

1 Clifford A. Chanler, State Bar No. 135534  
Josh Voorhees, State Bar No. 241436  
2 Stephen E. Cohen, State Bar No. 284416  
THE CHANLER GROUP  
3 2560 Ninth Street  
Parker Plaza, Suite 214  
4 Berkeley, CA 94710  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
7 PETER ENGLANDER

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION  
11

12 PETER ENGLANDER )

13 Plaintiff, )

14 v. )

15 GRAND BASKET CO. INC.; et al., )

16 Defendants. )

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Case No. RG 13-677613

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

**[PROPOSED] CONSENT JUDGMENT AS  
TO HANCOCK & MOORE, INC.**

**(Health & Safety Code § 25249.6 et seq.)**

Complaint Filed: April 30, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander  
4 (“Englander”) and Hancock & Moore, Inc. (“Hancock”), with Englander and Hancock collectively  
5 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 Hancock & Moore, Inc.**

11 Hancock 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 Hancock manufactured, imported, sold and/or  
16 distributed for sale in California products with foam cushioned components containing tris(1,3-  
17 dichloro-2-propyl) phosphate (“TDCPP”) and tris(2-chloroethyl) phosphate (“TCEP”) without the  
18 requisite Proposition 65 health hazard warnings. Englander alleges that TDCPP and TCEP escape  
19 from 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 Proposition 65 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 TDCPP and TCEP shall hereinafter be collectively referred to as the “Listed Chemicals.”

1           **1.5     Product Description**

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

7           **1.6     Notices of Violation**

8           On or about February 15, 2013, Englander issued to Hancock and certain requisite public  
9 enforcement agencies a “60-Day Notice of Violation” (“Initial Notice”) that provided the recipients  
10 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,  
11 consumers, and workers in California that the Products expose users to TDCPP.

12           On or about April 19, 2013, Englander issued to Hancock and certain public enforcement  
13 agencies a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the  
14 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn  
15 customers, consumers and workers in California that the Products expose users to TDCPP and  
16 TCEP.

17           The Initial Notice and the Supplemental Notice shall hereinafter collectively be referred to  
18 as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced or is  
19 diligently prosecuting the allegations set forth in the Notices.

20           **1.7     Complaint**

21           On April 30, 2013, Englander filed a Complaint in the Superior Court in and for the County  
22 of Alameda against Hancock, other defendants and Does 1 through 150, *Peter Englander v. Grand*  
23 *Basket Co., Inc., et al.*, Case No. RG 13-677613, alleging violations of Proposition 65, based in part  
24 on the alleged unwarned exposures to TDCPP contained in the Products. On July 30, 2013,  
25 Englander filed a First Amended Complaint (“Complaint”), alleging additional violations of  
26 Proposition 65 against Hancock, including unwarned exposures to TCEP.

1           1.8     **No Admission**

2           Hancock denies the material factual and legal allegations contained in Englander’s Notices  
3 and Complaint and maintains that all products that it has manufactured, imported, distributed,  
4 and/or sold in California, including the Products, have been and are in compliance with all laws.  
5 Nothing in this Consent Judgment shall be construed as an admission by Hancock of any fact,  
6 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent  
7 Judgment constitute or be construed as an admission by Hancock of any fact, finding, conclusion,  
8 issue of law, or violation of law. However, this section shall not diminish or otherwise affect a  
9 Hancock’s obligations, responsibilities, and duties under this Consent Judgment.

10           1.9     **Consent to Jurisdiction**

11           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
12 jurisdiction over Hancock as to the allegations contained in the Notices and Complaint, that venue  
13 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the  
14 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil  
15 Procedure § 664.6.

16           **2.     DEFINITIONS**

17           2.1     **California Customers**

18           “California Customer” shall mean any customer that Hancock reasonably understands is  
19 located in California, has a California warehouse or distribution center, maintains a retail outlet in  
20 California, or has made internet sales into California on or after January 1, 2011.

21           2.2     **Detectable**

22           “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent  
23 of .0025%) of any one chemical in any material, component, or constituent of a  
24 subject product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies  
25 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the  
26 presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

27           2.3     **Effective Date**

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

1           2.4    **Private Label Covered Products**

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

5           2.5    **Reformulated Products**

6           “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP  
7 or TCEP.

8           2.6    **Reformulation Standard**

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

11          2.7    **Retailer**

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

14 **3.    INJUNCTIVE RELIEF: REFORMULATION**

15          3.1    **Reformulation Commitment**

16          Commencing on March 31, 2014, Hancock shall not manufacture or import for distribution  
17 or sale to California Customers, or cause to be manufactured or imported for distribution or sale to  
18 California Customers, any Products that are not Reformulated Products.

19          3.2    **Vendor Notification/Certification**

20          On or before the Effective Date, Hancock shall provide written notice to all of its then-  
21 current vendors of the Products that will be sold or offered for sale in California, or to California  
22 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated  
23 Products for potential sale in California. In addressing the obligation set forth in the preceding  
24 sentence, Hancock shall not employ statements that will encourage a vendor to delay compliance  
25 with the Reformulation Standard. Hancock shall subsequently obtain written certifications, no later  
26 than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products  
27 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications  
28

1 shall be held by Hancock for at least two years after their receipt and shall be made available to  
2 Englander upon request.

### 3 3.3 Products No Longer in Hancock's Control

4 No later than 30 days after the Effective Date, Hancock shall send a letter, electronic or  
5 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after  
6 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notices  
7 Hancock received from Englander ("Exemplar Product"); and (2) any California Customer and/or  
8 Retailer that Hancock reasonably understands or believes had any inventory for resale in California  
9 of Exemplar Products as of the relevant Notices' dates. The Notification Letter shall advise the  
10 recipient that the Exemplar Product contains "TDCPP and TCEP, chemicals known to the State of  
11 California to cause cancer," and request that the recipient either: (a) label the Exemplar Products  
12 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or  
13 (b) return, at Hancock's sole expense, all units of the Exemplar Product held for sale in California,  
14 or to California Customers, to Hancock or a party Hancock has otherwise designated. The  
15 Notification Letter shall require a response from the recipient within 20 days confirming whether  
16 the Exemplar Products will be labeled or returned. Hancock shall maintain records of all  
17 correspondence or other communications generated pursuant to this Section for two years after the  
18 Effective Date and shall promptly produce copies of such records upon Englander's written request.

### 19 3.4 Current Inventory

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

### 24 3.5 Product Warnings

#### 25 3.5.1 Product Labeling

26 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,  
27 labeling, or directly on each Product. Each warning shall be prominently placed with such  
28 conspicuousness as compared with other words, statements, designs, or devices as to render it likely

1 to be read and understood by an ordinary individual under customary conditions before purchase.  
2 Each warning shall be provided in a manner such that the consumer or user understands to which  
3 specific Product the warning applies, so as to minimize the risk of consumer confusion.

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

5 **WARNING:** This product contains TDCPP and  
6 TCEP, flame retardant chemicals  
7 known to the State of California to  
8 cause cancer.<sup>1</sup>

9 Attached as Exhibit B are template warnings developed by Englander that are deemed to be  
10 clear and reasonable for purposes of this Consent Judgment.<sup>2</sup> Provided that the other requirements  
11 set forth in this Section are addressed, including as to the required warning statement and method of  
12 transmission, as set forth above, Hancock remains free not to utilize the template warnings.

### 13 3.5.2 Internet Website Warning

14 Hancock certifies that as of the date that this Consent Judgment is executed, it does not sell  
15 any Products to California or California Customers via the internet. However, in the event that at a  
16 future date Hancock commences selling Products to California or California Customers via the  
17 internet that do not meet the reformulation standard set out in Section 2.6 above, a warning shall be  
18 given in conjunction with said sales, which warning shall appear on one or more web pages  
19 displayed to a purchaser during the checkout process. The following warning statement shall be  
20 used and shall: (a) appear adjacent to or immediately following the display, description, or price of

21 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be  
22 used if Hancock had begun to use it, prior to the Effective Date. If Hancock seeks to use alternative  
23 warning language, other than the language specified above or the safe harbor warning specified in  
24 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, Hancock  
25 must obtain the Court's approval of its proposed alternative and provide all Parties and the Office of  
26 the Attorney General with timely notice and the opportunity to comment or object before the Court  
27 acts on the request. The Parties agree that the following warning language shall not be deemed to  
28 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 that 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.

1 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

2 The warning text shall be the same type size or larger than the Product description text:

3                   **WARNING:** This product contains TDCPP and  
4                                   TCEP, flame retardant chemicals  
5                                   known to the State of California to  
6                                   cause cancer.<sup>3</sup>

7                   **3.6 Alternatives to Interim Warnings**

8                   The obligations of Hancock under Section 3.3 shall be relieved provided Hancock certifies  
9                   on or before January 15, 2014 that only Exemplar Products meeting the Reformulation Standard  
10                   will be offered for sale in California, or to California Customers for sale in California, after January  
11                   31, 2014. The obligations of Hancock under Section 3.4 shall be relieved provided Hancock  
12                   certifies on or before January 15, 2014 that, after June 30, 2014, it will only distribute or cause to be  
13                   distributed for sale in, or sell in, California, or to California Customers for sale in California,  
14                   Products (i.e., Products beyond the Exemplar Product(s)) meeting the Reformulation Standard. The  
15                   certifications provided by this Section are material terms and time is of the essence.

16                   **4. MONETARY PAYMENTS**

17                   **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

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

27                   4.1.1 Initial Civil Penalty. On or before the Effective Date, Hancock shall make an  
28                   initial civil penalty payment in the amount identified on 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 31, 2014, Hancock shall make a  
2 second civil penalty payment in the amount identified on Exhibit A. The amount of the second  
3 penalty may be reduced according to any penalty waiver Hancock is eligible for under Sections  
4 4.1.4(i) and 4.1.4(iii), below.

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

9           4.1.4 Reductions to Civil Penalty Payment Amounts. Hancock may reduce the  
10 amount of the second and/or third civil penalty payments identified on Exhibit A by providing  
11 Englander with certification of certain efforts undertaken to reformulate their Products or limit the  
12 ongoing sale of non-reformulated Products in California. The options to provide a written  
13 certification in lieu of making a portion of a civil penalty payment constitute material terms of this  
14 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           If Hancock so elects on Exhibit A, a portion of the second civil penalty shall be waived, to  
18 the extent that it has agreed that, as of January 15, 2014, and continuing into the future, it shall only  
19 manufacture or import for distribution or sale to California Customers or cause to be manufactured  
20 or imported for distribution or sale to California Customers, Reformulated Products. An officer or  
21 other authorized representative of Hancock that has exercised this election shall provide Englander  
22 with a written certification confirming compliance with such conditions, which certification must  
23 be received by Englander's counsel on or before January 31, 2014.

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

25           If Hancock so elects on Exhibit A, a portion of the third civil penalty shall be waived, to the  
26 extent that it has agreed that, as of March 15, 2014, and continuing into the future, it shall only  
27 manufacture or import for distribution or sale in the California or cause to be manufactured or  
28 imported for distribution or sale in California, Reformulated Products which also do not contain

1 tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per  
2 million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject  
3 product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545  
4 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the  
5 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized  
6 representative of Hancock that has exercised this election shall provide Englander with a written  
7 certification confirming compliance with such conditions, which certification must be received by  
8 Englander’s counsel on or before November 15, 2014.

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

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

16 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**  
17 **California of Unreformulated Inventory.**

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

23 **4.2 Representations**

24 Hancock represents that the sales data and other information concerning its size, knowledge  
25 of the Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Englander  
26

27 <sup>4</sup> For purposes of this Section, the term Exemplar Products shall further include Products for  
28 which Englander has, prior to August 31, 2013, provided Hancock 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 was truthful to its knowledge and a material factor upon which Englander has relied to determine  
2 the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent  
3 Judgment. If, within nine months of the Effective Date, Englander discovers and presents to  
4 Hancock, evidence demonstrating that the preceding representation and warranty was materially  
5 inaccurate, then Hancock shall have 30 days to meet and confer regarding Englander's contention.  
6 Should this 30 day period pass without any such resolution between the Parties, Englander shall be  
7 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of  
8 contract.

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

14 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

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

25 \_\_\_\_\_  
26 <sup>5</sup> This Section shall not be applicable where the vendor in question had previously been  
27 found by Hancock to have provided unreliable certifications as to meeting the Reformulation  
28 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated  
penalty for a second exceedance by Hancock's vendor at a level between 100 and 249 ppm shall 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 stipulated penalty level. Hancock under this Section must provide notice and appropriate  
2 supporting information relating to the purchase (e.g. vendor name and contact information  
3 including representative, purchase order, certification (if any) received from vendor for the  
4 exemplar or subcategory of products), test results, and a letter from a company representative or  
5 counsel attesting to the information provided, to Englander within 30 calendar days of receiving test  
6 results from Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the  
7 full 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, Hancock expressed a desire to  
13 resolve the fee and cost issue. Hancock 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 Hancock'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 Plaintiff's counsel will incur to monitor various provisions in this agreement over the next two  
20 years, with the exception of additional fees that may be incurred pursuant to Hancock's election in  
21 Section 11. Hancock 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 Exhibit A.  
23 Hancock further agreed to tender and shall tender its full required payment under this Section to a  
24 trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within two  
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.

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

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

13                                   For United States Postal Service Delivery:

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

19                                   For Non-United States Postal Service Delivery:

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

25            4.5.2    Proof of Payment to OEHHA. A copy of each check payable to OEHHA  
26 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in  
27 Section 4.5.1(a) above, as proof of payment to OEHHA.

28            4.5.3    Tax Documentation. Hancock shall issue a separate 1099 form for each  
29 payment required by this Section to: (a) Peter Englander, whose address and tax identification  
30 number shall be furnished upon request after this Consent Judgment has been fully executed by the  
31 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard  
32 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box  
33 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set  
34 forth in Section 4.5.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

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

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

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

19 Englander, in his individual capacity only and *not* in his representative capacity, provides a  
20 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
21 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
22 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,  
23 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP and  
24 TCEP in the Products or Additional Products (as defined in Section 11.1 and delineated on Exhibit  
25 A) manufactured, imported, distributed, or sold by Hancock prior to the Effective Date.<sup>7</sup> The  
26 Parties further understand and agree that this Section 5.2 release shall not extend upstream to any  
27

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

1 entities that manufactured the Products or Additional Products, or any component parts thereof, or  
2 any distributors or suppliers who sold the Products or Additional Products, or any component parts  
3 thereof to Hancock, except that entities upstream of Hancock that is a Retailer of a Private Labeled  
4 Covered (or Additional) Product shall be released as to the Private Labeled Covered (or Additional)  
5 Products offered for sale in California by the Retailer in question. Nothing in this Section affects  
6 Englander's right to commence or prosecute an action under Proposition 65 against a Releasee that  
7 does not involve Hancock's Products or Additional Products.

8           **5.3 Hancock's Release of Englander**

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

15 **6. COURT APPROVAL**

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

1 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 4,  
2 above, shall be refunded to Hancock within 15 days.

3 **7. GOVERNING LAW**

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

13 **8. NOTICES**

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

18 To Hancock:

19 At the address shown on Exhibit A

To Englander:

20 Proposition 65 Coordinator  
21 The Chanler Group  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710-2565

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

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

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



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

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products, where Hancock has identified on Exhibit A additional  
6 products that contain Listed Chemicals and that are sold or offered for sale by it in California, or to  
7 California Customers (“Additional Products”), then by no later than January 15, 2014, Hancock  
8 may provide Englander with additional information or representations necessary to enable them to  
9 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &  
10 Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam that is  
11 supplied, shaped or manufactured for use as a component of a product, such as upholstered  
12 furniture, is specifically excluded from the definition of Additional Products and shall not be  
13 identified by Hancock on Exhibit A as an Additional Product. Except as agreed upon by Englander,  
14 Hancock shall not include a product, as an Additional Product, that is the subject of an existing 60-  
15 day notice issued by Englander or any other private enforcer at the time of execution. After receipt  
16 of the required information, Englander agrees to issue a supplemental 60-day notice in compliance  
17 with all statutory and regulatory requirements for the Additional Products. Englander will, and in  
18 no event later than October 1, 2014, prepare and file an amendment to this Consent Judgment to  
19 incorporate the Additional Products within the defined term “Products” and serve a copy thereof  
20 and its supporting papers (including the basis for supplemental stipulated penalties, if any) on the  
21 Office of the California Attorney General; upon the Court’s approval and finding that the  
22 supplemental stipulated penalty amount, if any, is reasonable the Additional Products shall become  
23 subject to Section 5.1 in addition to Section 5.2. Hancock shall, at the time it elects to utilize this  
24 Section and tenders the additional information or representations regarding the Additional Products  
25 to Englander, tender to The Chanler Group’s trust account an amount not to exceed \$8,750 as  
26 stipulated penalties and attorneys’ fees and costs incurred by Englander in issuing the new notice  
27 and engaging in other reasonably related activities, which may be released from the trust as  
28 awarded by the Court upon Englander’s application. Any fee award associated with the

1 modification of the Consent Judgment to include Additional Products shall not offset any associate  
2 supplemental penalty award, if any. (Any tendered funds remaining in the trust thereafter shall be  
3 refunded to Hancock within 15 days). Such payment shall be made "In trust for The Chanler  
4 Group" and delivered as per Section 4.5.1(a) above.

5 11.2 Englander and Hancock agree to support the entry of this agreement as a Consent  
6 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The  
7 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed  
8 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall  
9 draft and file. If any third party objection to the noticed motion is filed, Englander and Hancock  
10 shall work together to file a reply and appear at any hearing before the Court. This provision is a  
11 material component of the Consent Judgment and shall be treated as such in the event of a breach.

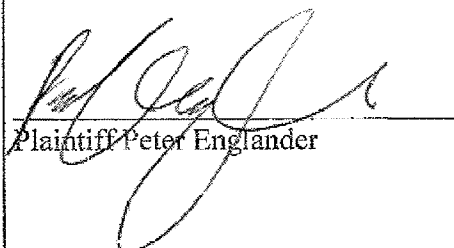
12 **12. MODIFICATION**

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

16 **13. AUTHORIZATION**


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

20  
21 AGREED TO:

22   
23 \_\_\_\_\_  
24 Plaintiff Peter Englander

25 Date: January 6, 2014

21 AGREED TO:

22   
23 \_\_\_\_\_  
24 Thomas J. O'Connell  
25 VP Finance  
26 Defendant Hancock & Moore, Inc.

27 Date: January 6, 2014

1 EXHIBIT A

2  
3 I. Name of Settling Defendant (Mandatory)

4 HANCOCK & MOORE, INC.

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

6 Jessica Charles LLC

7  
8 III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

9  Foam-cushioned pads for children and infants to lie on, such as rest mats

10  Upholstered furniture

11  Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

12  Car seats, strollers

13  Other (specify):

14  
15 IV. Types of Additional Products Hancock & Moore, Inc. Elects to Address (if any):  
16  
17

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18 V. Hancock Sales, Inc.'s Required Settlement Payments

19 A. Civil Penalties for Hancock & Moore, Inc.: \$35,000, as follows:

20 \$7,000 initial payment due on or before the Effective Date;

21 \$17,000 second payment due on or before January 31, 2014, of which \$10,000 may  
22 be waived pursuant to Section 4.1.4(i) and \$7,000 may be waived pursuant to  
Section 4.1.4(ii); and

23 \$11,000 third payment due on or before November 30, 2014, of which \$7,000 may  
24 be waived pursuant to Section 4.1.4(ii) and \$4,000 may be waived pursuant to  
Section 4.1.4(iv).

25 VI. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

26 A. Fees and Costs for Hancock & Moore, Inc.: \$23,000.  
27  
28

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

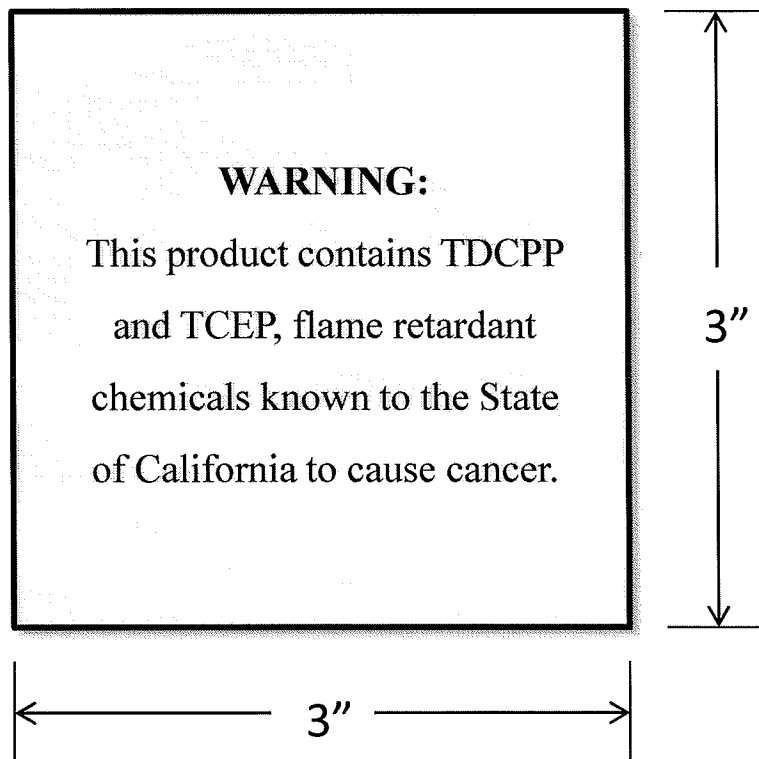
2 Thomas J. O'Connell  
3 VP Finance  
4 Hancock & Moore, Inc.  
5 P.O. Box 3444  
6 Hickory, NC 28603  
7 Email: tom@hancockandmoore.com  
8 Tel: (828) 495-1947  
9 Fax: (828) 495-3021

10 Todd O. Maiden, Esq.  
11 Reed Smith, LLP  
12 101 Second Street, Suite 1800  
13 San Francisco, CA 94105  
14 Email: tmaiden@reedsmith.com  
15 Tel: (415) 659-5918  
16 Fax: (415) 391-8269

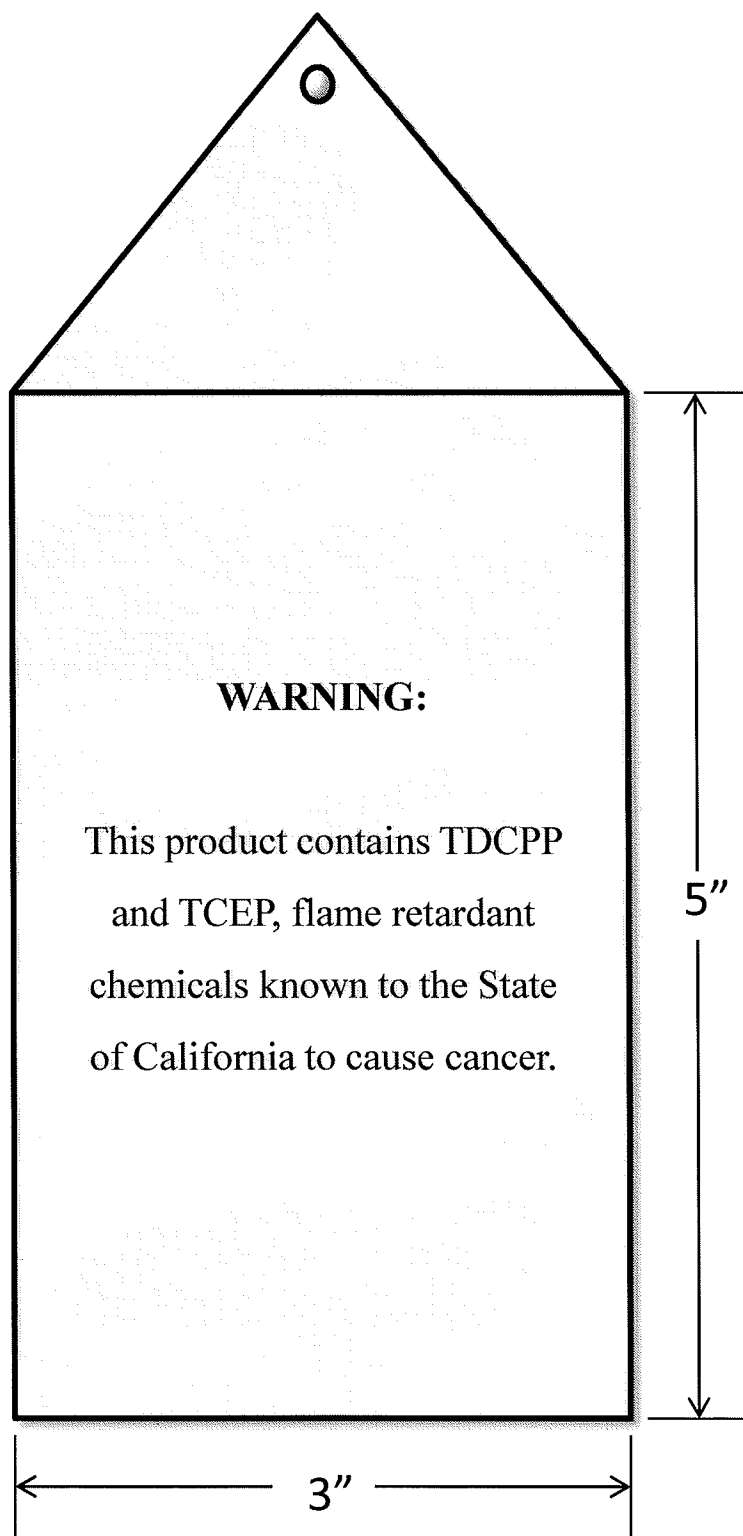
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EXHIBIT B  
(ILLUSTRATIVE WARNINGS)



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

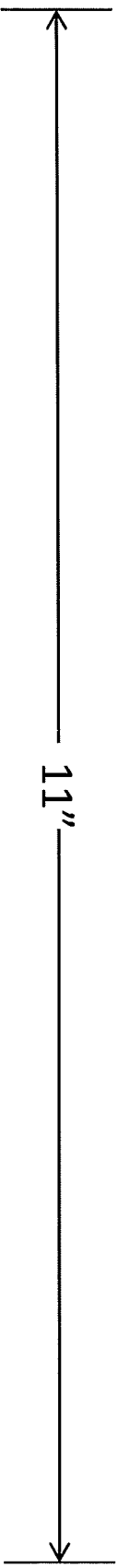


**INSTRUCTIONS:** Print warning on each side of hang tag.  
Minimum 12 pt. font. “WARNING:” text must be bold.

**WARNING:**

This product contains TDCPP and TCPEP, flame 8.5"

retardant chemicals known to the State of  
California to cause cancer.



**INSTRUCTIONS:**

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