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

14 PETER ENGLANDER
15 Plaintiff,

16 v.

17 ASHLEY FURNITURE INDUSTRIES,
18 INC., et al.
19 Defendants.

Case No. RG13672407

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

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT THE BEST MASTER
ENTERPRISES, 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 The Best Master Enterprises, Inc. (“Best Master”), with Englander and
5 Best Master each 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 Best Master 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 Best Master 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”), and furniture with vinyl upholstery containing di(2-
18 ethylhexyl)phthalate (“DEHP”) without providing the clear and reasonable health hazard warnings
19 required by Proposition 65.

20 On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
21 chemical known to reproductive harm or birth defects. DEHP became subject to the “clear and
22 reasonable warning” requirements of the act one year later on October 24, 2003. Cal. Code Regs.,
23 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).

24 On October 28, 2011, California identified and listed TDCPP pursuant to
25 Proposition 65 as a chemical known to cause cancer. TDCPP became subject to the “clear and
26 reasonable warning” requirements of the act one year later on October 28, 2012. Cal. Code Regs.,
27 tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges workers,
28 consumers, and other individuals, including infants and children are exposed to TDCPP that

1 escapes from the foam padding components in Best Master’s furniture, and that the same
2 individuals are exposed to DEHP by route of dermal exposure and/or ingestion.

3 1.5 **Product Description**

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

8 1.6 **Notices of Violation**

9 On March 27, 2013, and July 12, 2013, Englander served Best Master and the requisite
10 public enforcement agencies with two separate 60-Day Notices of Violation (“Notices”), alleging
11 that Best Master violated Proposition 65 when it failed to warn their customers, consumers, and
12 workers in California that the Products expose users and other individuals to DEHP and TDCPP.
13 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
14 prosecuting the allegations set forth in the Notices.

15 1.7 **Complaint**

16 On March 21, 2013, Englander commenced the instant action. Thereafter, on July 9, 2013,
17 Englander filed a Second Amended Complaint (“Complaint”), the operative pleading in this action,
18 naming Best Master as a defendant, and stating a cause of action for the alleged violations of
19 Proposition 65 that are the subject of the Notices.

20 1.8 **No Admission**

21 Best Master denies the material, factual, and legal allegations contained in the Notices and
22 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
23 including the Products, have been and are in compliance with all laws. Nothing in this Consent
24 Judgment shall be construed as an admission by Best Master of any fact, finding, conclusion of law,
25 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
26 construed as an admission by Best Master of any fact, finding, conclusion of law, issue of law, or
27 violation of law. This Section shall not, however, diminish or otherwise affect Best Master’s
28 obligations, responsibilities, and duties under this Consent Judgment.

1 **1.9 Jurisdiction**

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

7 **2. DEFINITIONS**

8 **2.1 California Customer**

9 “California Customer” shall mean any customer that Best Master reasonably understands is
10 located in California, has a California warehouse or distribution center, maintains a retail outlet in
11 California, or has distributed Products for sale in California, online via the internet or by any other
12 means, on or after January 1, 2011.

13 **2.2 No Detectable Amount**

14 “No Detectable Amount” shall mean no more than 25 parts per million (“ppm”) (the
15 equivalent of .0025%) of any one chemical in any material, component, or constituent of a
16 subject product, when analyzed by a domestic NVLAP (National Volunteer Laboratory
17 Accreditation Program) accredited laboratory pursuant to Environmental Protection Agency testing
18 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
19 determine the presence, or measure the amount, of TDCPP, tris(2-chloroethyl) phosphate
20 (“TCEP”), and/or tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a solid substance.

21 **2.3 Effective Date**

22 “Effective Date” shall mean the date that the Court grants the motion for approval of this
23 Consent Judgment contemplated by Section 6.

24 **2.4 Private Label Covered Products**

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

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2.5 Reformulated Products

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

2.6 Reformulation Standard

The “Reformulation Standard” shall mean containing no more than 25 ppm for each of TDCPP, TCEP, and/or TDBPP.

2.7 Retailer

“Retailer” means an individual or entity that offers a Product for sale to consumers in California.

2.8 Standard for DEHP Content

The “DEHP Standard” shall mean products containing a maximum of 1,000 ppm DEHP content when tested pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies to determine DEHP content in a solid substance.

3. INJUNCTIVE RELIEF: REFORMULATION

3.1 Reformulation Commitment

Commencing on September 15, 2014, and continuing thereafter, Best Master shall not manufacture or import for distribution or sale to California Customers, or cause to be manufactured or imported for distribution or sale to California Customers, any Products that are not Reformulated Products. With regard to DEHP in vinyl/PVC upholstery, Best Master shall, no later than the Effective Date, only purchase for sale, manufacture for sale, or distribute for sale in California, or to a California Customer for sale in California, Products that comply with the DEHP Standard.

3.2 Vendor Notification/Certification

To the extent it has not already done so, Best Master shall provide written notice to all of its current vendors of Products that are sold or offered for sale in California, or to California Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated Products and Products that Comply with the DEHP Standard. In addressing the obligation set forth in the preceding sentence, Best Master shall not employ statements to encourage a vendor to delay

1 compliance with the Reformulation Standard. No later October 1, 2014, Best Master shall obtain a
2 written certification from each such vendor, and any newly engaged vendors, that the Products it
3 manufactures comply with the Reformulation Standard and the DEHP Standard applicable to
4 vinyl/PVC upholstery. Such certifications shall be held by Best Master for at least two years from
5 receipt, and shall be made available to Englander upon request.

6 **3.3 Products No Longer in Best Master's Control**

7 To the extent it has not already done so, Best Master shall send a letter ("Notification
8 Letter"), electronic or otherwise, to: (a) each California Customer and/or Retailer which it, after
9 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notices
10 ("Exemplar Product"); and (b) any California Customer and/or Retailer that Best Master believes is
11 reasonably likely to have any inventory of Exemplar Products for resale in California as of October
12 28, 2012. The Notification Letter shall advise the recipient that the Exemplar Product "contains
13 TDCPP and/or TCEP, chemicals known to the State of California to cause cancer," and request that
14 the recipient either: (a) label the Exemplar Products remaining in inventory prior to offering them
15 for sale in California, or to California Customers, pursuant to Section 3.5; or (b) return, at Best
16 Master's expense, all units of the Exemplar Product held for sale in California, or to California
17 Customers, to Best Master or a party Best Master has otherwise designated. The Notification Letter
18 shall require a response from the recipient within 20 days confirming whether any remaining
19 Exemplar Products in the customer's inventory will be labeled or returned. Best Master shall
20 maintain records of Notification Letters and customer responses sent or received under this Section
21 for two years, and shall promptly produce copies of such records upon Englander's request.

22 **3.4 Current Inventory**

23 Any Products in, or manufactured and en route to, Best Master's inventory as of or after
24 September 15, 2014, that do not qualify as Reformulated Products, and that Best Master has reason
25 to believe may be sold or distributed for sale in California, shall contain a clear and reasonable
26 warning as set forth in Section 3.5 below unless Section 3.6 applies.

27 **3.5 Product Warnings**

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1 **3.5.1 Product Labeling.** Any warning provided under Section 3.3 or 3.4 above
2 shall be affixed to the packaging, labeling, or directly on each Product. Each warning shall be
3 prominently placed with such conspicuousness when compared with other words, statements,
4 designs, or devices as to render it likely to be read and understood by an ordinary individual under
5 customary conditions before purchase. Each warning shall be provided in a manner such that the
6 consumer or user understands to which specific Product the warning applies, so as to minimize the
7 risk of consumer confusion.

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

9 **WARNING:** This product contains [TDCPP and/or
10 TCEP], flame retardant chemicals
11 known to the State of California to
 cause cancer.¹

12 **3.5.2 Internet Website Warning.** A warning shall be given in conjunction with
13 the sale of the Products into California, or to California Customers online via the internet. The
14 warning shall appear on one or more web pages displayed to a purchaser prior to completing
15 payment and/or during the “checkout” process. The following warning statement shall be used and
16 shall: (a) appear adjacent to or immediately following the display, description, or price of the
17 Product; (b) be accessible via a hyperlink that appears adjacent to or immediately following the
18 display, description, or price of the Product; or (c) appear as a pop-up box. The warning, hyperlink
19 and/or pop-up box text shall be the same type size or larger than the Product description text, and
20 shall state:

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24 ¹ Alternative warning language that meets the requirements of 27 Cal. Code Regs. § 25601 shall be deemed
25 acceptable under this Consent Judgment, if Best Master utilized it prior to the Effective Date. . If Best Master elects to
26 employ any warning language or method of warning transmission other than that which provided in Section 3.5.2, or
27 the safe harbor warning provided by 27 Cal. Code Regs. § 25603.2(a)(1), Best Master agrees that it will obtain Court
28 approval of the alternate warning/transmission method, and provide Englander and the Office of the Attorney General
with appropriate notice and an opportunity to comment or object before the Court acts on its request. The Parties
further agree that the following hybrid warning language shall not be deemed to meet the requirements of 27 CCR §
25601 and shall not be used pursuant to this Consent Judgment: (a) “cancer or birth defects or other reproductive
harm”; and (b) “cancer, birth defects or other reproductive harm” unless the Product in question includes components
known by Best Master to contain both a flame retardant chemical and DEHP.

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

5 **3.6 Alternatives to Interim Warnings**

6 Best Master’s obligation under Section 3.3 shall be relieved if it provides Englander with
7 written notice on or before August 15, 2014, certifying that only Exemplar Products meeting the
8 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
9 California, after August 15, 2014. The obligations of Best Master under Section 3.4 shall be
10 relieved upon Englander’s receipt of Best Master’s written certification on or before August 15,
11 2014, that, as of no later than August 15, 2014, it will only distribute or cause to be distributed for
12 sale, or sell or cause to be sold in California, or to California Customers for sale in California,
13 Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard. The
14 certifications provided by this Section are material terms and time is of the essence.

15 **4. MONETARY PAYMENTS**

16 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

17 In settlement of all the claims referred to in this Consent Judgment, Best Master shall pay
18 civil penalties totaling \$15,000 in accordance with this Section 4.1. Each penalty payment will be
19 allocated in accordance with California Health & Safety Code section 25249.12(c)(1) and (d), with
20 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
21 (“OEHHA”), and 25% of the penalty remitted to Peter Englander. Each penalty payment shall be
22 delivered within two business days of the date it is due at the addresses provided in Section 4.5,
23 below. Best Master shall be liable for payment of simple interest at a rate of 10% for all amounts
24 due and owing that are not received within two business days of the date they are due, if any.

25 **4.1.1 Initial Civil Penalty.** On or before the Effective Date, Best Master shall
26 make an initial civil penalty payment in the amount shown on Exhibit A. The initial penalty
27 payment shall be delivered in two checks made payable to: (a) “OEHHA” for 75% of the initial
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² The preceding footnote applies in this context as well.

1 penalty amount shown on Exhibit A; and (b) “Peter Englander, Client Trust Account” for the
2 remaining 25% of the initial civil penalty amount shown on Exhibit A.

3 **4.1.2 Second Civil Penalty.** On or before October 1, 2014, Best Master shall
4 make a second civil penalty payment in the amount identified on Exhibit A. The amount of the
5 second penalty may be reduced according to any penalty waiver for which Best Master is eligible
6 under Sections 4.1.4(i) and 4.1.4(ii), below.

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

11 **4.1.4 Reductions to Civil Penalty Payment Amounts.** Best Master may reduce
12 the 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 Best Master’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 Best Master so Elects on Exhibit A, a portion of the second civil penalty shall be waived,
21 if, as of September 1, 2014, and continuing thereafter, Best Master agrees that it will only
22 manufacture for sale or purchase for sale in California, or to California Customers, Reformulated
23 Products. An officer or other authorized representative shall provide Englander’s counsel with a
24 written certification confirming compliance with such conditions, no later than August 15, 2014.

25 **4.1.4(ii) Partial Penalty Waiver for Withdrawal of Non-Reformulated
26 Exemplar Products from the California Market.**

27 As shown on Best Master’s Exhibit A, a portion of the second civil penalty shall be waived,
28 if an officer or other authorized representative of Best Master provides Englander with written
certification, by September 1, 2014, confirming that each individual or establishment in California

1 to which it supplied the Exemplar Product after October 28, 2011, with inventory remaining for sale
2 in California has elected, pursuant to Section 3.3, to return the unsold Exemplar Products.

3 **4.1.4(iii) Partial Penalty Waiver for Termination of Distribution to**
4 **California of Inventory of Non-Reformulated Products.**

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

9 **4.2 Representations Regarding Sales Volume**

10 Best Master represents that the sales data and other information concerning its size,
11 knowledge of TDCPP/TCEP presence, and prior reformulation and/or warning efforts provided to
12 Englander was true and accurate based on its knowledge and are material factors upon which
13 Englander relied to determine the amount of civil penalties assessed pursuant to Health and Safety
14 Code section 25249.7(b). If, within nine months of the Effective Date, Englander discovers and
15 presents evidence to Best Master demonstrating that the preceding representation and warranty was
16 materially inaccurate, then Best Master shall have 30 days to meet and confer regarding
17 Englander's contention. Should this 30 day period pass without any resolution between Englander
18 and Best Master, Englander shall be entitled to file a formal legal claim including, but not limited
19 to, a claim for damages for breach of contract.

20 **4.3 Penalties for Certain Violations of the Reformulation Standard.**

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

12 4.4 Reimbursement of Fees and Costs

13 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee
15 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
16 other settlement terms had been finalized, Best Master expressed a desire to resolve Englander's
17 outstanding fees and costs. Under general contract principles and the private attorney general
18 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
19 through the mutual execution of this agreement, including the fees and costs incurred as a result of
20 investigating, bringing this matter to Best Master's attention, negotiating a settlement in the public
21 interest, and seeking court approval of the same, Best Master agreed to pay Englander, upon the
22 Court's approval and entry of this Consent Judgment, the amount of fees and costs indicated on
23 Exhibit A. Best Master further agreed to tender and shall tender its payment in full under this
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25 ³ This Section shall not be applicable where the vendor in question had previously been
26 found by Best Master 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 Best Master's vendor at a level between 100 and 249 ppm shall
not be available after July 1, 2015.

⁴ 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 Section to Best Master’s counsel’s trust account – payable to “The Chanler Group in Trust” –
2 within two business days of the Effective Date. Such funds shall be disbursed upon the Court’s
3 approval and entry of this Consent Judgment.

4 **4.5 Payment Procedures**

5 **4.5.1 Payment Addresses.**

6 (a) All payments and tax documentation owed to Englander and his
7 counsel, pursuant to this Consent Judgment shall be delivered to the following address:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

13 (b) All payments and tax documentation owed to under this Consent
14 Judgment shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of
15 the following addresses, as appropriate:

16 For United States Postal Service Delivery:

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

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

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

28 **4.5.2 Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
shall be enclosed with Best Master’s penalty payment(s) to Englander.

4.5.3 Payment Schedule. For the initial civil penalty and attorneys’ fee and cost
reimbursement payments required by Sections 4.1.1 and 4.4, Best Master agrees to deliver its
payments according to the following payment schedule: Within ten (10) days of the Effective Date,
Best Master agrees to tender the initial civil penalty payments to Englander and OEHHA in two
checks payable to (i) “OEHHA” in the amount of \$3,750; and “Peter Englander, Client Trust

1 Account” in the amount of \$1,250. On the same date (i.e., within 10 days of the Effective Date)
2 Best Master will remit \$3,500 – a portion of the total attorneys’ fees and costs to be reimbursed – in
3 a single check payable to “The Chanler Group.” Thereafter, on or before the 15th of each of the
4 month following the Effective Date, Best Master shall deliver an additional check payable to “The
5 “Chanler Group” in the amount of \$5,000 until all of the fees to be reimbursed on Exhibit A have
6 been paid. If any of the subsequent penalty or fee reimbursement payments are not timely received
7 within two business days of the date that it is due, all payments required by Sections 4.1.1 and 4.4
8 shall be immediately due.

9 **4.5.4 Payments Held in Trust.** All payments under this Consent Judgment shall
10 be held in trust by Best Master’s counsel until such time as the Court grants the motion for approval
11 of Consent Judgment contemplated by Section 6. Within ten days of the date this Consent
12 Judgment is fully executed by the Parties, Best Master shall provide its counsel with the initial civil
13 penalty payments to OEHHA and Englander, and the payment for reimbursement of Englander’s
14 fees under Section 4.4 to be held in its attorney-client trust account until disbursement. Within two
15 business days of the Court’s approval of this Consent Judgment, Best Master’s counsel shall tender
16 to “The Chanler Group in Trust” the penalty and fee payments for Englander.

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 Best Master, its
20 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
21 employees, attorneys, and each entity to whom Best Master directly or indirectly distributes or sells
22 the Products, including, but not limited, to downstream distributors, wholesalers, customers,
23 retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all
24 claims alleging violations of Proposition 65 through the Effective Date based on unwarned
25 exposures to TDCPP in the Products, as set forth in the Notices. Compliance with the terms of this
26 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to TDCPP
27 from the Products, as set forth in the Notices. The Parties further understand and agree that this
28 Section 5.1 release shall not extend upstream to any entity that manufactured the Products or any

1 component parts thereof, or any distributor or supplier who sold the Products or any component
2 parts thereof to Best Master, except that entities upstream who provided a Private Labeled Covered
3 Product to Best Master, if any, shall be released as to the Private Labeled Covered Products Best
4 Master has offered for sale in California, or to California Customers.

5 **5.2 Englander’s Individual Releases of Claims**

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

21 **5.3 Best Master’ Release of Englander**

22 Best Master, on its own behalf, and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
24 attorneys and other representatives, for any and all actions taken or statements made (or those that
25 could have been taken or made) by Englander and his attorneys and other representatives, whether
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27 _____
28 ⁵ The injunctive relief requirements of Section 3 shall apply to Additional Products as
otherwise specified.

1 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
2 matter, or with respect to the Products.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all Parties. Englander and Best Master agree to support the entry
7 of this agreement as a Consent Judgment and to obtain approval of the Consent Judgment by the
8 Court in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety
9 Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent
10 Judgment, which motion Englander shall draft and file and Best Master shall support, appearing at
11 the hearing if so requested. If any third-party objection to the motion is filed, Englander and Best
12 Master agree to work together to file a reply and appear at any hearing. This provision is a material
13 component of the Consent Judgment and shall be treated as such in the event of a breach.

14 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
15 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
16 of action to take, then the case shall proceed in its normal course on the Court's trial calendar. If
17 the Court's approval is ultimately overturned by an appellate court, the Parties shall meet and
18 confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly
19 agree on a course of action to take, then the case shall proceed in its normal course on the Court's
20 trial calendar. In the event that this Consent Judgment is entered by the Court and subsequently
21 overturned by any appellate court, any monies that have been provided to OEHHA, Englander or
22 his counsel pursuant to Section 3, above, shall be refunded within 15 days of the appellate decision
23 becoming final. If the Court does not approve and enter the Consent Judgment within one year of
24 the Effective Date, any monies that have been provided to OEHHA or held in trust for Englander or
25 his counsel pursuant to Section 3, above, shall be refunded to the Best Master within 15 days.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California.
3 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
4 reason of law generally, or as to the Products, then Best Master may provide Englander with notice
5 of any asserted change in the law, and shall have no further obligations pursuant to this Consent
6 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this
7 Consent Judgment shall be interpreted to relieve Best Master from its obligation to comply with any
8 pertinent state or federal law or regulation.

9 **8. NOTICE**

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

14 To Best Master:

15 At the Address Shown on Exhibit A

16 To Englander:

17
18 Attn: Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

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

24 This Consent Judgment may be executed in counterparts and by facsimile or portable
25 document format (pdf) signature, each of which shall be deemed, and as valid as, an original, and
26 all of which, when taken together, shall constitute one and the same document.
27
28

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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


4 **12. MODIFICATION**

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

8 **13. AUTHORIZATION**

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

12
13 **AGREED TO:**

14 
15 _____
16 PETER ENGLANDER

17 Dated: August 3, 2014 _____

AGREED TO:

18 _____
19 THE BEST MASTER ENTERPRISES, INC.

20 By: _____
(Print Name)

21 Its: _____
(Title)

22 Dated: _____

23
24
25
26
27
28

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12
13 **AGREED TO:**

AGREED TO:

14
15 _____
16 PETER ENGLANDER

15 _____
16 THE BEST MASTER ENTERPRISES, INC.

17 Dated: _____

17 By: _____
(Print Name) *May Ta*

18 Its: _____
(Title) *Secretary*

19 Dated: _____
20 *7/25/14*

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EXHIBIT A

I. Settling Defendant: **Best Master Enterprises, Inc. (“Best Master”)**

II. Types of Covered Products: Upholstered Chairs manufactured or distributed by Best Master that contain .

III. Best Master’s Settlement Payments:

A. Initial Settlement Payments: \$33,500

1. Initial Civil Penalty: \$5,000
2. Attorneys’ Fees and Costs: \$ 28,500

Best Master’s initial penalty and attorneys’ fee and cost reimbursement payments shall be delivered according to payment schedule memorialized in Section 4.5.3 of the Consent Judgment.

B. Second Civil Penalty: \$10,000

1. Section 4.1.4(i) Partial Penalty Waiver, if applicable: \$6,000
2. Section 4.1.4(ii) Partial Penalty Waiver, if applicable: \$4,000

C. Third Civil Penalty: \$5,000

2. Section 4.1.4(iii) Partial Penalty Waiver, if applicable: \$5,000

IV. Persons to receive notice under Section 8:

Hoc Van Tah, President
The Best Master Enterprises, Inc.
15101 Santa Ana Ave., Suite 102
Fontana, CA 92337

with a copy to:

Barbara R. Adams
Adams | Nye | Becht LLP
222 Kearny St., 7th Floor
San Francisco, CA 94108
Email: badams@adamsnye.com
Phone: 415-982-8955
Fax: 415-982-2042