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8 Attorneys for Plaintiff  
9 PETER ENGLANDER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 UNLIMITED JURISDICTION

13 PETER ENGLANDER

14 Plaintiff,

15 vs.

16 ACME FURNITURE INDUSTRY, INC.,  
17 BASSETT FURNITURE INDUSTRIES,  
18 INCORPORATED, BEST CHAIRS  
19 INCORPORATED, BUTLER SPECIALTY  
20 COMPANY, COA, INC., FOREMOST  
21 GROUPS, INC., IDEA NUOVA INC., MINSON  
22 CORPORATION, NAJARIAN FURNITURE  
23 COMPANY, INC., P'KOLINO, LLC, THE TJX  
24 COMPANIES, INC. and DOES 1-150,

25 Defendants.

Case No. RG13673678

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

**CONSENT TO JUDGMENT AS  
TO DEFENDANT BEST CHAIRS,  
INC. (dba BEST HOME  
FURNISHINGS)**

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

Filed: March 29, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

7 Plaintiff is an individual residing in the State of California who seeks to promote awareness  
8 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 Best**

11 Best Chairs, Inc. (dba Best Home Furnishings) (hereafter “Best”) employs ten or more  
12 persons and is a person in the course of doing business for purposes of the Safe Drinking Water  
13 and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition  
14 65”).

15 **1.4 General Allegations**

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

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

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**1.5 Product Description**

The products and/or product categories covered by this agreement are hereinafter defined in Sections 2.3 and 2.4.

**1.6 Notices of Violation**

On January 24, 2013, Plaintiff served Best and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and workers in California that the Products expose users to the Listed Chemical. On March 20, 2013, Plaintiff served Best, Buy Buy Baby, Inc. and certain requisite public enforcement agencies with a "Supplemental 60-Day Notice of Violation" ("Supplemental Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and workers in California that the Products expose users to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the notices.

**1.7 Complaint**

On October 18, 2013, Plaintiff filed a Second Amended Complaint in the Superior Court in and for the County of Alameda against Best, other defendants and Does 1 through 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the Products (ACSC Action No. RG13673678; The original Complaint was filed on March 29, 2013, and a First Amended Complaint was filed on April 10, 2013). On June 12, 2013, Plaintiff also filed a Complaint in the Superior Court in and for the County of Alameda against Buy Buy Baby, Inc., other defendants and Does 1 through 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the Exemplar Products (ACSC Action No. RG13683321).

**1.8 No Admission**

Best denies the material factual and legal allegations contained in Plaintiff's Notices and Complaints and maintains that all products that they have manufactured, imported, distributed, and/or sold in California, including the Products, have been and are in compliance with all laws.

1 Nothing in this Consent Judgment shall be construed as an admission by Best of any fact, finding,  
2 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
3 constitute or be construed as an admission by Best of any fact, finding, conclusion, issue of law, or  
4 violation of law. However, this section shall not diminish or otherwise affect Best's obligations,  
5 responsibilities, and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
8 jurisdiction over Best as to the allegations contained in the Complaints, that venue is proper in the  
9 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this  
10 Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

11 **2. DEFINITIONS**

12 **2.1 California Customers**

13 "California Customer" shall mean any customer that Best reasonably understands is  
14 located in California, has a California warehouse or distribution center, maintains a retail outlet in  
15 California, or has made internet sales into California on or after October 28, 2011.

16 **2.2 Detectable**

17 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent  
18 of .0025%) of TDCPP in any material, component, or constituent of a subject product, when  
19 analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or  
20 equivalent methodologies utilized by federal or state agencies to determine the presence, and  
21 measure the quantity, of TDCPP in a solid substance.

22 **2.3 Covered Products**

23 "Covered Product" shall mean all padded, upholstered furniture, including ottomans, and  
24 including Exemplar Product. Polyurethane foam that is supplied, shaped or manufactured for use  
25 as a component of another product, such as upholstered furniture, but which is not itself a finished  
26 product (e.g. bulk polyurethane foam), is specifically excluded from the definition of Covered  
27 Products. "Private Label Covered Products" means Products that bear a brand or trademark  
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1 owned or licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in  
2 the State of California.

3 **2.4 Exemplar Products**

4 “Exemplar Product” or “Exemplar Covered Product” shall mean all Storytime Series chairs  
5 and ottomans.

6 **2.5 Reformulated Products**

7 “Reformulated Products” shall mean Covered Products that contain no Detectable amount  
8 of TDCPP.

9 **2.6 Reformulation Standard**

10 The “Reformulation Standard” shall mean containing no more than 25 ppm of TDCPP.

11 **2.7 Retailer**

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

14 **3. INJUNCTIVE RELIEF: REFORMULATION**

15 **3.1 Reformulation Commitment**

16 Best represents as a material part of this settlement agreement that all of the Covered  
17 Products it manufactured after October 28, 2012, were Reformulated Products. Best agrees that  
18 since this date, and continuing into the future, it has and shall not manufacture or import, or cause  
19 to be manufactured or imported, any Covered Products that are not Reformulated Products.

20 **3.2 Vendor Notification/Certification**

21 Best represents as a material part of this settlement agreement that, on or before October  
22 2012, it provided written notice to all of its then-current vendors of polyurethane foam or other  
23 foam components of Covered Products, instructing each such vendor to use reasonable efforts to  
24 provide Best with only foam meeting the Reformulation Standard. Best further represents that  
25 prior to September 2012 it received confirmation from each such vendor that the foam utilized in  
26 Covered Products and manufactured or sold by such vendors was in compliance with the  
27 Reformulation Standard. Best agrees that in the future, it shall require each new vendor of foam  
28 materials for Covered Products to comply with the Reformulation Standard and certify such

1 compliance to Best. Best shall make any such written certification available to Plaintiff upon  
2 written request.

3 **3.3 Products No Longer in Best's Control**

4 Best represents as a material part of this settlement agreement that no later than January  
5 2014, Best sent a letter, electronic or otherwise ("Notification Letter") to: (1) each California  
6 Customer and/or Retailer to which Best, after October 28, 2011, supplied any non-reformulated  
7 Exemplar Product for resale in California; and (2) any California Customer and/or Retailer that  
8 Best reasonably understood or believed had any inventory for resale in California of Exemplar  
9 Products. The Notification Letter advised the recipient that the Exemplar Product contained  
10 TDCPP, that TDCPP is a Proposition 65 listed chemical, and requested that the recipient label the  
11 Exemplar Products remaining in inventory for sale in California, or to California Customers,  
12 pursuant to Section 3.5. Best shall maintain records of all correspondence or other  
13 communications generated pursuant to this Section until December 31, 2018, and shall promptly  
14 produce copies of such records upon Plaintiff's written request.

15 **3.4 Current Inventory**

16 Best represents as a material part of this settlement agreement that as of January 1, 2014, it  
17 did not maintain any inventory of non-reformulated Covered Products for sale in California, or for  
18 sale to retailers Best reasonably understands have retail outlets in California. To the extent Best  
19 discovers in Best's possession or acquires any inventory of non-reformulated Covered Products,  
20 each such product shall be labeled with a clear and reasonable warning as set forth in Section 3.5  
21 below prior to sale or distribution.

22 **3.5 Product Warnings**

23 **3.5.1 Product Labeling**

24 Any warning provided under Section 3.4 above shall be affixed to the packaging, labeling,  
25 or directly on each Covered Product. Each warning shall be prominently placed with such  
26 conspicuousness as compared with other words, statements, designs, or devices as to render it  
27 likely to be read and understood by an ordinary individual under customary conditions before  
28 purchase. Each warning shall be provided in a manner such that the consumer or user

1 understands to which specific Covered Product the warning applies, so as to minimize the risk of  
2 consumer confusion.

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

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

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

### 12 3.5.2 Internet Website Warning

13 To the extent that Best sells, or makes available for sale, any non-reformulated Covered  
14 Product through an internet website (owned, operated or controlled by Best), a warning shall be  
15 given in conjunction with the sale of the Covered Products to California, or California Customers,  
16 via the internet, which warning shall appear on one or more web pages displayed to a purchaser  
17 during the checkout process. The following warning statement shall be used and shall: (a) appear  
18 adjacent to or immediately following the display, description, or price of the Covered Product; (b)  
19 appear as a pop-up box or (c) otherwise appear automatically to the consumer. The warning text  
20 shall be the same type size or larger than the Covered Product description text:

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21 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Best had  
22 begun to use it, prior to execution of this Agreement. If Best seeks to use alternative warning language, other than the  
23 language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method  
24 of transmission of the warning, Best must obtain the Court's approval of its alternative and provide all Parties and the  
25 Office of the Attorney General with timely notice and the opportunity to comment or object before the Court acts on the  
26 request. The Parties agree that the following warning language shall not be deemed to meet the requirements of 27  
27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other  
28 reproductive harm"; and (b) "cancer, birth defects or other reproductive harm."

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

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

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3 **4. MONETARY PAYMENTS**

4 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

5 In settlement of all the claims referred to in this Consent Judgment, Best shall pay the  
6 following civil penalties in accordance with this Section.

7 4.1.1 Civil Penalty. On or before July 31, 2015, Best shall make a civil penalty  
8 payment in the amount of \$37,000.00 pursuant to the payment procedures of Section 4.5.

9 4.1.2 Reductions to Civil Penalty Payment Amounts. Best may reduce the  
10 amount of the \$37,000.00 civil penalty payment by providing Plaintiff with certification of certain  
11 efforts undertaken to reformulate their Covered Products or limit the ongoing sale of non-  
12 reformulated Covered Products in California. The options to provide a written certification in lieu  
13 of making a portion of a Best's civil penalty payment constitute material terms of this Consent  
14 Judgment, and with regard to such terms, time is of the essence.

15 **4.1.2(i) Partial Penalty Waiver for Extended Reformulation.**

16 Best represents that it has been informed by all of its foam suppliers that all foam it has  
17 received as of January 1, 2015, is fire retardant chemical free. Accordingly, Best shall be entitled to  
18 a waiver of \$25,000.00 of the civil penalty, to the extent that it agrees that, as of January 1, 2015,  
19 and continuing into the future, it shall only manufacture or import for distribution or sale in  
20 California or cause to be manufactured or imported for distribution or sale in California,  
21 Reformulated Products that also do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a  
22 detectable amount of more than 25 parts per million ("ppm") (the equivalent of .0025%) in any  
23 polyurethane foam material, component, or constituent of a Covered Product, when analyzed by  
24 an accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent  
25 methodologies utilized by federal or state agencies to determine the presence, and measure the  
26 quantity, of TDBPP in a solid substance. An officer or other authorized representative of Best that  
27 is competent to confirm this election shall provide Plaintiff with a written certification confirming

28 <sup>3</sup> Footnote 4, *supra*, applies in this context as well.



1 that it has been informed by all of its foam suppliers that all foam it has received as of January 1,  
2 2015, is fire retardant chemical free, which certification must be received by Plaintiff's counsel on  
3 or before August 1, 2015.

#### 4 **4.2 Representation**

5 Best represents that the sales data and other information concerning its size, knowledge of  
6 Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Plaintiff was  
7 truthful to its knowledge and a material factor upon which Plaintiffs have relied to determine the  
8 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent  
9 Judgment. If on or before May 1, 2016, Plaintiff discovers and presents to Best, evidence  
10 demonstrating that the preceding representation and warranty was materially inaccurate, then  
11 Best shall have 30 days to meet and confer regarding the Plaintiff's contention. Should this 30 day  
12 period pass without any such resolution between the Plaintiff and Best, Plaintiff shall be entitled to  
13 file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

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

15 If Plaintiff provides notice and appropriate supporting information to Best that levels of a  
16 Listed Chemical in excess of the Reformulation Standard have been detected in one or more  
17 Covered Products labeled or otherwise marked in an identifiable manner as manufactured or  
18 imported after a deadline for meeting the Reformulation Standard has arisen for Best under  
19 Sections 3.1 above, Best may elect to pay a stipulated penalty to relieve any further potential  
20 liability under Proposition 65 or sanction under this Consent Judgment as to Covered Products  
21 sourced from the vendor in question.<sup>4</sup> The stipulated penalty shall be \$1,500 if the violation level  
22 is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being  
23 applicable for any amount in excess of the Reformulation Standards but under 250 ppm.<sup>5</sup> Plaintiff  
24 shall further be entitled to reimbursement of their associated expense in an amount not to exceed

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25 <sup>4</sup> This Section shall not be applicable where the vendor in question had previously been found by Best to have  
26 provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion.  
27 Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Best's vendor at a level between 100  
28 and 249 ppm shall not be available after July 1, 2016.

<sup>5</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in the same  
manner as set forth in Section 4.5.

1 \$5,000 regardless of the stipulated penalty level. Best under this Section must provide notice and  
2 appropriate supporting information relating to the purchase (e.g. foam vendor name and contact  
3 information including representative, purchase order, certification (if any) received from vendor  
4 for the exemplar or subcategory of products), test results, and a letter from a company  
5 representative or counsel attesting to the information provided, to Plaintiff within 30 calendar  
6 days of receiving test results from Plaintiff's counsel. Any violation levels at or above 250 ppm  
7 shall be subject to the full remedies provided pursuant to this Consent Judgment and at law.

#### 8 **4.4 Reimbursement of Fees and Costs**

9 The Parties acknowledge that Plaintiff 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, Best expressed a desire to  
13 resolve the fee and cost issue. Best then agreed to pay Plaintiff and his counsel a fee and cost  
14 reimbursement amount of \$61,000.00 under general contract principles and the private attorney  
15 general doctrine codified at California Code of Civil Procedure section 1021.5 for all work  
16 performed through the mutual execution of this agreement, including the fees and costs incurred  
17 as a result of investigating, bringing this matter to Best's attention, negotiating a settlement in the  
18 public interest, and seeking court approval of the same. In addition, the negotiated fee and cost  
19 figure expressly includes the anticipated significant amount of time plaintiffs' counsel will incur to  
20 monitor various provisions in this agreement over the next two years. Best shall pay this fee and  
21 cost reimbursement, pursuant to Section 4.5, on or before July 31, 2015.

#### 22 **4.5 Payment Procedures**

##### 23 **4.5.1 Issuance of Payments.**

24 (a) All payments due pursuant to Sections 4.1.1 and 4.4 shall be shall be  
25 tendered by Best to a trust bank account of Dillingham & Murphy LLP. Within five (5)  
26 days of Best's payment, an authorized representative of Dillingham & Murphy LLP shall  
27 mail confirmation of receipt of such payments pursuant to Sections 4.1 and 4.4 at the  
28 following payment address:

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

(b) No later than five business days after approval of this Consent to Judgment by the Court, Dillingham & Murphy shall deliver payment of the civil penalty under Section 4.1, payable to “The Chanler Group, in Trust for Peter Englander and OEHHA” and shall deliver payment of the fee/cost reimbursement under Section 4.4, payable to “The Chanler Group” to the following payment address:

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

(c) Upon receipt and clearance of the civil penalty payment from Dillingham & Murphy LLP, The Chanler Group shall thereafter issue payment of 75% of the civil penalty to OEHHA and 25% of the civil penalty to Mr. Englander. The Chanler Group shall provide a copy of its OEHHA penalty distribution to counsel for Best.

(d) Best shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.5.1(b) that are not received within two business days of the due date.

4.5.2 Tax Documentation. Best shall issue a separate 1099 form for each payment required by this Section to “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

**5. CLAIMS COVERED AND RELEASED**

**5.1 Plaintiff’s Release of Proposition 65 Claims**

Plaintiff, acting on his own behalf and in the public interest, releases Best, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Best directly or indirectly distributed or sold Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for

1 violations of Proposition 65 through execution of this agreement by Best based on unwarned  
2 exposures to the Listed Chemicals in the Products, as set forth in the Notices. *As part of this*  
3 *settlement, coordinated defendant Buy Buy Baby, Inc. shall be considered a Releasee only to the extent of*  
4 *Buy Buy Baby's sale or other distribution of the Storytime Series padded, upholstered furniture sold or*  
5 *supplied to Buy Buy Baby, Inc. by Best Chairs Incorporated.* The Parties further understand and agree  
6 that this Section 5.1 release shall not extend upstream to any entities, other than Bests, that  
7 manufactured the Products or any component parts thereof, or any distributors or suppliers who  
8 sold the Products or any component parts thereof to Best, except that entities upstream of Best that  
9 is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled  
10 Covered Products offered for sale in California, or to California Customers, by the Retailer in  
11 question.

#### 12 **5.2 Plaintiff's Individual Releases of Claims**

13 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides  
14 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
15 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
16 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,  
17 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP in  
18 the Products manufactured, imported, distributed, or sold by Best prior to the date this agreement  
19 is executed by Best. The Parties further understand and agree that this Section 5.2 release shall not  
20 extend upstream to any entities that manufactured the Products or any component parts thereof,  
21 or any distributors or suppliers who sold the Products, or any component parts thereof, to Best,  
22 except that entities upstream of Best that is a Retailer of a Private Labeled Covered (or Additional)  
23 Product shall be released as to the Private Labeled Covered (or Additional) Products offered for  
24 sale in California by the Retailer in question. Nothing in this Section affects Plaintiff's rights to  
25 commence or prosecute an action under Proposition 65 against a Releasee that does not involve  
26 Best's Products.

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5.3 **Best's Release of Plaintiff**

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

6. **COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court within one year after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section 4, above, shall be refunded within 15 days of the appellate decision becoming final. If the Court does not approve and enter the Consent Judgment by May 1, 2016, any settlement monies that have been held in trust by counsel for Best pursuant to Section 4, above, shall be refunded to Best within 15 days.

7. **GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or

1 rendered inapplicable by reason of law generally as to the Products, then Best may provide written  
2 notice to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant  
3 to this Consent Judgment with respect to, and to the extent that, the Products are so affected.  
4 Nothing in this Consent Judgment shall be interpreted to relieve Best from any obligation to  
5 comply with any pertinent state or federal law or regulation.

6 **8. NOTICES**

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

11 To Best:

12 Patrick L. Miller, Esq.  
13 General Counsel  
14 Best Chairs, Inc.  
15 1 Best Drive  
16 Ferdinand, IN 47532

To Plaintiff:

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

15 Jack C. Henning  
16 Dillingham & Murphy, LLP  
17 353 Sacramento Street, Suite 2000  
18 San Francisco, CA 94111  
[jch@dillinghammurphy.com](mailto:jch@dillinghammurphy.com)

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

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

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

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

26 Plaintiff and his attorneys agree to comply with the reporting form requirements  
27 referenced in California Health & Safety Code section 25249.7(f).  
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**11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

**12. MODIFICATION**

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

**13. AUTHORIZATION**

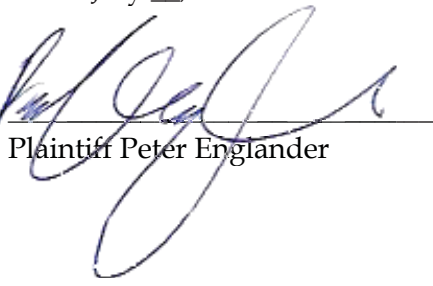
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: July 17, 2015

Date: July \_\_, 2015

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

\_\_\_\_\_  
Patrick L. Miller  
Best Chairs Inc.

11. ADDITIONAL POST EXECUTION ACTIVITIES

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

12. MODIFICATION

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

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.

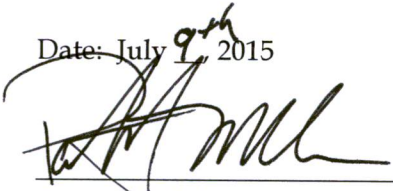
AGREED TO:

Date: July \_\_, 2015

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

AGREED TO:

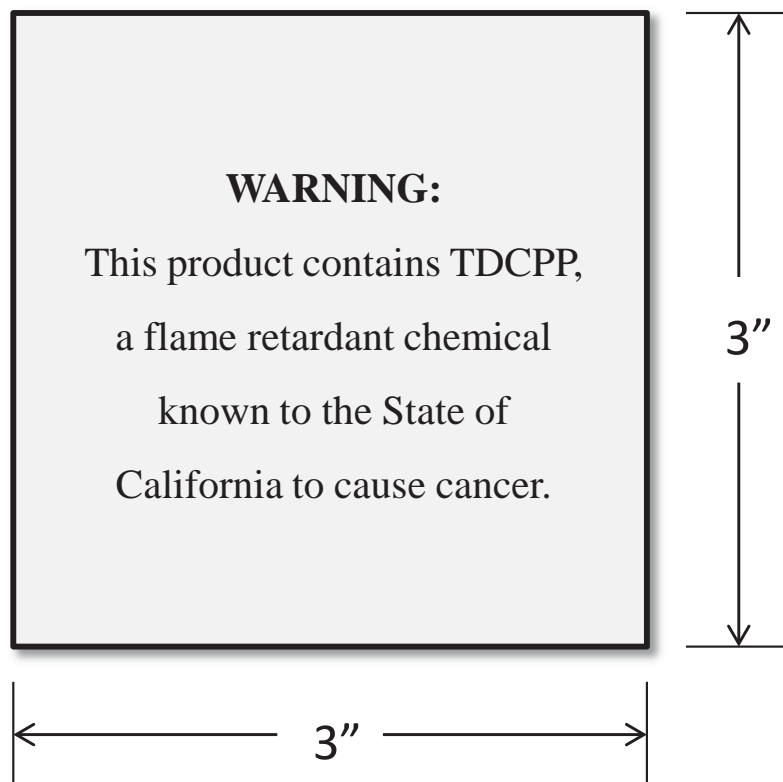
Date: July 9<sup>th</sup>, 2015

  
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Patrick L. Miller  
Best Chairs Inc.

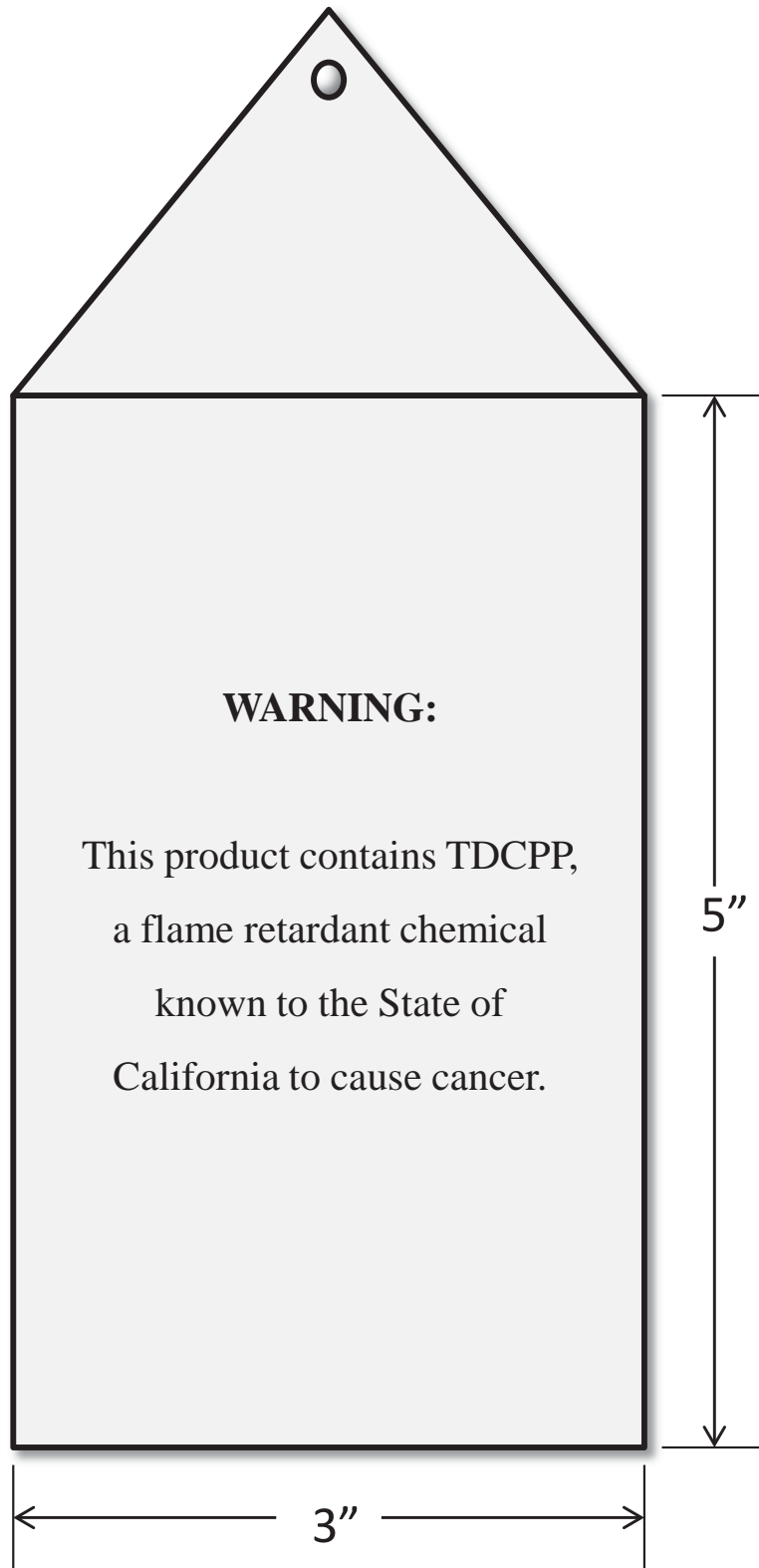


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EXHIBIT B  
(ILLUSTRATIVE WARNINGS)



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



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

**WARNING:**

This product contains TDCPP, a flame retardant  
8.5"

chemical known to the State of California to  
cause cancer.

11"

**INSTRUCTIONS:**

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