

1 Clifford A. Chanler, State Bar No. 135534  
2 Troy C. Bailey, State Bar No. 277424  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118  
9  
10 Attorneys for Englander  
11 PETER ENGLANDER

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

11 PETER ENGLANDER  
12 Englander,  
13 v.  
14 EUROMARKET DESIGNS INC.; et al.  
15 Defendants.

) Case No. RG 13673023  
)  
) Assigned for All Purposes to  
) Judge George C. Hernandez, Jr.,  
) Department 17  
) [PROPOSED] CONSENT JUDGMENT AS  
) TO FURNITURE OF AMERICA  
) CALIFORNIA, INC.  
)  
)  
) (Health & Safety Code § 25249.6 et seq.  
) Complaint Filed: June 26, 2013)

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander  
4 (“Englander”) and the defendant Furniture Of America California, Inc. (“FAC”) with Englander  
5 and FAC collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

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

10 **1.3 Furniture of America California, Inc.**

11 FAC 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 FAC manufactured, imported, sold and/or distributed  
16 for sale in California, upholstered chairs with foam padding containing tris(1,3-dichloro-2-propyl)  
17 phosphate (“TDCPP”) and tris(2-chloroethyl) phosphate (“TCEP”) without the requisite  
18 Proposition 65 health hazard warnings. Englander alleges that TCEP and TDCPP escape from  
19 foam padding, leading to human exposures.

20 **1.4.2** Pursuant to Proposition 65, on April 1, 1992, California identified and listed  
21 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable  
22 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §  
23 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

24 **1.4.3** Pursuant to Proposition 65, on October 28, 2011, California identified and  
25 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
26 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code  
27 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

28

1           1.4.4 Englander alleges that FAC manufactured, imported, sold and/or distributed  
2 for sale in California night stands with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate  
3 (“DEHP”) without the requisite Proposition 65 health hazard warnings.

4           1.4.5 Pursuant to Proposition 65, on October 24, 2003, California identified and  
5 listed di(2-ethylhexyl)phthalate (“DEHP”) as a chemical known to cause birth defects and other  
6 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements of  
7 Proposition 65 one year later on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health &  
8 Safety Code §§ 25249.8 and 25249.10(b).

9           TDCPP, TCEP, and DEHP shall hereinafter be collectively referred to as the “Listed  
10 Chemicals.”

#### 11           1.5     **Product Description**

12           The categories of products that are covered by this Consent Judgment as to FAC are  
13 identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or  
14 manufactured for use as a component of another product, such as upholstered furniture, but which is  
15 not itself a finished product, is specifically excluded from the definition of Products and shall not be  
16 identified by FAC on Exhibit A as a Product.

#### 17           1.6     **Notices of Violation**

18           On or about January 17, 2013, Englander served FAC and certain requisite public  
19 enforcement agencies with a “60-Day Notice of Violation” (“January 17, 2013, Notice”) that  
20 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged  
21 failure to warn customers, consumers, and workers in California that the Products expose users to  
22 TDCPP.

23           On March 13, 2013, Englander served FAC, others, and certain requisite public enforcement  
24 agencies with a “60-Day Notice of Violation” (“March 13, 2013, Notice”) that provided the  
25 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn  
26 customers, consumers, and workers in California the Products expose users to TCEP.

27           Based on further investigation, on June 10, 2013, Englander also issued a “Supplemental 60-  
28 Day Notice of Violation” to FAC and certain requisite public enforcement agencies (“June 10,

1 2013, Notice”), alleging that the Products expose users to TDCPP and that certain night stands with  
2 vinyl/PVC upholstery expose Californians to DEHP (“Phthalate Products”). DEHP and other  
3 phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are listed  
4 under Proposition 65 as chemicals known to cause birth defects and other reproductive harm.

5 The January 17, 2013, Notice, March 13, 2013, Notice, and the June 10, 2013, Notice shall  
6 hereinafter collectively be referred to as the “Notices.” To the best of the Parties’ knowledge, no  
7 public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

#### 8 1.7 Complaint

9 On March 26, 2013 Englander filed a Complaint in and for the County of Alameda against  
10 FAC, other defendants, and Does 1 through 150, *Peter Englander v. Euromarket Designs, Inc., et*  
11 *al.*, Case No. RG 13673023, alleging violations of Proposition 65, based in part on the alleged  
12 unwarned exposures to TDCPP contained in the Products. On April 10, 2013, Englander filed a  
13 First Amended Complaint (“Complaint”), alleging additional violations of Proposition 65, including  
14 unwarned exposures to TDCPP. Upon entry of this Consent Judgment, the Complaint shall be  
15 deemed amended *nunc pro tunc* to include the violations of Proposition 65 alleged by Englander in  
16 the June 10, 2013 notice.

#### 17 1.8 No Admission

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

#### 26 1.9 Consent to Jurisdiction

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
28 jurisdiction over FAC as to the allegations contained in the Notices and Complaint, that venue is

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 FAC reasonably understands is located  
7 in California, has a California warehouse or distribution center, maintains a retail outlet in  
8 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 a NVLAP accredited laboratory pursuant to EPA testing  
13 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to  
14 determine the presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

15 **2.3 Effective Date**

16 “Effective Date” shall mean December 31, 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 of  
20 California.

21 **2.5 Reformulated Products**

22 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP  
23 or TCEP in excess of the Reformulation Standard and Phthalate Products which contain no more  
24 than 1000 ppm each of, DEHP, BBP, and DBP.

25 **2.6 Reformulation Standard**

26 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of  
27 TDCPP and TCEP and for Phthalate Products, no more than 1000 ppm each of, DEHP, BBP, and  
28 DBP.

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 May 31, 2014, FAC shall not manufacture or import for distribution or sale  
7 to California Customers, or cause to be manufactured or imported for distribution or sale to  
8 California Customers, any Products that are not Reformulated Products.

9           **3.2     Vendor Notification/Certification**

10          On or before the Effective Date, FAC shall provide written notice to all of its then-current  
11 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, FAC shall not employ statements that will encourage a vendor to delay compliance with  
15 the Reformulation Standard. FAC shall subsequently obtain written certifications, no later than  
16 December 31, 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 FAC 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 FAC’s Control**

21          No later than 55 days after the Effective Date, FAC 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 each of the  
24 Notices received by FAC from Englander (“Exemplar Product(s)”); and (2) any California  
25 Customer and/or Retailer that FAC reasonably understands or believes had any inventory for resale  
26 in California of Exemplar Product(s) as of the relevant Notice’s dates. The Notification Letter shall  
27 advise the recipient that each Exemplar Product(s) contain TDCPP and TCEP, chemicals known to  
28 the State of California to cause cancer and/or DEHP, a chemical known to the State of California to

1 cause birth defects and other reproductive harm, as appropriate depending on the allegations in the  
2 Notices, and request that the recipient either: (a) label the Exemplar Product(s) remaining in  
3 inventory for sale in California, or to California Customers, pursuant to Section 3.5; or (b) return, at  
4 FAC's sole expense, all units of the Exemplar Product(s) held for sale in California, or to California  
5 Customers, to FAC or a party FAC has otherwise designated. The Notification Letter shall require  
6 a response from the recipient within 25 days confirming whether the Exemplar Product(s) will be  
7 labeled or returned. FAC shall maintain records of all correspondence or other communications  
8 generated pursuant to this Section for two years after the Effective Date and shall promptly produce  
9 copies of such records upon Englander's written request.

#### 10 3.4 Current Inventory

11 Any Products in, or manufactured and en route to, FAC's inventory as of or after January  
12 31, 2013, that do not qualify as Reformulated Products and that FAC has reason to believe may be  
13 sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth in  
14 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 likely  
20 to be read and understood by an ordinary individual under customary conditions before purchase.  
21 Each warning shall be provided in a manner such that the consumer or user understands to which  
22 specific Product the warning applies, so as to minimize the risk of consumer confusion.

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

24 **WARNING:** This product contains TDCPP and  
25 TCEP, flame retardant chemicals  
26 known to the State of California to  
cause cancer.

27 Or, for Phthalate Products:  
28

1                   **WARNING:** This product contains DEHP, a  
2                   phthalate chemical known to the State  
3                   of California to cause birth defects and  
4                   other reproductive harm.<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 of  
8 transmission as set forth above. FAC 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 of  
14 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the customer. The  
15 warning text shall be the same type size or larger than the Product description text:

16                   **WARNING:** This product contains TDCPP and  
17 TCEP, flame retardant chemicals  
18 known to the State of California to  
19 cause cancer.

20                  Or, for Phthalate Products:

21                   **WARNING:** This product contains DEHP, a  
22 phthalate chemical known to the State

23                   <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be  
24 used if FAC had begun to use it, prior to the Effective Date. If FAC seeks to use alternative  
25 warning language other than the language specified above or the safe harbor warning specified in  
26 27 CCR § 25603.2, or seeks to use an alternative method of transmission of the warning, it must  
27 obtain the Court's approval of its proposed alternative and provide all Parties and the Office of the  
28 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."

29                   <sup>2</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag  
30 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side  
31 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring  
32 8.5" x 11" with no less than 32 point font, with the warning language printed on each side, which  
33 shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a  
34 yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed  
35 directly to the Product packaging.



of California to cause birth defects and other reproductive harm.<sup>3</sup>

3.6 **Alternatives to Interim Warnings**

The obligations of FAC under Section 3.3 shall be relieved provided FAC certifies on or before January 15, 2014 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, 2014. The obligations of FAC under Section 3.4 shall be relieved provided FAC certifies on or before January 15, 2014 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(s)) 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, FAC 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 three business days of the date it is due and be delivered to the addresses listed in Section 4.5 below. FAC shall be liable for payment of interest, at a rate of 8% per annum, simple interest, for all amounts due and owing under Section 4 that are not received within four business days of the due date.

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

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

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

1           4.1.3 Third Civil Penalty. On or before December 31, 2014, FAC shall make a  
2 third civil penalty payment in the amount identified on FAC's Exhibit A. The amount of the third  
3 penalty may be reduced according to any penalty waiver FAC is eligible for under Sections 4.1.4(ii)  
4 and 4.1.4(iv), below.

5           4.1.4 Reductions to Civil Penalty Payment Amounts. FAC may reduce the amount  
6 of the second and/or third civil penalty payments identified on FAC's Exhibit A by providing  
7 Englander with certification of certain efforts undertaken to reformulate their Products or limit the  
8 ongoing sale of non-reformulated Products in California. The options to provide a written  
9 certification in lieu of making a portion of FAC's civil penalty payment constitute material terms of  
10 this Consent Judgment, and with regard to such terms, time is of the essence.

11                   **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**  
12                   **Products Sold or Offered for Sale in California.**

13           As shown on FAC's Exhibit A, a portion of the second civil penalty shall be waived, to the  
14 extent that it has agreed that, as of January 15, 2014, and continuing into the future, it shall only  
15 manufacture or import for distribution or sale to California Customers or cause to be manufactured  
16 or imported for distribution or sale to California Customers, Reformulated Products. An officer or  
17 other authorized representative of FAC that has exercised this election shall provide Englander with  
18 a written certification confirming compliance with such conditions, which certification must be  
19 received by Englander's counsel on or before January 1, 2014.

20                   **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

21           If FAC so elects on Exhibit A, a portion of the third civil penalty shall be waived, to the  
22 extent that it has agreed that, as of May 31, 2014, and continuing into the future, it shall only  
23 manufacture or import for distribution or sale in California or cause to be manufactured or imported  
24 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-  
25 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million  
26 ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product,  
27 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and  
28 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,

1 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized  
2 representative of FAC that has exercised this election shall provide Englander with a written  
3 certification confirming compliance with such conditions, which certification must be received by  
4 Englander's counsel on or before November 15, 2014.

5 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**  
6 **Exemplar Products from the California Market.**

7 As shown on FAC's Exhibit A, a portion of the second civil penalty shall be waived, if an  
8 officer or other authorized representative of FAC provides Englander with written certification, by  
9 January 15, 2014, confirming that each individual or establishment in California to which it  
10 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar  
11 Products held for sale in California.<sup>4</sup>

12 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**  
13 **California of Unreformulated Inventory.**

14 As shown on FAC's Exhibit A, a portion of the third civil penalty shall be waived, if an  
15 officer or other authorized representative of FAC provides Englander with written certification, on  
16 or before November 15, 2015, confirming that, as of July 1, 2014, it has and will continue to  
17 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated  
18 Products.

19 **4.2 Representations**

20 FAC represents that the sales data and other information concerning its size, knowledge of  
21 Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Englander was  
22 truthful to its knowledge and a material factor upon which Englander has relied to determine the  
23 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent  
24 Judgment.

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

1 If, within nine months of the Effective Date, Englander discovers and presents to FAC,  
2 evidence demonstrating that the preceding representation and warranty was materially inaccurate,  
3 then FAC shall have 30 days to meet and confer regarding the Englander's contention. Should this  
4 30 day period pass without any such resolution between the Englander and FAC, Englander shall be  
5 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of  
6 contract.

7 FAC further represents that in implementing the requirements set forth in Sections 3.1 and  
8 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve  
9 reformulation of its Products and Additional Products on a nationwide basis and not employ  
10 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to  
11 goods intended for sale to California Consumers.

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

14 If Englander provides notice and appropriate supporting information to FAC that levels of  
15 the Listed Chemicals in excess of the Reformulation Standard have been detected in one or more  
16 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a  
17 deadline for meeting the Reformulation Standard has arisen for FAC under Sections 3.1 or 3.6  
18 above, FAC may elect to pay a stipulated penalty to relieve any further potential liability under  
19 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in  
20 question.<sup>5</sup> The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000  
21 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in  
22 excess of the Reformulation Standards but under 250 ppm.<sup>6</sup> Englander shall further be entitled to  
23 reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the  
24

---

25 <sup>5</sup> This Section shall not be applicable where the vendor in question had previously been  
26 found by FAC to have provided unreliable certificates as to meeting the Reformulation Standard in  
27 its Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a  
second exceedance by FAC's vendor at a level between 100 and 249 ppm shall not be available  
after July 1, 2015.

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

#### 8 4.4 Reimbursement of Fees and Costs

9 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
11 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
12 settled. Shortly after the other settlement terms had been finalized, FAC expressed a desire to  
13 resolve the fee and cost issue. FAC then agreed to pay Englander and his counsel under general  
14 contract principles and the private attorney general doctrine codified at California Code of Civil  
15 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,  
16 including the fees and costs incurred as a result of investigating, bringing this matter to FAC's  
17 attention, negotiating a settlement in the public interest, and seeking court approval of the same. In  
18 addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of  
19 time Englander's counsel will incur to monitor various provisions in this agreement over the next  
20 two years, with the exception of additional fees that may be incurred pursuant to FAC's election in  
21 Section 11. FAC more specifically agreed, upon the Court's approval and entry of this Consent  
22 Judgment, to pay Englander's counsel the amount of fees and costs indicated on FAC's Exhibit A.  
23 FAC further agreed to tender and shall tender its full required payment under this Section to "trust  
24 account at The Chanler Group" (made payable "In Trust for The Chanler Group") within four  
25 business days of the Effective Date. Such funds shall be released from the trust account upon the  
26 Court's approval and entry of this Consent Judgment.

27  
28

1           **4.5    Payment Procedures**

2                   **4.5.1   Issuance of Payments.**

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

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

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

14   For United States Postal Service Delivery:

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

20   For Non-United States Postal Service Delivery:

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

26                           **4.5.2   Proof of Payment to OEHHA.** A copy of each check payable to OEHHA  
27                           shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in  
28                           Section 4.5.1(a) above, as proof of payment to OEHHA.

29                           **4.5.3   Tax Documentation.** FAC shall issue a separate 1099 form for each payment  
30                           required by this Section to: (a) Peter Englander, whose address and tax identification number shall  
31                           be furnished upon request after this Consent Judgment has been fully executed by the Parties; (b)  
32                           OEHHA, who shall be identified as "California Office of Environmental Health Hazard  
33                           Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box

1 4010, Sacramento, CA 95814, and (c) "The Chanler Group" (EIN: 94-3171522) to the address set  
2 forth in Section 4.3.1(a) above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Englander's Release of Proposition 65 Claims**

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

20 **5.2 Englander's Individual Releases of Claims**

21 Englander, in his individual capacity only and *not* in his representative capacity, provides a  
22 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
23 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
24 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,  
25 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,  
26 TCEP, TDBPP, DEHP, DBP and/or BBP in the Products or Additional Products (as defined in  
27 Section 11.1 and delineated on FAC's Exhibit A) manufactured, imported, distributed, or sold by  
28

1 FAC prior to the Effective Date.<sup>7</sup> The Parties further understand and agree that this Section 5.2  
2 release shall not extend upstream to any entities that manufactured the Products or Additional  
3 Products, or any component parts thereof, or any distributors or suppliers who sold the Products or  
4 Additional Products, any component parts thereof to FAC, except that entities upstream of FAC that  
5 is a Retailer of a Private Labeled Covered Product (or Additional Product) shall be released as to  
6 the Private Labeled Covered (or Additional) Products offered for sale in California by the Retailer  
7 in question. Nothing in this Section affects Englander's right to commence or prosecute an action  
8 under Proposition 65 against a Releasee that does not involve FAC's Products or Additional  
9 Products.

### 10 5.3 Furniture of America California's Release of Englander

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

### 17 6. COURT APPROVAL

18 This Consent Judgment is not effective until it is approved and entered by the Court and  
19 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court  
20 within one year after it has been fully executed by all Parties. If the Court does not approve the  
21 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal  
22 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall  
23 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately  
24 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the  
25 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,  
26 then the case shall proceed in its normal course on the Court's trial calendar. In the event that this

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



1 Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any  
2 monies that have been provided to OEHHA, Englander or his counsel pursuant to Section 4, above,  
3 shall be refunded within 15 days of the appellate decision becoming final. If the Court does not  
4 approve and enter the Consent Judgment within one year of the Effective Date, any monies that  
5 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 4,  
6 above, shall be refunded to FAC within 15 days.

7 **7. GOVERNING LAW**

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

17 **8. NOTICES**

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

22 To FAC:

23 At the address shown on Exhibit A

To Englander:

24 Proposition 65 Coordinator  
25 The Chanler Group  
26 2560 Ninth Street  
27 Parker Plaza, Suite 214  
28 Berkeley, CA 94710-2565

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

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

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

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

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 In addition to the Products, where FAC has identified on Exhibit A additional  
10 products that contain the Listed Chemicals and that are sold or offered for sale by it in California, or  
11 to California Customers, ("Additional Products"), then by no later than October 31, 2013, FAC may  
12 provide Englander with additional information or representations necessary to enable him to issue a  
13 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety  
14 Code section 25249.7, that includes the Additional Products. Polyurethane foam that is supplied,  
15 shaped or manufactured for use as a component of a product, such as upholstered furniture, is  
16 specifically excluded from the definition of Additional Products and shall not be identified by FAC  
17 on Exhibit A as an Additional Product. Except as agreed upon by Englander, FAC shall not include  
18 a product, as an Additional Product, that is the subject of an existing 60-day notice issued by  
19 Englander or any other private enforcer at the time of execution. After receipt of the required  
20 information, Englander agrees to issue a supplemental 60-day notice in compliance with all  
21 statutory and regulatory requirements for the Additional Products. Englander will, and in no event  
22 later than December 31, 2014, prepare and file an amendment to this Consent Judgment to  
23 incorporate the Additional Products within the defined term "Products" and serve a copy thereof  
24 and its supporting papers (including the basis for supplemental stipulated penalties, if any) on the  
25 Office of the California Attorney General, upon the Court's approval and finding that the  
26 supplemental stipulated penalty amount, if any, is reasonable, the Additional Products shall become  
27 subject to Section 5.1 in addition to Section 5.2. FAC shall, at the time it elects to utilize this  
28 Section and tenders the additional information or representations regarding the Additional Products

1 to Englander, tender to The Chanler Group's trust account an amount not to exceed \$8,750 as  
2 stipulated penalties and attorneys' fees and costs incurred by Englander in issuing the new notice  
3 and engaging in other reasonably related activities, which may be released from the trust as  
4 awarded by the Court upon Englander's application. Any fee award associated with the  
5 modification of the Consent Judgment to include Additional Products shall not offset any associated  
6 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be  
7 refunded to FAC within 15 days). Such payment shall be made to "in trust for The Chanler Group"  
8 and delivered as per Section 4.5.1(a) above.

9           11.2 Englander and FAC agree to support the entry of this agreement as a Consent  
10 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The  
11 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed  
12 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall  
13 draft and file. If any third party objection to the noticed motion is filed, Englander and FAC shall  
14 work together to file a reply and appear at any hearing before the Court. This provision is a  
15 material component of the Consent Judgment and shall be treated as such in the event of a breach.

16 **12. MODIFICATION**

17           This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
18 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
19 of any party and entry of a modified Consent Judgment by the Court.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**13. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

**Defendant:  
Furniture of America California, Inc.**

  
\_\_\_\_\_  
Plaintiff, Peter Englander

**By:** \_\_\_\_\_  
**Name:**  
**Its:**

**Date:** January 20, 2014

**Date:**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**13. AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Defendant:  
Furniture of America California, Inc.

\_\_\_\_\_  
Plaintiff, Peter Englander

By: Gu / us  
Name: GEORGE WANG  
Its: President

Date:

Date: 1/15/14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

I. Name of Settling Defendant: FURNITURE OF AMERICA CALIFORNIA, INC.

II. Names of Releasees (Optional; May be Partial)

III. Types of Covered Products Applicable to Furniture of America California, Inc.:

a) Upholstered chairs with foam padding containing TDCPP and TCEP

b) Night stands with vinyl/PVC upholstery containing DEHP

IV. Types of Additional Products Furniture of America California, Inc. Elects to Address (if any):

V. Settling Defendant's Required Settlement Payments

A. Penalties for Furniture of America California, Inc., \$55,000, as follows:

\$10,000 initial payment due on or before the Effective Date;

\$ 28,000 second payment due on or before January 15, 2014, of which \$ 18,000 may be waived pursuant to Section 4.1.4(i) and \$ 10,000 may be waived pursuant to Section 4.1.4(iii); and

\$ 17,000 third payment due on or before November 30, 2014, of which \$ 11,000 may be waived pursuant to Section 4.1.4(ii) and \$ 6,000 may be waived pursuant to Section 4.1.4(iv).

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs: for Furniture of America California, Inc.: \$ 40,000.

VII. Person(s) to receive Notices pursuant to Section 8

William Hsiang  
Name

\_\_\_\_\_  
Name

Attorney-at-Law  
Title

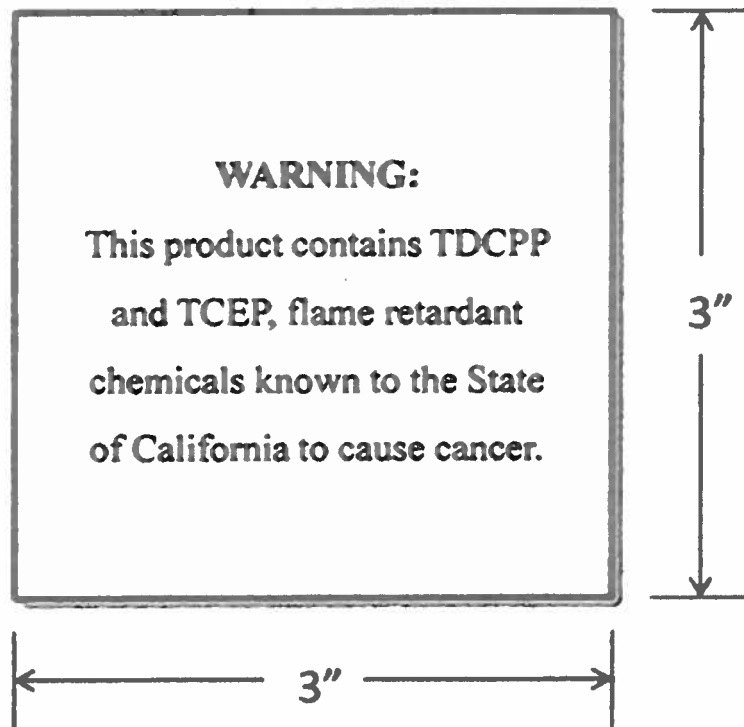
\_\_\_\_\_  
Title

17800 Castleton St., Suite 408

City of Industry, CA 91748

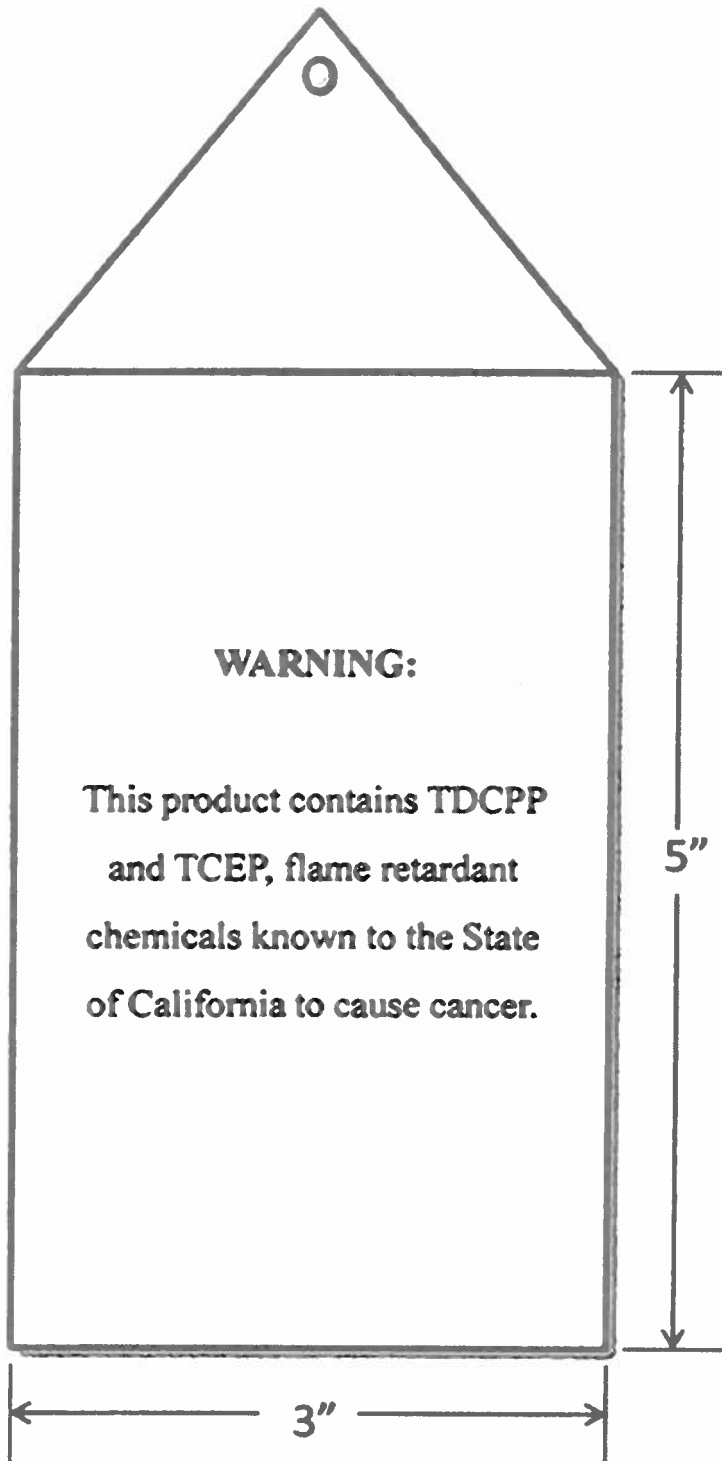
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 and TCPEP, flame

8.5"

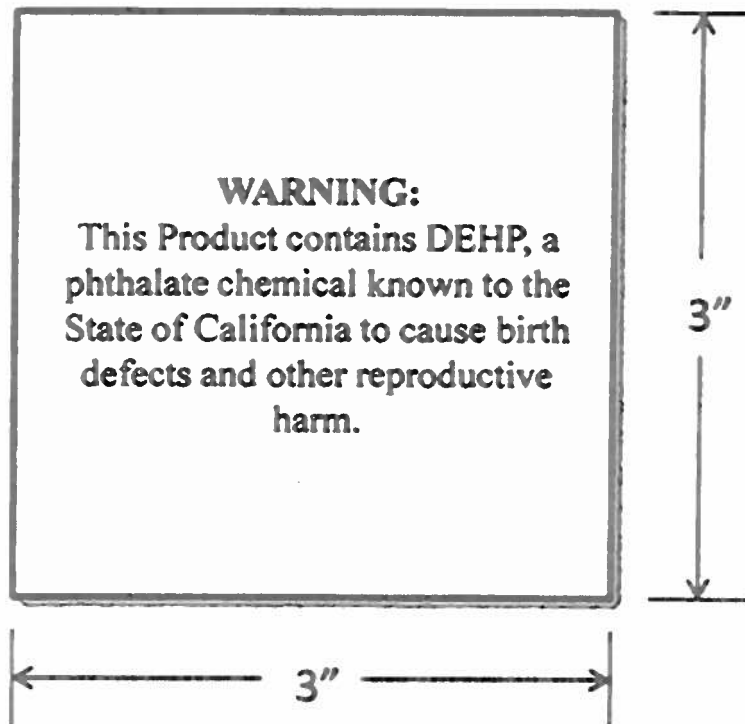
retardant chemicals known to the State of

California to cause cancer.

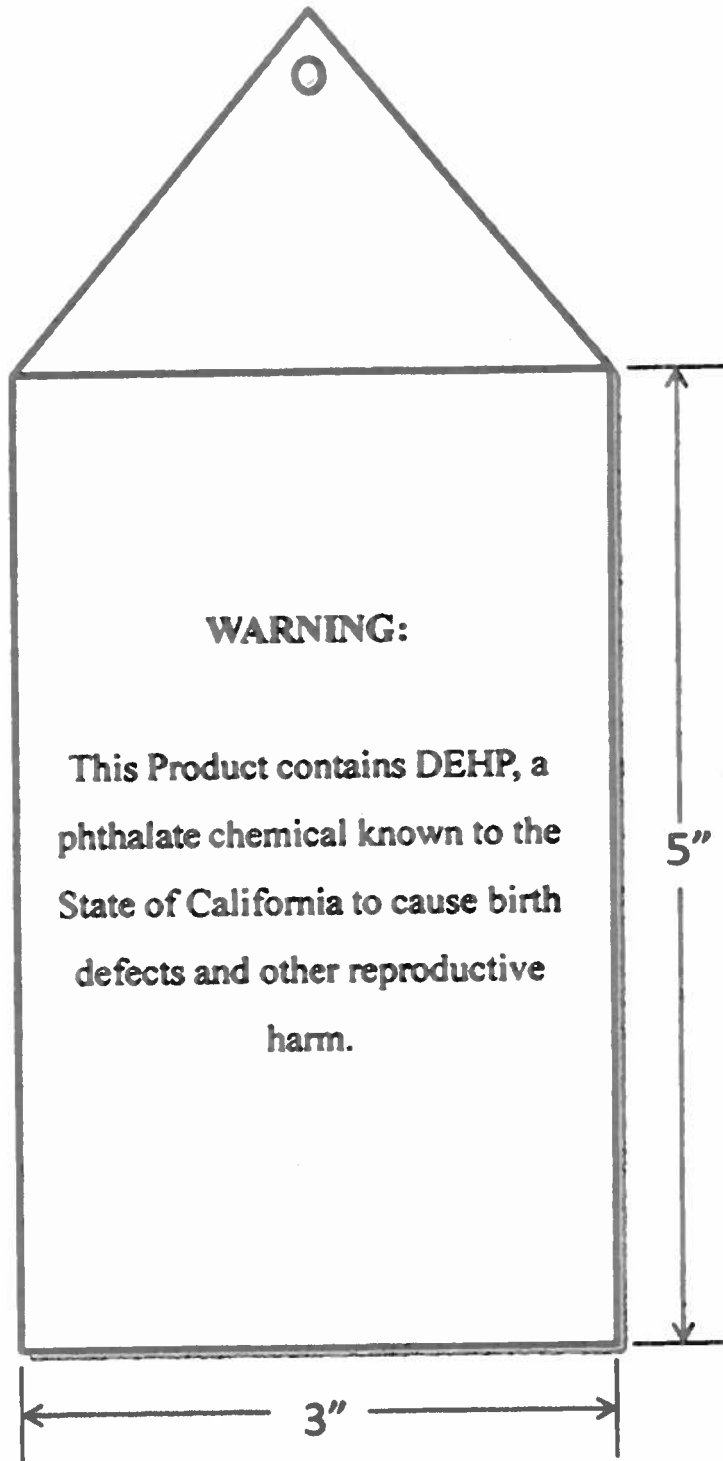
11"

**INSTRUCTIONS:**

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



**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 DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

**INSTRUCTIONS:**

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