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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 CORINTHIAN, INC.; *et al.*,  
15 Defendants.

) Case No. RG 13684712  
)  
)

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

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

) **(Health & Safety Code § 25249.6 *et seq.***  
) **Complaint Filed: June 21, 2013)**

1 **1. INTRODUCTION**

2 1.1 **Parties**

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

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

14 1.4 **General Allegations**

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

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

23 TDCPP shall hereinafter be referred to as the “Listed Chemical.”

24 1.5 **Product Description**

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

3 **1.6 Notice of Violation**

4 On March 4, 2013, Englander served Corinthian and certain requisite public enforcement  
5 agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice  
6 of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers,  
7 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 June 21, 2013, Englander filed a Complaint in the Superior Court in and for the County  
12 of Alameda against Corinthian, among others, and Does 1 through 150, *Peter Englander v.*  
13 *Corinthian, Inc., et al.*, Case No. RG 13684712, alleging violations of Proposition 65, based in part  
14 on the alleged unwarned exposures to TDCPP contained in the Products (“Complaint”).

15 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

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

3 **2. DEFINITIONS**

4 **2.1 California Customers**

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

8 **2.2 Detectable**

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

15 **2.3 Effective Date**

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

17 **2.4 Private Label Covered Products**

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

21 **2.5 Reformulated Products**

22 “Reformulated Products” shall mean Products that contain no Detectable amount of  
23 TDCPP or TCEP

24 **2.6 Reformulation Standard**

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

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1           **2.7     Retailer**

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

4 **3.     INJUNCTIVE RELIEF: REFORMULATION**

5           **3.1     Reformulation Commitment**

6           Commencing on March 31, 2014, Corinthian shall not manufacture or import for  
7 distribution or sale to California Customers, or cause to be manufactured or imported for  
8 distribution or sale to California Customers, any Products that are not Reformulated Products.

9           **3.2     Vendor Notification/Certification**

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

20          **3.3     Products No Longer in Corinthian’s Control**

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

10 **3.4 Current Inventory**

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

15 **3.5 Product Warnings**

16 **3.5.1 Product Labeling**

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

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

2  
3 **WARNING:** This product contains TDCPP, a  
4 flame retardant chemical known to  
the State of California to cause  
cancer.<sup>1</sup>

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.<sup>2</sup> 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, Corinthian remains free not to utilize the template warnings.

9 **3.5.2 Internet Website Warning**

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

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18  
19 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be  
20 used if Corinthian had begun to use it, prior to the Effective Date. If Corinthian seeks to use  
21 alternative warning language, other than the language specified above or the safe harbor warning  
22 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,  
23 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 <sup>2</sup> 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  
26 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring  
27 8.5" x. 11", with no less that 32 point font, with the warning language printed on each side, which  
shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a  
yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed  
directly to the Product packaging.

**WARNING:** This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.<sup>3</sup>

**3.6 Alternatives to Interim Warnings**

The obligations of Corinthian under Section 3.3 shall be relieved provided Corinthian 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 Corinthian under Section 3.4 shall be relieved provided Corinthian 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, Corinthian 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”), 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. Corinthian 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.

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

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<sup>3</sup> Footnote 1, *supra*, applies in this context as well.



1           4.1.2 Second Civil Penalty. On or before January 15, 2014, Corinthian shall make  
2 a second civil penalty payment in the amount identified on Corinthian’s Exhibit A. The amount of  
3 the second penalty may be reduced according to any penalty waiver Corinthian is eligible for under  
4 Sections 4.1.4(i) and 4.1.4(iii), below.

5           4.1.3 Third Civil Penalty. On or before November 30, 2014, Corinthian shall  
6 make a third civil penalty payment in the amount identified on Corinthian’s Exhibit A. The  
7 amount of the third penalty may be reduced according to any penalty waiver Corinthian is eligible  
8 for under Sections 4.1.4(ii) and 4.1.4(iv), below.

9           4.1.4 Reductions to Civil Penalty Payment Amounts. Corinthian may reduce the  
10 amount of the second and/or third civil penalty payments identified on Corinthian’s Exhibit A by  
11 providing Englander with certification of certain efforts undertaken to reformulate their Products  
12 or limit the ongoing sale of non-reformulated Products in California. The options to provide a  
13 written certification in lieu of making a portion of Corinthian’s civil penalty payment constitute  
14 material terms of this Consent Judgment, and with regard to such terms, time is of the essence.

15                   4.1.4(i)   **Partial Penalty Waiver for Accelerated Reformulation of**  
16                   **Products Sold or Offered for Sale in California.**

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

24                   4.1.4(ii)   **Partial Penalty Waiver for Extended Reformulation.**

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

10 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**  
11 **Exemplar Products from the California Market.**

12 As shown on Corinthian’s Exhibit A, a portion of the second civil penalty shall be waived,  
13 if an officer or other authorized representative of Corinthian provides Englander with written  
14 certification, by December 15, 2013, confirming that each individual or establishment in California  
15 to which it supplied the Exemplar Product after October 28, 2011, has elected to return all  
16 remaining Exemplar Products held for sale in California.<sup>4</sup>

17 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**  
18 **California of Unreformulated Inventory.**

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

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

1                   4.2     **Representations**

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

7                   If, within nine months of the Effective Date, Englander discovers and presents Corinthian,  
8 evidence demonstrating that the preceding representation and warranty was materially inaccurate,  
9 then Corinthian shall have 30 days to meet and confer regarding the Englander’s contention.  
10 Should this 30 day period pass without any such resolution between the Englander and Corinthian,  
11 Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for  
12 damages for breach of contract.

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

18                   4.3     **Stipulated Penalties for Certain Violations of the Reformulation**  
19                   **Standard.**

20                  If Englander provides notice and appropriate supporting information to Corinthian that  
21 levels of the Listed Chemical in excess of the Reformulation Standard have been detected in one or  
22 more Products labeled or otherwise marked in an identifiable manner as manufactured or imported  
23 after a deadline for meeting the Reformulation Standard has arisen for Corinthian under Sections  
24 3.1 or 3.6 above, Corinthian may elect to pay a stipulated penalty to relieve any further potential  
25 liability under Proposition 65 or sanction under this Consent Judgment as to Products sourced from  
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1 the vendor in question.<sup>5</sup> The stipulated penalty shall be \$1,500 if the violation level is below 100  
2 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for  
3 any amount in excess of the Reformulation Standards but under 250 ppm.<sup>6</sup> Englander shall further  
4 be entitled to reimbursement of his associated expense in an amount not to exceed \$5,000  
5 regardless of the stipulated penalty level. Corinthian under this Section must provide notice and  
6 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  
8 for the exemplar or subcategory of products), test results, and a letter from a company  
9 representative or counsel attesting to the information provided, to Englander within 30 calendar  
10 days of receiving test results from Englander's counsel. Any violation levels at or above 250 ppm  
11 shall be subject to the 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 to them, thereby leaving  
15 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
16 settled. Shortly after the other settlement terms had been finalized, Corinthian expressed a desire  
17 to resolve the fee and cost issue. Corinthian then agreed to pay Englander and his counsel under  
18 general contract principles and the private attorney general doctrine codified at California Code of  
19 Civil Procedure section 1021.5 for all work performed through the mutual execution of this  
20 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to  
21 Corinthian's attention, negotiating a settlement in the public interest, and seeking court approval of  
22 the same. In addition, the negotiated fee and cost figure expressly includes the anticipated  
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24 <sup>5</sup> This Section shall not be applicable where the vendor in question had previously been  
25 found by Corinthian to have provided unreliable certifications as to meeting the Reformulation  
26 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated  
27 penalty for a second exceedance by Corinthian's vendor at a level between 100 and 249 ppm shall  
28 not be available after July 1, 2015.

<sup>6</sup> 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 significant amount of time Englander’s counsel will incur to monitor various provisions in this  
2 agreement over the next two years, with the exception of additional fees that may be incurred  
3 pursuant to Corinthian’s election in Section 11. Corinthian more specifically agreed, upon the  
4 Court’s approval and entry of this Consent Judgment, to pay Englander’s counsel the amount of  
5 fees and costs indicated on Corinthian’s Exhibit A. Corinthian further agreed to tender and shall  
6 tender its full required payment under this Section to a trust account at The Chanler Group (made  
7 payable “In Trust for The Chanler Group”) within two business days of the Effective Date. Such  
8 funds shall be released from the trust account upon the Court’s approval and entry of this Consent  
9 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

28 For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

1           4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA  
2 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth  
3 in Section 4.5.1(a) above, as proof of payment to OEHHA.

4           4.5.3 Tax Documentation. Corinthian shall issue a separate 1099 form for each  
5 payment required by this Section to: (a) Peter Englander, whose address and tax  
6 identification number shall be furnished upon request after this Consent Judgment has been  
7 fully executed by the Parties; (b) OEHHA, who shall be identified as “California Office of  
8 Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be  
9 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) “The  
10 Chanler Group” (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

11 **5. CLAIMS COVERED AND RELEASED**

12 **5.1 Englander’s Release of Proposition 65 Claims**

13 Englander, acting on his own behalf and in the public interest, releases Corinthian, its  
14 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents  
15 employees, attorneys, and each entity to whom Corinthian directly or indirectly distribute or sell  
16 Products, including, but not limited to downstream distributors, wholesalers, customers, retailers,  
17 franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for  
18 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed  
19 Chemical in the Products, as set forth in the Notice. Compliance with the terms of this Consent  
20 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed  
21 Chemical from the Products, as set forth in the Notice. The Parties further understand and agree  
22 that this Section 5.1 release shall not extend upstream to any entities, other than Corinthian, that  
23 manufactured the Products or any component parts thereof, or any distributors or suppliers who  
24 sold the Products or any component parts thereof to Corinthian, except that an entity upstream of  
25 Corinthian that is a Retailer of a Private Labeled Covered Product shall be released as to the  
26 Private Labeled Covered Products offered for sale in California, or to California Customers, by the  
27 Retailer in question.

1           **5.2     Englander’s Individual Releases of Claims**

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

18           **5.3     Corinthian’s Release of Englander**

19           Corinthian, on behalf of itself, its past and current agents, representatives, attorneys,  
20 successors, and assignees, hereby waives any and all claims against Englander and his attorneys  
21 and other representatives, for any and all actions taken or statements made (or those that could  
22 have been taken or made) by Englander and his attorneys and other representatives, whether in the  
23 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this  
24 matter with respect to the Products or Additional Products.

25  
26 \_\_\_\_\_  
27           <sup>7</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as  
28 otherwise specified.

1 **COURT APPROVAL**

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

17 **GOVERNING LAW**

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



1 **8. NOTICES**

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

6 To Corinthian:

7 At the address shown on Exhibit A

To Englander:

8 Proposition 65 Coordinator  
9 The Chanler Group  
10 2560 Ninth Street  
11 Parker Plaza, Suite 214  
12 Berkeley, CA 94710-2565

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

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

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

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

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

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

21 11.1 In addition to the Products, where Corinthian has identified on Exhibit A additional  
22 products that contain the Listed Chemical and that are sold or offered for sale by it in California, or  
23 to California Customers, (“Additional Products”), then by no later than October 15, 2013,  
24 Corinthian may provide Englander with additional information or representations necessary to  
25 enable him to issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant  
26 to Health & Safety Code § 25249.7, that includes the Additional Products. Polyurethane foam that  
27

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

23 11.2 Englander and Corinthian agree to support the entry of this agreement as a Consent  
24 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The  
25 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed  
26 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall  
27 draft and file. If any third party objection to the noticed motion is filed, Englander and Corinthian  
28

1 shall work together to file a reply and appear at any hearing before the Court. This provision is a  
2 material component of the Consent Judgment and shall be treated as such in the event of a breach.

3 **12. MODIFICATION**


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

7 **13. AUTHORIZATION**

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

11  
12 AGREED TO:

12 AGREED TO:  
13 Settling Defendant:  
14 Corinthian, Inc.

14   
15 \_\_\_\_\_  
16 Plaintiff, Peter Englander

15 By: \_\_\_\_\_  
16 Name:  
17 It's:

18 Date: October 7, 2013

18 Date: October \_\_, 2013

1 shall work together to file a reply and appear at any hearing before the Court. This provision is a  
2 material component of the Consent Judgment and shall be treated as such in the event of a breach.

3 **12. MODIFICATION**

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

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10 Consent Judgment.

11  
12 AGREED TO:

12 AGREED TO:  
13 Settling Defendant:  
14 Corinthian, Inc.

15 \_\_\_\_\_  
16 Plaintiff, Peter Englander

15 By:   
16 Name:  
17 It's:

18 Date: September \_\_, 2013

18 Date: September \_\_, 2013

1 EXHIBIT A

2 I. Name of Settling Defendant: CORINTHIAN, INC.

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

4 SERRANO'S FURNITURE as to the Products sold, manufactured, imported and/or  
5 distributed by CORINTHIAN, INC.

6 III. Types of Covered Products Applicable to Corinthian, Inc.:

7 Accent chairs containing TDCPP

8 IV. Types of Additional Products Corinthian, Inc. Elects to Address (if any):

9 V. Corinthian, Inc.'s Required Settlement Payments

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

11 \$20,000 initial payment due on or before the Effective Date;

12 \$42,000, second payment due on or before January 15, 2014, of which  
13 \$ 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

14 \$24,000 third payment due on or before November 30, 2014, of which  
15 \$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).

16 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs  
17 attributable to Corinthian, Inc.: \$44,000.

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

19 Kevin C. Mayer

Name

20 Attorney

Title

21 \_\_\_\_\_  
22 Company/Firm Name

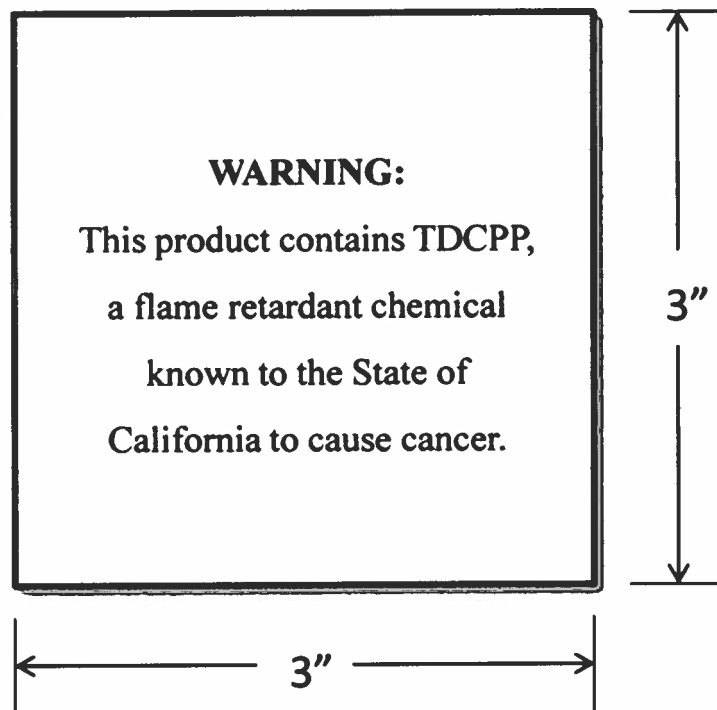
23 Address: Crowell & Moring LLP

24 515 South Flower Street, 40<sup>th</sup> Floor

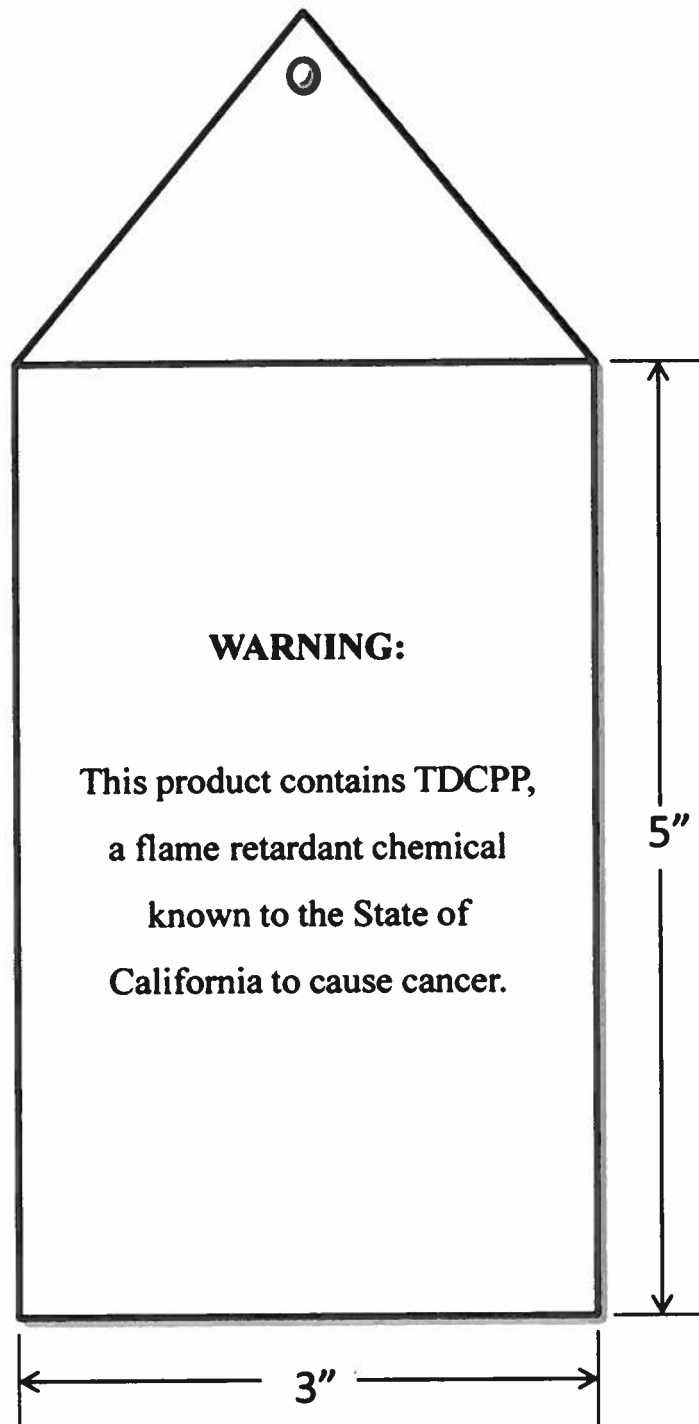
25 Los Angeles, CA 90071  
26  
27  
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EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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

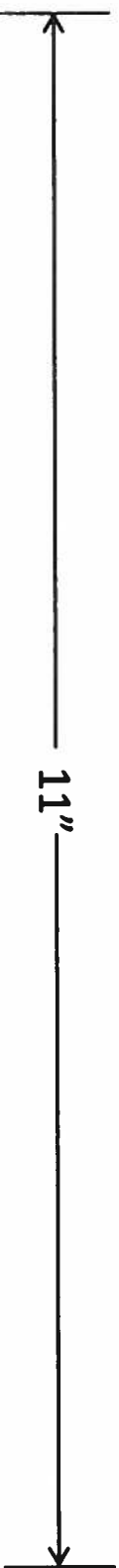


**INSTRUCTIONS:** Print warning on each side of hang tag.  
Minimum 12 pt. font. "WARNING:" text must be bold.



**WARNING:**

This product contains TDCPP, a flame retardant  
8.5"  
chemical known to the State of California to  
cause cancer.



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