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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 Plaintiff,
13 v.

14 ASHLEY FURNITURE INDUSTRIES,
INC.; *et al.*,
15 Defendants.

) Case No. RG13672407
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT AMERICAN LEATHER,**
) **INC.**
)
) **(Health & Safety Code § 25249.6 *et seq.***
) **60-Day Notice of Violation Served: January 28,**
) **2013)**

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1 **1. INTRODUCTION**

2 1.1 **Parties**

3 This Consent Judgment is entered into by and between Peter Englander (“Englander”) and
4 defendant American Leather, Inc. (“American Leather”) with Englander and American Leather
5 collectively referred to as the “Parties.”

6 1.2 **Peter Englander**

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

10 1.3 **American Leather, Inc.**

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

14 1.4 **General Allegations**

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

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

24 1.5 **Product Description**

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

3 **1.6 Notice of Violation**

4 On January 28, 2013, Englander served American Leather, others, and certain requisite
5 public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the
6 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn
7 customers, 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 July 9, 2013, Englander filed a Second Amended Complaint in the Superior Court in
12 and for the County of Alameda against Ashley Furniture Industries, Inc., among others, and Does 1
13 through 150, *Peter Englander v. Ashley Furniture Industries, Inc., et al.*, Case No. RG13672407,
14 which names America Leather as a defendant and alleges violations of Proposition 65, based in
15 part on the alleged unwarned exposures to TDCPP contained in the Products (“Complaint”).

16 **1.8 No Admission**

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

25 **1.9 Consent to Jurisdiction**

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

4 **2. DEFINITIONS**

5 **2.1 California Customers**

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

9 **2.2 Detectable**

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

15 **2.3 Effective Date**

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

17 **2.4 Reformulated Products**

18 “Reformulated Products” shall mean Products that contain no Detectable amount of
19 TDCPP and TCEP.

20 **2.5 Reformulation Standard**

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

23 **2.6 Retailer**

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

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on March 31, 2014, American Leather 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, American Leather shall provide written notice to all of its
8 then-current vendors of the Products that will be sold or offered for sale in California, or to
9 California Customers, instructing each such vendor to use reasonable efforts to provide only
10 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
11 preceding sentence, American Leather shall not employ statements that will encourage a vendor to
12 delay compliance with the Reformulation Standard. American Leather shall subsequently obtain
13 written certifications, no later than April 1, 2014, from such vendors, and any newly engaged
14 vendors, that the Products manufactured by such vendors are in compliance with the
15 Reformulation Standard. Certifications shall be held by American Leather for at least two years
16 after their receipt and shall be made available to Englander upon request.

17 **3.3 Products No Longer in American Leather's Control**

18 No later than 45 days after the Effective Date, American Leather shall send a letter,
19 electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer
20 which it, after October 28, 2011, supplied the item for resale in California described as an
21 exemplar in the Notice received by American Leather from Englander ("Exemplar Product"); and
22 (2) any California Customer and/or Retailer that American Leather reasonably understands or
23 believes had any inventory for resale in California of Exemplar Product as of the relevant Notice's
24 dates. The Notification Letter shall advise the recipient that the Exemplar Product "contains
25 TDCPP, a chemical known to the State of California to cause cancer," and request that the
26 recipient either: (a) label the Exemplar Products remaining in inventory for sale in California, or
27 to California Customers, pursuant to Section 3.5; or (b) return, at American Leather's sole
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1 expense, all units of the Exemplar Product held for sale in California, or to California Customers,
2 to American Leather or a party American leather has otherwise designated. The Notification
3 Letter shall require a response from the recipient within 15 days confirming whether the Exemplar
4 Product will be labeled or returned. American Leather shall maintain records of all
5 correspondence or other communications generated pursuant to this Section for two years after the
6 Effective Date and shall promptly produce copies of such records upon Englander's written
7 request.

8 3.4 Current Inventory

9 Any Products in, or manufactured and en route to, American Leather's inventory as of or
10 after December 31, 2013, that do not qualify as Reformulated Products and that American Leather
11 has reason to believe may be sold or distributed for sale in California, shall contain a clear and
12 reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.¹

13 3.5 Product Warnings

14 3.5.1 Product Labeling

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

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27 ¹ This shall not apply to Products which are Private Label Covered Products in a Retailer
28 settling Defendant's inventory as of December 31, 2013.

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

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3 **WARNING:** This product contains TDCPP, a
4 flame retardant chemical known to
the State of California to cause
cancer.²

5 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
6 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
7 set forth in this Section are addressed, including as to the required warning statement and method
8 of transmission as set forth above, American Leather remains free not to utilize the template
9 warnings.

10 **3.5.2 Internet Website Warning**

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

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19 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
20 used if American Leather had begun to use it, prior to the Effective Date. If American Leather
21 seeks to use alternative warning language, other than the language specified above or the safe
22 harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission
23 of the warning, 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."

24 ³ The characteristics of the template warnings are as follows: (a) a yellow hang tag
25 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
26 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
27 yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed
directly to the Product packaging.

WARNING: This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.⁴

3.6 Alternatives to Interim Warnings

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

4. MONETARY PAYMENTS

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

In settlement of all the claims referred to in this Consent Judgment, American Leather shall pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group in Trust for Englander.” Each penalty payment shall be made within two business days of the date it is due and be delivered to the addresses listed in Section 4.5 below. American Leather shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

⁴ Footnote 2, *supra*, applies in this context as well.

1 4.1.1 Initial Civil Penalty. On or before the Effective Date, American Leather
2 shall make an initial civil penalty payment in the amount identified on American Leather’s Exhibit
3 A.

4 4.1.2 Second Civil Penalty. On or before January 15, 2014, American leather
5 shall make a second civil penalty payment in the amount identified on American Leather’s Exhibit
6 A. The amount of the second penalty may be reduced according to any penalty waiver American
7 Leather is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

8 4.1.3 Third Civil Penalty. On or before November 30, 2014, American Leather
9 shall make a third civil penalty payment in the amount identified on American Leather’s Exhibit
10 A. The amount of the third penalty may be reduced according to any penalty waiver American
11 Leather is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

12 4.1.4 Reductions to Civil Penalty Payment Amounts. American Leather may
13 reduce the amount of the second and/or third civil penalty payments identified on American
14 Leather Exhibit A by providing Englander with certification of certain efforts undertaken to
15 reformulate their Products or limit the ongoing sale of non-reformulated Products in California.
16 The options to provide a written certification in lieu of making a portion of American Leather’s
17 civil penalty payment constitute material terms of this Consent Judgment, and with regard to such
18 terms, time is of the essence.

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

21 As shown on American Leather’s Exhibit A, a portion of the second civil penalty shall be
22 waived, to the extent that it has agreed that, as of November 1, 2013, and continuing into the
23 future, it shall only manufacture or import for distribution or sale to California Customers or cause
24 to be manufactured or imported for distribution or sale to California Customers, Reformulated
25 Products. An officer or other authorized representative of American Leather that has exercised this
26 election shall provide Englander with a written certification confirming compliance with such
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1 conditions, which certification must be received by Englander’s counsel on or before December
2 15, 2013.

3 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

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

16 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
17 **Exemplar Products from the California Market.**

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

23 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
24 **California of Unreformulated Inventory.**

25 As shown on American Leather’s Exhibit A, a portion of the third civil penalty shall be
26 waived, if an officer or other authorized representative of American Leather provides Englander
27 with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it

1 has and will continue to distribute, offer for sale, or sell in California, or to California Customers,
2 only Reformulated Products.

3 4.2 Representations

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

14 American Leather further represents that in implementing the requirements set forth in
15 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts
16 to achieve reformulation of its Products on a nationwide basis and not employ statements that will
17 encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for
18 sale to California Consumers.

19 4.3 Stipulated Penalties for Certain Violations of the Reformulation

20 Standard.

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

13 4.4 Reimbursement of Fees and Costs

14 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
16 this fee reimbursement issue to be resolved after the material terms of the agreement had been
17 settled. Shortly after the other settlement terms had been finalized, American Leather expressed a
18 desire to resolve the fee and cost issue. American Leather then agreed to pay Englander and his
19 counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution
21 of this agreement, including the fees and costs incurred as a result of investigating, bringing this
22 matter to American Leather's attention, negotiating a settlement in the public interest, and seeking
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24 ⁵ This Section shall not be applicable where the vendor in question had previously been
25 found by American Leather to have provided unreliable certifications as to meeting the
26 Reformulation Standard in its Products on more than one occasion. Notwithstanding the
foregoing, a stipulated penalty for a second exceedance by American Leather's vendor at a level
between 100 and 249 ppm shall not be available after July 1, 2015.

27 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 court approval of the same. In addition, the negotiated fee and cost figure expressly includes the
2 anticipated significant amount of time Englander’s counsel will incur to monitor various
3 provisions in this agreement over the next two years. American Leather more specifically agreed,
4 upon the Court’s approval and entry of this Consent Judgment, to pay Englander’s counsel the
5 amount of fees and costs indicated on American Leather’s Exhibit A. American Leather further
6 agreed to tender and shall tender its full required payment under this Section to a trust account at
7 The Chanler Group (made payable “In Trust for The Chanler Group”) within two business days of
8 the Effective Date. Such funds shall be released from the trust account upon the Court’s approval
9 and entry of this Consent Judgment.

10 **4.5 Payment Procedures**

11 4.5.1 Issuance of Payments.

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

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

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

22 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

7 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
8 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
9 in Section 4.5.1(a) above, as proof of payment to OEHHA.

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

17 **5. CLAIMS COVERED AND RELEASED**

18 **5.1 Englander’s Release of Proposition 65 Claims**

19 Englander, acting on his own behalf and in the public interest, releases American Leather
20 and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
21 employees, attorneys, and all of their successors and assigns (“Defendant Releasees”), and each
22 entity to whom Defendant Releasees directly or indirectly distribute or sell Products, including, but
23 not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
24 members, and licensees (collectively, “Downstream Releasees”), from all claims for violations of
25 Proposition 65 through the Effective Date based on unwarned exposures to the TDCPP in the
26 Products, as set forth in the Notice. Compliance with the terms of this Consent Judgment
27 constitutes compliance with Proposition 65 with respect to exposures to the TDCPP from the
28 Products, as set forth in the Notice. The Parties further understand and agree that this Section 5.1
release shall not extend upstream to any entities, other than Defendant Releasees, that

1 manufactured the Products or any component parts thereof, or any distributors or suppliers who
2 sold the Products or any component parts thereof to Defendant Releasees.

3 **5.2 Englander’s Individual Releases of Claims**

4 Englander, in his individual capacity only and *not* in his representative capacity, provides 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 Englander of any nature, character, or kind, whether known or
8 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
9 TDCPP, TCEP and TDBPP in the Products manufactured, imported, distributed, or sold by
10 Defendant Releasees prior to the Effective Date. The Parties further understand and agree that this
11 Section 5.2 release shall not extend upstream to any entities that manufactured the Products or
12 any component parts thereof or any distributors or suppliers who sold the Products or any
13 component parts thereof to Defendant Releasees. Nothing in this Section affects Englander’s right
14 to commence or prosecute an action under Proposition 65 against a Releasee that does not involve
15 Defendant Releasees Products.

16 **5.3 American Leather’s Release of Englander**

17 American Leather, on behalf of itself and Defendant Releasees, hereby waives any and all
18 claims against Englander and his attorneys and other representatives, for any and all actions taken
19 or statements made (or those that could have been taken or made) by Englander and his attorneys
20 and other representatives, whether in the course of investigating claims or otherwise seeking to
21 enforce Proposition 65 against it in this matter with respect to the Products.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
25 within one year after it has been fully executed by all Parties. If the Court does not approve the
26 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or
27 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case
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1 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is
2 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to
3 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of
4 action to take, then the case shall proceed in its normal course on the Court's trial calendar. In the
5 event that this Consent Judgment is entered by the Court and subsequently overturned by any
6 appellate court, any monies that have been provided to OEHHA, Englander, or his counsel
7 pursuant to Section 4, above, shall be refunded within 15 days of the appellate decision becoming
8 final. If the Court does not approve and enter the Consent Judgment within one year of the
9 Effective Date, any monies that have been provided to OEHHA or held in trust for Englander or
10 his counsel pursuant to Section 4, above, shall be refunded to American Leather within 15 days.

11 **7. GOVERNING LAW**

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

21 **8. NOTICES**

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

To Englander:

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3 At the address shown on Exhibit A

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

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

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

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

12 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 Englander and American Leather agree to support the entry of this agreement as a Consent
17 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
18 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
19 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall
20 draft and file. If any third party objection to the noticed motion is filed, Englander and American
21 Leather shall work together to file a reply and appear at any hearing before the Court. This
22 provision is a material component of the Consent Judgment and shall be treated as such in the
23 event of a breach.

1 **12. MODIFICATION**

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


5 **13. AUTHORIZATION**


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

9 AGREED TO:

AGREED TO:

Settling Defendant:
American Leather, Inc.

10
11 
12 _____
13 Plaintiff, Peter Englander

By: 
14 _____
15 Name: P. M. Henson, Jr.

14 Date: November 8, 2013

Date: October 15, 2013

1 EXHIBIT A

2 I. Name of Settling Defendant: AMERICAN LEATHER, INC.

3 II. Names of Releasees (optional/partial):

4 AL Legacy Partners, Inc.

5 American Leather Operations, LLC

6 American Leather Holdings, LLC

7 III. Types of Covered Products Applicable to American Leather:

8 Padded Upholstered Furniture, including Ottomans, containing TDCPP

9 IV. Types of Additional Products American Leather Elects to Address (if any):

10 V. American Leather Required Settlement Payments

11 A. Penalties of \$86,000, as follows:

12 \$20,000 initial payment due on or before the Effective Date;

13 \$42,000 second payment due on or before January 15, 2014, of which
14 \$23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be
waived pursuant to Section 4.1.4(iii); and

15 \$24,000 third payment due on or before November 30, 2014, of which
16 \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be
waived pursuant to Section 4.1.4(iv).

17 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
18 attributable to American Leather, Inc.: \$40,000.

19 VI. Person(s) to receive Notices pursuant to Section 8

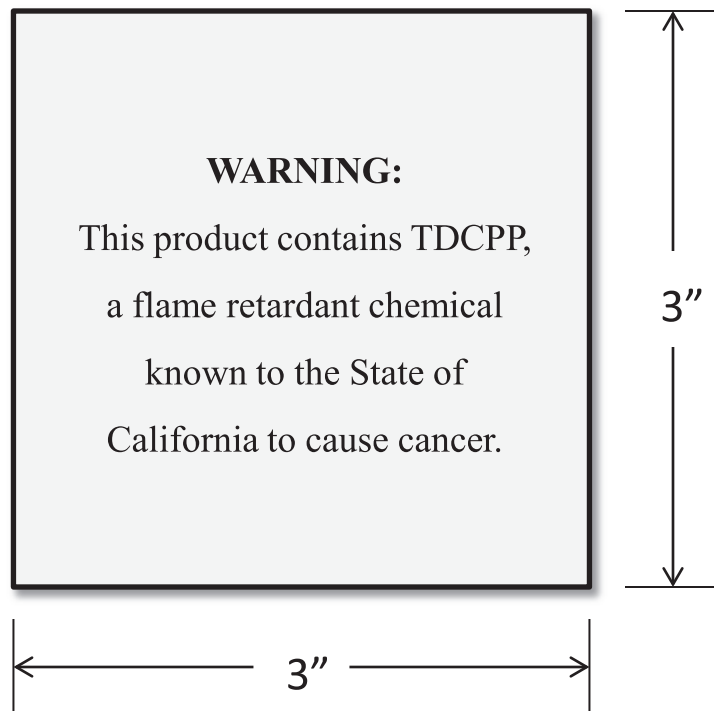
20 Mel Henson
21 CFO
22 American Leather, Inc.
4501 Mountain Creek Parkway
23 Dallas, TX 75236\

24 With a copy to:

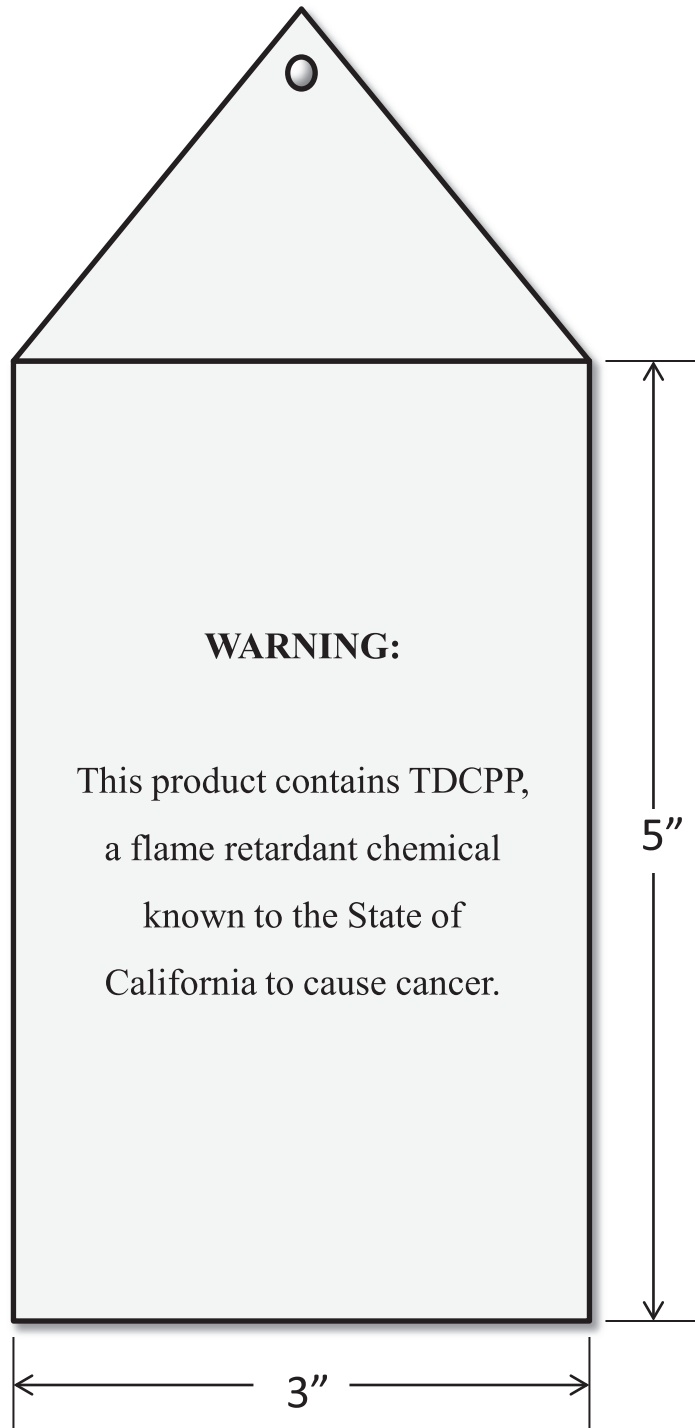
25 Jeffrey B. Margulies
26 Norton Rose Fulbright
555 South Flower Street, 41st Floor
27 Los Angeles, CA 90071
28

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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



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

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to
cause cancer.

11"

INSTRUCTIONS:

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