and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Englander alleges that A.R.T. manufactured, imported, sold and/or
16 distributed for sale in California, upholstered furniture with foam padding containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without providing the clear and reasonable health hazard
18 warnings required by Proposition 65.

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

24 **1.5 Product Description**

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

1 **1.6 Notice of Violation**

2 On May 1, 2013, Englander served A.R.T. and certain requisite public enforcement agencies
3 with a 60-Day Notice of Violation (“Notice”), alleging that A.R.T. violated Proposition 65 when it
4 failed to warn its customers, consumers, and workers in California that the Products expose users to
5 TDCPP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
6 prosecuting the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On July 22, 2013, Englander commenced the instant action (“Complaint”), naming A.R.T.
9 as a defendant, and stating a cause of action for the alleged violations of Proposition 65 that are the
10 subject of the Notice.

11 **1.8 No Admission**

12 A.R.T. denies the material, factual, and legal allegations contained in the Notice and
13 Complaint and maintains that all of the products that it has sold or distributed for sale in California,
14 including the Products, have been and are in compliance with all laws. Nothing in this Consent
15 Judgment shall be construed as an admission by A.R.T. of any fact, finding, conclusion of law,
16 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
17 construed as an admission by A.R.T. of any fact, finding, conclusion of law, issue of law, or
18 violation of law. This Section shall not, however, diminish or otherwise affect A.R.T.’s
19 obligations, responsibilities, and duties under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over A.R.T. as to the allegations contained in the Complaint, that venue is proper in the
23 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section 664.6.

25 **2. DEFINITIONS**

26 **2.1 California Customer**

27 “California Customer” shall mean any customer of A.R.T. that A.R.T. reasonably
28 understands is located in California, has a California warehouse or distribution center, maintains a

1 retail outlet in California, or has distributed Products for sale in California, online via the internet or
2 by any other means, on or after January 1, 2011.

3 **2.2 No Detectable Amount**

4 “No Detectable Amount” shall mean no more than 25 parts per million (“ppm”) (the
5 equivalent of .0025%) of any one chemical in any material, component, or constituent of a
6 subject product, when analyzed by a domestic NVLAP (National Volunteer Laboratory
7 Accreditation Program) accredited laboratory pursuant to EPA testing methodologies 3545 and
8 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
9 or measure the amount, of TDCPP or TCEP in a solid substance.

10 **2.3 Effective Date**

11 “Effective Date” shall mean January 15, 2014.

12 **2.4 Private Label Covered Products**

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

16 **2.5 Reformulated Products**

17 “Reformulated Products” shall mean Products that contain No Detectable Amount of
18 TDCPP or TCEP.

19 **2.6 Reformulation Standard**

20 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
21 TDCPP or TCEP.

22 **2.7 Retailer**

23 “Retailer” means a person that offers a Product for sale to consumers in California.

24 **3. INJUNCTIVE RELIEF: REFORMULATION**

25 **3.1 Reformulation Commitment**

26 Commencing on July 1, 2014, and continuing thereafter, A.R.T. shall not manufacture or
27 import for distribution or sale to California Customers for sale in California, or cause to be
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1 manufactured or imported for distribution or sale to California Customers for sale in California, any
2 Products that are not Reformulated Products.

3 **3.2 Vendor Notification/Certification**

4 No later than 30 days after the Effective Date, A.R.T. shall provide written notice to all of
5 its then-current vendors of Products that are sold or offered for sale in California, or to California
6 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
7 Products. In addressing the obligation set forth in the preceding sentence, A.R.T. shall not employ
8 statements to encourage a vendor to delay compliance with the Reformulation Standard. No later
9 than July 1, 2014, A.R.T. shall obtain a written certification from each such vendor, and any other
10 vendors engaged as of that date, that the Products it manufactures comply with the Reformulation
11 Standard. Such certifications shall be held by A.R.T. for at least two years from receipt, and shall
12 be made available to Englander upon request.

13 **3.3 Products No Longer in A.R.T.'s Control**

14 No later than 30 days after the Effective Date, A.R.T. shall send a letter ("Notification
15 Letter"), electronic or otherwise, to: (1) each California Customer and/or Retailer which it, after
16 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
17 ("Exemplar Product"); and (2) any California Customer and/or Retailer which it, before October 28,
18 2011, supplied the Exemplar Product for resale in California and that A.R.T. believes is reasonably
19 likely to have any inventory of Exemplar Products for resale in California as of the January 1, 2013.
20 The Notification Letter shall advise the recipient that the Exemplar Product "contains TDCPP
21 and/or TCEP, chemicals known to the State of California to cause cancer," and request that the
22 recipient either: (a) label the Exemplar Products remaining in inventory prior to offering them for
23 sale in California, or to California Customers, pursuant to Section 3.5; or (b) return, at A.R.T.'s
24 expense, all units of the Exemplar Product held for sale in California, or to California Customers, to
25 A.R.T. or a party A.R.T. has otherwise designated. The Notification Letter shall require a response
26 from the recipient within 20 days confirming whether the Exemplar Product will be labeled or
27 returned. The Settling Defendant shall maintain records of all Notification Letters and responses
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1 for two years after the Effective Date and shall promptly produce copies of such records upon
2 Englander's written request.

3 **3.4 Current Inventory**

4 Any Products in, or manufactured and en route to, A.R.T.'s inventory as of or after January
5 31, 2014, that do not qualify as Reformulated Products, and that A.R.T. has reason to believe may
6 be sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth
7 in Section 3.5 below unless Section 3.6 applies.

8 **3.5 Product Warnings**

9 **3.5.1 Product Labeling.** Any warning provided under Section 3.3 or 3.4 above
10 shall be affixed to the packaging, labeling, or directly on each Product. Each warning shall be
11 prominently placed with such conspicuousness when compared with other words, statements,
12 designs, or devices as to render it likely to be read and understood by an ordinary individual under
13 customary conditions before purchase. Each warning shall be provided in a manner such that the
14 consumer or user understands to which specific Product the warning applies, so as to minimize the
15 risk of consumer confusion.

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

17 **WARNING:** This product contains [TDCPP and/or
18 TCEP], flame retardant chemicals
19 known to the State of California to
20 cause cancer.¹

21 **3.5.2 Internet Website Warning.** A warning shall be given in conjunction with
22 A.R.T.'s sale of the Products into California, or to California Customers online via the internet.
23 The warning shall appear on one or more web pages displayed to a purchaser prior to completing
24 payment and/or during the "checkout" process. The following warning statement shall be used and

24 ¹ The regulatory safe harbor warning language specified in 27 Cal. Code Regs. §
25 25603.2(a)(1) shall be deemed acceptable under this Consent Judgment, if A.R.T. employed it prior
26 to the Effective Date. A.R.T. must obtain Court approval for any alternative warning statement
27 other than that set forth above or the regulatory safe harbor language found at 27 Cal. Code Regs. §
28 25603.2(a)(1), and/or for any proposed alternate method of warning transmission. In doing so,
A.R.T. agrees to provide the Parties and the Office of the Attorney General with timely notice and
an opportunity to oppose or comment on before the Court acts on the request. The Parties agree
that the following hybrid warning language shall not be deemed to meet the requirements of 27 Cal.
Code Regs. § 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."

1 shall: (a) appear adjacent to or immediately following the display, description, or price of the
2 Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer. The
3 warning text shall be the same type size or larger than the Product description text, and shall state:

4 **WARNING:** This product contains [TDCPP and/or
5 TCEP], flame retardant chemicals
6 known to the State of California to
7 cause cancer.²

8 **3.6 Alternatives to Interim Warnings**

9 A.R.T.'s obligation under Section 3.3 shall be relieved if it provides Englander with written
10 notice on or before March 15, 2014 certifying that only Exemplar Products meeting the
11 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
12 California, after March 31, 2014. The obligations of A.R.T. under Section 3.4 shall be relieved
13 upon Englander's receipt of A.R.T.'s written certification on or before March 15, 2014, that, as of
14 July 1, 2014, it will only distribute or cause to be distributed for sale, or sell in California, or to
15 California Customers for sale in California, Products (i.e., Products beyond the Exemplar Product)
16 meeting the Reformulation Standard. The certifications provided by this Section are material terms
17 and time is of the essence.

18 **4. MONETARY PAYMENTS**

19 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

20 In settlement of all the claims referred to in this Consent Judgment, A.R.T. shall pay the
21 civil penalties shown on Exhibit A. Each penalty payment will be allocated in accordance with
22 California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the funds remitted
23 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), 25% of the
24 penalty remitted to "The Chanler Group in Trust for Englander." Each penalty payment shall be
25 delivered within two business days of the date it is due at the addresses provided in Section 4.5,
26 below. A.R.T. shall be liable for payment of simple interest at a rate of 10% for all amounts due
27 and owing that are not received within two business days of the date they are due, if any.

28 ² The preceding footnote applies in this context as well.

1 4.1.1 **Initial Civil Penalty.** On or before the Effective Date, A.R.T. shall make an
2 initial civil penalty payment in the amount identified on Exhibit A.

3 4.1.2 **Second Civil Penalty.** On or before April 15, 2014, A.R.T. shall make a
4 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
5 penalty may be reduced according to any penalty waiver for which A.R.T. is eligible under Sections
6 4.1.4(i) and 4.1.4(iii), below.

7 4.1.3 **Third Civil Penalty.** On or before December 31, 2014, A.R.T. shall make a
8 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
9 may be reduced according to any penalty waiver for which A.R.T. is eligible under Sections
10 4.1.4(ii) and 4.1.4(iv), below.

11 4.1.4 **Reductions to Civil Penalty Payment Amounts.** A.R.T. may reduce the
12 amount of the second and/or third civil penalty payments identified on Exhibit A by providing
13 Englander with certification of certain efforts undertaken to reformulate its Products or limit the
14 ongoing sale of non-reformulated Products in California. The option to provide a written
15 certification in lieu of making a portion of A.R.T.'s second or third civil penalty payments
16 constitutes a material term of this Consent Judgment, and with regard to such term, time is of the
17 essence.

18 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of
19 Products Sold or Offered for Sale in California.**

20 If A.R.T. so Elects on Exhibit A, a portion of the second civil penalty shall be waived, if, as
21 of April 15, 2014, and continuing thereafter, A.R.T. agrees that it will only manufacture or import
22 for distribution or sale to California Customers for sale in California or cause to be manufactured or
23 imported for distribution or sale to California Customers for sale in California, Reformulated
24 Products. An officer or other authorized representative shall provide Englander with a written
25 certification confirming compliance with such conditions, no later than May 15, 2014.

26 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

27 If A.R.T. so Elects on Exhibit A, a portion of the third civil penalty shall be waived, if, as of
28 July 1, 2014, and continuing thereafter, A.R.T. agrees that it will only manufacture or import for
distribution or sale in California or cause to be manufactured or imported for distribution or sale in

1 California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate
2 (“TDBPP”) in a detectable amount of more than 25 parts per million (“ppm”) (the equivalent of
3 .0025%) in any material, component, or constituent of a subject product, when analyzed by a
4 NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or
5 equivalent methodologies utilized by federal or state agencies to determine the presence, and
6 measure the quantity, of TDBPP in a solid substance. An officer or other authorized representative
7 shall provide Englander with a written certification confirming compliance with such conditions, no
8 later than November 15, 2014.

9 4.1.4(iii) **Partial Penalty Waiver for Withdrawal of Non-Reformulated**
10 **Exemplar Products from the California Market.**

11 As shown on A.R.T.’s Exhibit A, a portion of the second civil penalty shall be waived, if an
12 officer or other authorized representative of A.R.T. provides Englander with written certification,
13 by April 15, 2014, confirming that each California Customer or Retailer to which it supplied the
14 Exemplar Product for resale in California after October 28, 2011, has elected, pursuant to Section
15 3.3, to return all Exemplar Products held for sale in California.³

16 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**
17 **California of Inventory of Non-Reformulated Products.**

18 As shown on A.R.T.’s Exhibit A, a portion of the third civil penalty shall be waived, if an
19 officer or other authorized representative of A.R.T. provides Englander with written certification,
20 on or before December 31, 2014, confirming that, as of July 1, 2014, it has and will continue to
21 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
22 Products.

23 4.2 **Representations and Warranties**

24 A.R.T. represents that the sales data and other information concerning its size, knowledge of
25 TDCPP/TCEP presence, and prior reformulation and/or warning efforts, provided to Englander
26 were true and accurate based on its knowledge and are material factors upon which Englander relied

27 ³ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Englander has, prior to August 31, 2013, provided A.R.T. with test results from a NVLAP
accredited laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm
pursuant to EPA testing methodologies 3545 or 8270C.

1 to determine the amount of civil penalties assessed pursuant to Health and Safety Code section
2 25249.7(b). If, within nine months of the Effective Date, Englander discovers and presents to
3 A.R.T., evidence demonstrating that the preceding representation and warranty was materially
4 inaccurate, then A.R.T. shall have 30 days to meet and confer regarding Englander's contention.
5 Should this 30 day period pass without any resolution between Englander and A.R.T., Englander
6 shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for
7 breach of contract. A.R.T. further represents that in implementing the requirements set forth in
8 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to
9 achieve reformulation of its Products on a nationwide basis and not employ statements that will
10 encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for
11 sale to California Consumers.

12 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

13 If Englander provides notice and credible supporting information to A.R.T. that levels of
14 TDCPP in excess of the Reformulation Standard have been detected in one or more Products
15 labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline
16 for meeting the Reformulation Standard under Sections 3.1 or 3.6 above, has commenced, then
17 A.R.T. may elect to pay a stipulated penalty to relieve any further potential liability under
18 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
19 question.⁴ The stipulated penalty shall be \$1,000 if the violation level is below 100 ppm and \$2,000
20 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
21 excess of the Reformulation Standards but under 250 ppm.⁵ Englander shall further be entitled to
22 reimbursement of his associated expenses in an amount not to exceed \$3,000 regardless of the
23 stipulated penalty level. If the Parties proceed under this Section, A.R.T. must provide notice and
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25 ⁴ This Section shall not be applicable where the vendor in question had previously been
26 found pursuant to this Section to have provided unreliable certifications as to meeting the
27 Reformulation Standard in its Products on more than two occasions. Notwithstanding the
28 foregoing, a stipulated penalty for a second exceedance by A.R.T.'s vendor at a level between 100
and 249 ppm shall not be available after July 1, 2015.

⁵ 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 appropriate supporting information relating to the purchase (e.g. vendor name and contact
2 information including representative, purchase order, certification (if any) received from vendor for
3 the exemplar or subcategory of products), test results, and a letter from a company representative or
4 counsel attesting to the information provided to Englander within 30 calendar days of receiving
5 notice and credible supporting evidence from Englander’s counsel. Any violation levels at or above
6 250 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at
7 law.

8 4.4 Reimbursement of Fees and Costs

9 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee
11 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
12 other settlement terms had been finalized, A.R.T. expressed a desire to resolve Englander’s
13 outstanding fees and costs. Under general contract principles and the private attorney general
14 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
15 through the mutual execution of this agreement, including the fees and costs incurred as a result of
16 investigating, bringing this matter to A.R.T.’s attention, negotiating a settlement in the public
17 interest, and seeking court approval of the same. In addition, the negotiated fee and cost figure
18 expressly includes the anticipated significant amount of time Englander’s counsel will incur to
19 monitor various provisions in this agreement over the next two years, with the exception of
20 additional fees that may be incurred pursuant to A.R.T.’s election under Section 11, if any. A.R.T.
21 agreed to pay Englander, upon the Court’s approval and entry of this Consent Judgment, the
22 amount of fees and costs indicated on Exhibit A. A.R.T. further agreed to tender and shall tender
23 its payment in full under this Section to Englander’s counsel’s trust account – payable to “The
24 Chanler Group in Trust” – within two business days of the Effective Date. Such funds shall be
25 disbursed upon the Court’s approval and entry of this Consent Judgment.

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1 **4.5 Payment Procedures**

2 **4.5.1 Payment Addresses.**

3 (a) All payments owed to Englander and his counsel, pursuant to
4 Sections 4.1 and 4.2 shall be delivered to the following address:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

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

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery or Courier:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 **4.5.2 Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
26 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
27 Section 4.3.1(a) above.

28 **4.5.3 Tax Documentation.** A.R.T. shall provide a separate 1099 form for each
29 payment required by this Consent Judgment to: (a) Peter Englander, whose address and tax
30 identification number shall be furnished upon request after this Consent Judgment has been fully
31 executed by the Parties; (b) “California Office of Environmental Health Hazard Assessment” (EIN:
32 68-0284486); and (c) “The Chanler Group” (EIN: 94-3171522) , and deliver such form to the payee
33 at the payment addresses provided in Section 4.3.1, above.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Englander’s Release of Proposition 65 Claims**

3 Englander, acting on his own behalf and in the public interest, releases A.R.T., its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
5 attorneys, and each entity to whom A.R.T. directly or indirectly distributes or sells the Products,
6 including, but not limited, to downstream distributors, wholesalers, customers, retailers (including,
7 without limitation, J.C. Penney Company, Inc.), franchisees, cooperative members, and licensees
8 (collectively, “Releasees”), from all claims alleging violations of Proposition 65 through the
9 Effective Date based on unwarned exposures to the Listed Chemicals in the Products, as set forth in
10 the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
11 Proposition 65 with respect to exposures to TDCPP from the Products, as set forth in the Notice.
12 The Parties further understand and agree that this Section 5.1 release shall not extend upstream to
13 any entity that manufactured the Products or any component parts thereof, or any distributor or
14 supplier who sold the Products or any component parts thereof to A.R.T., except that entities
15 upstream who provided a Private Labeled Covered Product to A.R.T., if any, shall be released as to
16 the Private Labeled Covered Products A.R.T. has offered for sale in California, or to California
17 Customers.

18 **5.2 Englander’s Individual Releases of Claims**

19 Englander, in his individual capacity only and *not* in any representative capacity, provides a
20 release to A.R.T. and Releasees which shall be effective as a full and final accord and satisfaction,
21 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,
22 losses, claims, liabilities, and demands of any nature, character, or kind, whether known or
23 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
24 TDCPP, TCEP, and/or TDBPP in Products manufactured, imported, distributed, or sold by A.R.T.
25 prior to the Effective Date.⁶ The Parties further understand and agree that this Section 5.2 release
26 shall not extend upstream to any entity that manufactured any Products or any component parts
27 thereof, or any distributors or suppliers who sold any Products or any component parts thereof,
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1 except to the extent, and solely to the extent, those Products, or any component parts thereof , were
2 offered for sale in California by A.R.T., including but not limited to Private Labeled Covered
3 Products offered for sale in California by the A.R.T.. Nothing in this Section affects Englander’s
4 right to commence or prosecute an action under Proposition 65 against a Releasee that does not
5 involve A.R.T.’s Products or Additional Products.

6 **5.3 A.R.T.’s Release of Englander**

7 A.R.T., on its own behalf, and on behalf of its past and current agents, representatives,
8 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
9 attorneys and other representatives, for any and all actions taken or statements made (or those that
10 could have been taken or made) by Englander and his attorneys and other representatives, whether
11 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
12 matter, or with respect to the Products.

13 **6. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved in its entirety and entered by the
15 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
16 within one year after it has been fully executed by all Parties. Englander and A.R.T. agree to
17 support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent
18 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
19 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this
20 Consent Judgment, which motion Englander shall draft and file and A.R.T. shall support, appearing
21 at the hearing if so requested. If any third-party objection to the motion is filed, Englander and
22 A.R.T. agree to work together to file a reply and appear at any hearing. This provision is a material
23 component of the Consent Judgment and shall be treated as such in the event of a breach.

24 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
25 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
26 of action to take, then the case shall proceed in its normal course on the Court’s trial calendar. If
27 the Court’s approval is ultimately overturned by an appellate court, the Parties shall meet and
28 confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly

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

8 **7. GOVERNING LAW**

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

16 **8. NOTICE**

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

21 To A.R.T.:

22 At the address shown on Exhibit A

To Englander:

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

26 Any Party, from time to time, may specify in writing to the other Party a change of address to
27 which all notices and other communications shall be sent.
28

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

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 Englander and his counsel agree to comply with the reporting form requirements referenced
7 in California Health and Safety Code section 25249.7(f).

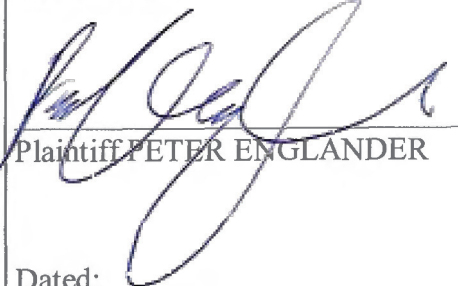
8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

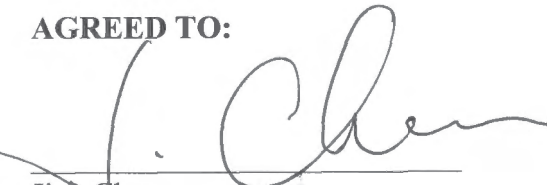
13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this
15 Consent Judgment.

16 **AGREED TO:**

17 
18 _____
19 Plaintiff PETER ENGLANDER

20
21 Dated: January 7, 2014 _____
22

AGREED TO:


23 _____
24 Jing Chen
25 Chief Financial Officer
26 Defendant A.R.T. FURNITURE, INC.

27 Dated: January 6, 2014 _____
28

EXHIBIT A

I. Settling Defendant: **A.R.T. Furniture, Inc. (“A.R.T.”)**

II. Types of Covered Products: Upholstered Furniture manufactured or distributed by A.R.T. (including, but not limited to, ottomans, footstools, and other furniture that utilizes polyurethane foam) and replacement parts and components manufactured or distributed by A.R.T. for the same.

III. Downstream Entities Released: The downstream entities covered by the Release in Section 5 include, but are not limited to, J. C. Penney Corporation, Inc. and J. C. Penney Company, Inc.

IV. A.R.T.’s Settlement Payments:

A. Initial Settlement Payments: \$34,000

- 1. Initial Civil Penalty: \$9,000
- 2. Attorneys’ Fees and Costs: \$ 25,000

B. Second Civil Penalty: \$12,000

- 1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: \$8,000
- 2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: \$4,000

C. Third Civil Penalty: \$5,000

- 1. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: \$3,000
- 2. Section 4.1.4(iv) Partial Penalty Waiver, if applicable: \$2,000

V. Persons to receive notice under Section 8:

<p>Jing Chen, Chief Financial Officer A.R.T. Furniture, Inc. 1165 Auto Center Drive Ontario, CA 91761</p> <p>Email: jchen@arthomefurnishings.com</p> <p>Tel: (909) 390-1039 Fax: (909) 390-1059</p>	<p>Todd O. Maiden, Esq. Jamon L. Bollock, Esq. Reed Smith, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105</p> <p>Email: tmaiden@reedsmith.com jbollock@reedsmith.com</p> <p>Tel: (415) 659-5918 Fax: (415) 391-8269</p>
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