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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. R13673678

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

**CONSENT TO JUDGMENT AS TO  
DEFENDANT P'KOLINO, LLC**

(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 the defendants identified in Exhibit A (“Settling Defendants”), with Plaintiff and  
5 the Settling Defendants collectively referred to as the “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 Settling Defendants**

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

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that each Settling Defendant manufactured, imported, sold  
16 and/or distributed for sale in California, products with foam cushioned components containing  
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”)   
18 without the requisite Proposition 65 health hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on April 1, 1992, California identified and listed  
20 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable  
21 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §  
22 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 1.4.3 Pursuant to Proposition 65, on October 28, 2011, California identified and  
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
25 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code  
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

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1 TDCPP and TCEP are hereinafter collectively referred to as the "Listed Chemicals." Plaintiff  
2 alleges that the Listed Chemicals escape from foam padding, leading to human exposures.

3 **1.5 Product Description**

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

9 **1.6 Notices of Violation**

10 Beginning in December 2012, Plaintiff served Settling Defendants and certain requisite  
11 public enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the  
12 recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn  
13 customers, consumers, and workers in California that the Products expose users to one or more  
14 Listed Chemicals.<sup>1</sup> To the best of the Parties' knowledge, no public enforcer has commenced or is  
15 diligently prosecuting the allegations set forth in the Notices.

16 **1.7 Complaint**

17 On April 10, 2013, Plaintiff filed a First Amended Complaint in the Superior Court in and  
18 for the County of Alameda against the Settling Defendants, other defendants and Does 1 through  
19 150, alleging violations of Proposition 65, based in part on the alleged unwarned exposures to  
20 TDCPP contained in the Products.

21 **1.8 No Admission**

22 The Settling Defendants deny the material factual and legal allegations contained in  
23 Plaintiff's Notices and Complaints and maintain that all products that they have manufactured,  
24 imported, distributed, and/or sold in California, including the Products, have been and are in  
25 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission

26 \_\_\_\_\_  
27 <sup>1</sup> Based on their further investigation, Plaintiff has also issued supplemental 60-day notices to some of the  
28 Settling Defendants alleging that the Products contain and expose Californians to di(2-ethylhexyl)phthalate ("DEHP").  
DEHP and other phthalates including butyl benzyl phthalate ("BBP") and Di-n-butyl phthalate ("DBP") are listed under  
Proposition 65 as chemicals known to cause birth defects and other reproductive harm.

1 by a Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
2 compliance with this Consent Judgment constitute or be construed as an admission by any Settling  
3 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section  
4 shall not diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and  
5 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 the Settling Defendants as to the allegations contained in the Complaints, that  
9 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce  
10 the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil  
11 Procedure § 664.6.

12 **2. DEFINITIONS**

13 **2.1 California Customers**

14 "California Customer" shall mean any customer that a Settling Defendant reasonably  
15 understands is located in California, has a California warehouse or distribution center, maintains a  
16 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

17 **2.2 Detectable**

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

23 **2.3 Effective Date**

24 "Effective Date" shall mean October 15, 2013.

25 **2.4 Private Label Covered Products**

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

1                   2.5     **Reformulated Products**

2                   “Reformulated Products” shall mean Products that contain no Detectable amount of  
3 TDCPP or TCEP.<sup>2</sup>

4                   2.6     **Reformulation Standard**

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

7                   2.7     **Retailer**

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

10                  3.     **INJUNCTIVE RELIEF: REFORMULATION**

11                  3.1     **Reformulation Commitment**

12                  Commencing on March 31, 2014, Settling Defendants shall not manufacture or import, or  
13 cause to be manufactured or imported, any Products that are not Reformulated Products.

14                  3.2     **Vendor Notification/Certification**

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

25                  3.3     **Products No Longer in a Settling Defendant’s Control**

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27                  <sup>2</sup> As to the Settling Defendants who received supplemental Notices concerning DEHP, the term “Reformulated  
28 Products” further requires that the Products for which claims concerning DEHP were noticed (the “Phthalate Products”) contain no more than 1000 ppm each of DEHP, BBP, and DBP.

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

### 18 3.4 Current Inventory

19 Any Products in, or manufactured and en route to, a Settling Defendant's inventory as of or  
20 after December 31, 2013, that do not qualify as Reformulated Products and that the Settling  
21 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a  
22 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.<sup>3</sup>

### 23 3.5 Product Warnings

#### 24 3.5.1 Product Labeling

25 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,  
26 labeling, or directly on each Product. Each warning shall be prominently placed with such

27 \_\_\_\_\_  
28 <sup>3</sup> This shall not apply to Products which are Private Label Covered Products in a Retailer Settling Defendants' inventory as of December 31, 2013.

1 conspicuousness as compared with other words, statements, designs, or devices as to render it  
2 likely to be read and understood by an ordinary individual under customary conditions before  
3 purchase. Each warning shall be provided in a manner such that the consumer or user  
4 understands to which specific Product the warning applies, so as to minimize the risk of consumer  
5 confusion.

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

7 **WARNING:** This product contains [TDCPP and/or  
8 TCEP], flame retardant chemicals  
known to the State of California to  
cause cancer.<sup>4</sup>

9 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be  
10 clear and reasonable for purposes of this Consent Judgment.<sup>5</sup> Provided that the other  
11 requirements set forth in this Section are addressed, including as to the required warning  
12 statement and method of transmission as set forth above, Settling Defendants remain free not to  
13 utilize the template warnings.

#### 14 3.5.2 Internet Website Warning

15 A warning shall be given in conjunction with the sale of the Products to California, or  
16 California Customers, via the internet, which warning shall appear on one or more web pages  
17 displayed to a purchaser during the checkout process. The following warning statement shall be  
18 used and shall: (a) appear adjacent to or immediately following the display, description, or price  
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20 <sup>4</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if the Settling  
21 Defendant had begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning  
22 language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks  
23 to use an alternative method of transmission of the warning, must obtain the Court's approval of its alternative warning  
24 statement and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to  
comment or object before the Court acts on the request. The Parties agree that the following hybrid 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."

25 <sup>5</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no  
26 less than 12 point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to  
27 the Product; (b) a yellow warning sign measuring 8.5" x 11", with no less than 32 point font, with the warning language  
28 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.



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

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

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

### 3.6 Alternatives to Interim Warnings

The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the Settling Defendant certifies on or before July 18, 2014, that only Exemplar Products meeting the Reformulation Standard were offered for sale in California, or to California Customers for sale in California, after December 31, 2013. The obligations of a Settling Defendant under Section 3.4 shall be relieved provided the Settling Defendant certifies on or before July 18, 2014, that, after June 30, 2014, it has distributed and will only distribute or cause to be distributed for sale in, or sell in, California, or to California Customers for sale in California, Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard. The certifications provided by this Section are material terms and time is of the essence.

## 4. MONETARY PAYMENTS

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

In settlement of all the claims referred to in this Consent Judgment, a Settling Defendant shall pay the civil penalties shown for it on Exhibit A in accordance with this Section.<sup>7</sup>

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”) and 25% of the penalty remitted to “The Chanler Group in Trust for Englander.” Each penalty payment shall be made within two business days of the date it is due and be delivered to the addresses listed in Section 4.5 below. A Settling Defendant shall

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<sup>6</sup> Footnote 4, *supra*, applies in this context as well.

<sup>7</sup> For Settling Defendants that received supplemental Notices alleging violations of Proposition 65 concerning DEHP in Phthalate Products, the penalty amount shown on Exhibit A includes an additional component to address the resolution of those additional claims.



1 be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing  
2 under this Section that are not received within two business days of the due date.

3 4.1.1 Initial Civil Penalty. On or before July 18, 2014, Settling Defendant shall  
4 make an initial civil penalty payment in the amount identified on Exhibit A.

5 4.1.2 Second Civil Penalty. On or before August 15, 2014, Settling Defendant shall  
6 make a second civil penalty payment in the amount identified on Exhibit A. The amount of the  
7 second penalty may be reduced according to any penalty waiver the Settling Defendant is eligible  
8 for under Sections 4.1.4(i) and 4.1.4(iii), below.

9 4.1.3 Third Civil Penalty. On or before August 15, 2014, each Settling Defendant  
10 shall make a third civil penalty payment in the amount identified on the Settling Defendant's  
11 Exhibit A. The amount of the third penalty may be reduced according to any penalty waiver the  
12 Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

13 4.1.4 Reductions to Civil Penalty Payment Amounts. Each Settling Defendant  
14 may reduce the amount of the second and/or third civil penalty payments identified on the  
15 Settling Defendant's Exhibit A by providing Plaintiff with certification of certain efforts  
16 undertaken to reformulate their Products or limit the ongoing sale of non-reformulated Products  
17 in California. The options to provide a written certification in lieu of making a portion of a Settling  
18 Defendant's civil penalty payment constitute material terms of this Consent Judgment, and with  
19 regard to such terms, time is of the essence.

20 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**  
21 **Products Sold or Offered for Sale in California.**

22 As shown on an electing Settling Defendant's Exhibit A, a portion of the second civil  
23 penalty shall be waived, to the extent that it has agreed that, as of November 1, 2013, and  
24 continuing into the future, it only manufactured or imported for distribution or sale to California  
25 Customers or cause to be manufactured or imported for distribution or sale to California  
26 Customers, Reformulated Products. An officer or other authorized representative of a Settling  
27 Defendant that has exercised this election shall provide Plaintiff with a written certification  
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1 confirming compliance with such conditions, which certification must be received by Plaintiff's  
2 counsel on or before July 18, 2014.

3 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

4 As shown on an electing Settling Defendant's Exhibit A, a portion of the third civil penalty  
5 shall be waived, to the extent that it has agreed that, as of March 15, 2014, and continuing into the  
6 future, it only manufactured or imported for distribution or sale in California or cause to be  
7 manufactured or imported for distribution or sale in California, Reformulated Products that also  
8 do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than  
9 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent  
10 of a subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing  
11 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies  
12 to determine the presence, and measure the quantity, of TDBPP in a solid substance. An officer or  
13 other authorized representative of a Settling Defendant that has exercised this election shall  
14 provide Plaintiff with a written certification confirming compliance with such conditions, which  
15 certification must be received by Plaintiff's counsel on or before July 18, 2014.

16 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated  
17 Exemplar Products from the California Market.**

18 As shown on a Settling Defendant's Exhibit A, a portion of the second civil penalty shall be  
19 waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff  
20 with written certification confirming that each individual or establishment in California to which it  
21 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining  
22 Exemplar Products held for sale in California.<sup>8</sup> An officer or other authorized representative of a  
23 Settling Defendant that has exercised this election shall provide Plaintiff with a written  
24 certification confirming such information, which certification must be received by Plaintiff's  
25 counsel on or before July 18, 2014.

26 \_\_\_\_\_  
27 <sup>8</sup> For purposes of this Section, the term Exemplar Products shall further include Products for which Plaintiffs  
28 have, prior to August 31, 2013, provided the Settling Defendants 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.

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

As shown on a Settling Defendant's Exhibit A, a portion of the third civil penalty shall be waived, if an officer or other authorized representative of a Settling Defendant provides Plaintiff with written certification confirming that, as of July 1, 2014, it has and will continue to distribute, offer for sale, or sell in California, or to California Customers, only Reformulated Products. An officer or other authorized representative of a Settling Defendant that has exercised this election shall provide Plaintiff with a written certification confirming such information, which certification must be received by Plaintiff's counsel on or before July 18, 2014.

**4.2 Representations**

Each Settling Defendant represents that the sales data and other information concerning its size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Plaintiff was truthful to its knowledge and a material factor upon which Plaintiffs have relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discover and present to a Settling Defendant, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then a Settling Defendant shall have 30 days to meet and confer regarding the Plaintiff's contention. Should this 30 day period pass without any such resolution between the Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

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

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1                   4.3     **Stipulated Penalties for Certain Violations of the Reformulation**  
2     **Standard.**

3             If Plaintiff provides notice and appropriate supporting information to a Settling Defendant  
4     that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one  
5     or more Products labeled or otherwise marked in an identifiable manner as manufactured or  
6     imported after a deadline for meeting the Reformulation Standard has arisen for a Settling  
7     Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated  
8     penalty to relieve any further potential liability under Proposition 65 or sanction under this  
9     Consent Judgment as to Products sourced from the vendor in question.<sup>9</sup> The stipulated penalty  
10    shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between  
11    100 ppm and 249 ppm, this being applicable for any amount in excess of the Reformulation  
12    Standards but under 250 ppm.<sup>10</sup> Plaintiff shall further be entitled to reimbursement of their  
13    associated expense in an amount not to exceed \$5,000 regardless of the stipulated penalty level. A  
14    Settling Defendant under this Section must provide notice and appropriate supporting  
15    information relating to the purchase (e.g. vendor name and contact information including  
16    representative, purchase order, certification (if any) received from vendor for the exemplar or  
17    subcategory of products), test results, and a letter from a company representative or counsel  
18    attesting to the information provided, to Plaintiff within 30 calendar days of receiving test results  
19    from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the full  
20    remedies provided pursuant to this Consent Judgment and at law.

21                   4.4     **Reimbursement of Fees and Costs**

22             The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute  
23     without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
24     this fee reimbursement issue to be resolved after the material terms of the agreement had been

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25             <sup>9</sup> This Section shall not be applicable where the vendor in question had previously been found by the Settling  
26     Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more  
27     than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by a Settling  
28     Defendant's vendor at a level between 100 and 249 ppm shall not be available after July 1, 2015.

<sup>10</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 settled. Shortly after the other settlement terms had been finalized, the Settling Defendants  
2 expressed a desire to resolve the fee and cost issue. The Settling Defendants then agreed to pay  
3 Plaintiff and his counsel under general contract principles and the private attorney general  
4 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed  
5 through the mutual execution of this agreement, including the fees and costs incurred as a result of  
6 investigating, bringing this matter to the Settling Defendant's attention, negotiating a settlement in  
7 the public interest, and seeking court approval of the same. In addition, the negotiated fee and  
8 cost figure expressly includes the anticipated significant amount of time plaintiffs' counsel will  
9 incur to monitor various provisions in this agreement over the next two years, with the exception  
10 of additional fees that may be incurred pursuant to a Settling Defendant's election in Section 11.  
11 Each Settling Defendant more specifically agreed, upon the Court's approval and entry of this  
12 Consent Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on the Settling  
13 Defendant's Exhibit A. Each Settling Defendant further agreed to tender and shall tender its full  
14 required payment under this Section to a trust account at The Chanler Group (made payable "In  
15 Trust for The Chanler Group") on or before July 18, 2014. Such funds shall be released from the  
16 trust account upon the Court's approval and entry of this Consent Judgment.

17 **4.5 Payment Procedures**

18 4.5.1 Issuance of Payments.

19 (a) All payments owed to Plaintiff and their counsel, pursuant to  
20 Sections 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

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

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

26 For United States Postal Service Delivery:

27 Mike Gyurics  
28 Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

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

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

4.5.3 Tax Documentation. A Settling Defendant shall issue a separate 1099 form for each payment required by this Section to: (a) Peter Englander, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "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 each Settling Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed Chemicals in the Products, as set forth in the Notices. *As part of this settlement, coordinated defendant Buy Buy Baby, Inc. shall be considered a Releasee only to the extent of Buy Buy Baby's sale or other distribution of the P'Kolino Little Reader chairs sold or supplied to Buy Buy Baby, Inc. by P'Kolino, LLC.* Compliance with the terms of this Consent Judgment constitutes

1 compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the  
2 Products, as set forth in the Notices. The Parties further understand and agree that this Section 5.1  
3 release shall not extend upstream to any entities, other than Settling Defendants, that  
4 manufactured the Products or any component parts thereof, or any distributors or suppliers who  
5 sold the Products or any component parts thereof to a Settling Defendant, except that entities  
6 upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered Product shall be  
7 released as to the Private Labeled Covered Products offered for sale in California, or to California  
8 Customers, by the Retailer in question.<sup>11</sup>

9 **5.2 Plaintiff's Individual Releases of Claims**

10 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides  
11 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
12 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
13 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,  
14 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,  
15 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and  
16 delineated on a Settling Defendant's Exhibit A) manufactured, imported, distributed, or sold by  
17 Settling Defendants prior to the Effective Date.<sup>12</sup> The Parties further understand and agree that  
18 this Section 5.2 release shall not extend upstream to any entities that manufactured the Products or  
19 Additional Products, or any component parts thereof, or any distributors or suppliers who sold the  
20 Products or Additional Products, or any component parts thereof to Settling Defendants, except  
21 that entities upstream of a Settling Defendant that is a Retailer of a Private Labeled Covered (or  
22 Additional) Product shall be released as to the Private Labeled Covered (or Additional) Products  
23 offered for sale in California by the Retailer in question. Nothing in this Section affects Plaintiff's  
24

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25 <sup>11</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"  
26 shall include DEHP with respect to those Settling Defendants that received supplemental Notices  
alleging violations of Proposition 65 as to exposures to DEHP.

27 <sup>12</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as  
28 otherwise specified.



1 rights to commence or prosecute an action under Proposition 65 against a Releasee that does not  
2 involve a Settling Defendant's Products or Additional Products.<sup>13</sup>

3 **5.3 Settling Defendants' Release of Plaintiff**

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

10 **6. COURT APPROVAL**

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

26  
27 <sup>13</sup> For purposes of this Section, as to the Phthalate Products, the term "Listed Chemicals"  
28 shall include DEHP, BBP and DBP with respect to those Settling Defendants that received  
supplemental Notices alleging violations of Proposition 65 as to exposures to DEHP.

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

**8. NOTICES**

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

To Settling Defendants:

At the address shown on Exhibit A

To Plaintiff:

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

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

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

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

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

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

3  
4 11. **ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products, where a Settling Defendant has identified on Exhibit A  
6 additional products that contain Listed Chemicals and that are sold or offered for sale by it in  
7 California, or to California Customers, ("Additional Products"), then by no later than October 15,  
8 2013, the Settling Defendant may provide Plaintiff with additional information or representations  
9 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit  
10 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.  
11 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,  
12 such as upholstered furniture, is specifically excluded from the definition of Additional Products  
13 and shall not be identified by a Settling Defendant on Exhibit A as an Additional Product. Except  
14 as agreed upon by Plaintiff, Settling Defendants shall not include a product, as an Additional  
15 Product, that is the subject of an existing 60-day notice issued by Plaintiff or any other private  
16 enforcer at the time of execution. After receipt of the required information, Plaintiff agrees to issue  
17 a supplemental 60-day notice in compliance with all statutory and regulatory requirements for the  
18 Additional Products. Plaintiff will, and in no event later than October 1, 2014, prepare and file an  
19 amendment to this Consent Judgment to incorporate the Additional Products within the defined  
20 term "Products" and serve a copy thereof and its supporting papers (including the basis for  
21 supplemental stipulated penalties, if any) on the Office of the California Attorney General. Upon  
22 the Court's approval thereof, and finding that the supplemental stipulated penalty amount, if any,  
23 is reasonable, the Additional Products shall become subject to Section 5.1 in addition to Section 5.2.  
24 The Settling Defendant shall, at the time it elects to utilize this Section and tenders the additional  
25 information or representations regarding the Additional Products to Plaintiff, tender to The  
26 Chanler Group's trust account an amount not to exceed \$8,750 as stipulated penalties and  
27 attorneys' fees and costs incurred by Plaintiff in issuing the new notice and engaging in other  
28 reasonably related activities, which may be released from the trust as awarded by the Court upon

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

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

14 **12. MODIFICATION**

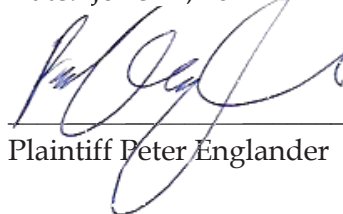
15 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
16 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
17 of any party and entry of a modified Consent Judgment by the Court.

18 **13. AUTHORIZATION**

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

22 AGREED TO:

23 Date: June 17, 2014

24   
25 \_\_\_\_\_  
26 Plaintiff Peter Englander

22 AGREED TO:

23 Date: June \_\_, 2014

24 \_\_\_\_\_  
25 [print name, title]

26 \_\_\_\_\_  
27 [signature]  
28 Settling Defendant P'Kolino LLC

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

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

14 **12. MODIFICATION**

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

18 **13. AUTHORIZATION**

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

22 AGREED TO:

23 Date: - \_\_\_\_/ \_\_, 2013

24 \_\_\_\_\_  
25 Plaintiff Peter Englander

22 AGREED TO:

23 Date: June 12, 2014

24 *ANTONIO TURCO-RIVAS*  
25 Antonio Turco-Rivas / CEO

26 \_\_\_\_\_  
27 [signature]  
28 Settling Defendant P'Kolino LLC

EXHIBIT A  
SETTLING DEFENDANTS

**P'KOLINO, LLC**

Listed Chemical: TDCPP

Product: padded, upholstered furniture, including children's chairs

Exemplar Product: P'Kolino Little Reader Chair

Additional Product: none

Penalty 1 (Section 4.1.1) (due July 18, 2014): \$7,000

Penalty 2 (Section 4.1.2) (due August 15, 2014): \$30,000

Penalty 3 (Section 4.1.3) (due August 15, 2014): \$24,000

Section 4.1.4(i) penalty waiver: \$18,000

Section 4.1.4(ii) penalty waiver: \$12,000

Section 4.1.4(iii) penalty waiver: \$12,000

Section 4.1.4(iv) penalty waiver: \$12,000

Additional Releasees: Buy Buy Baby, Inc. (*as part of this settlement, coordinated defendant Buy Buy Baby, Inc. shall be considered a Releasee only to the extent of Buy Buy Baby's sale or other distribution of the P'Kolino Little Reader chairs sold or supplied to Buy Buy Baby, Inc. by P'Kolino, LLC.*)

Section 4.4 fee and costs reimbursement (due July 18, 2014): \$26,000

Supplemental fee for additional Releasees: (due July 18, 2014): \$5,000

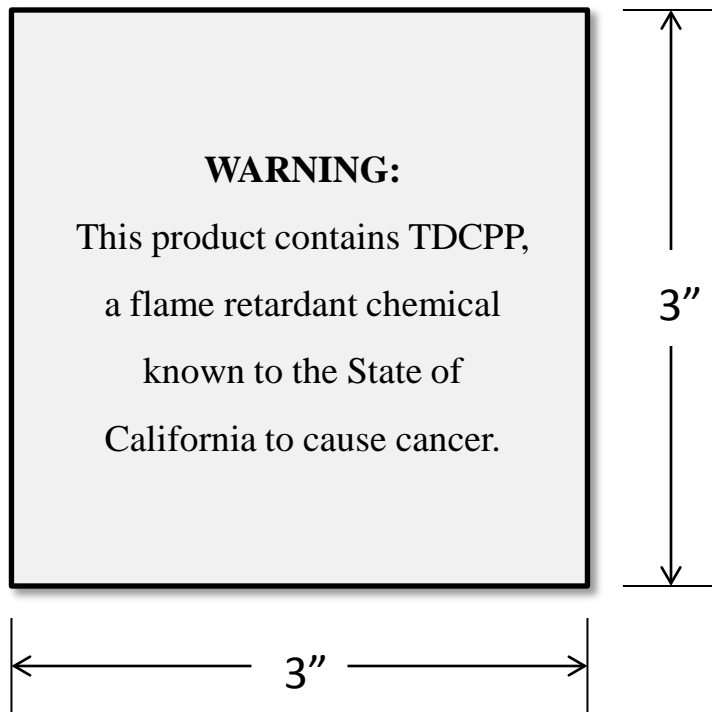
Person(s) to receive Notices pursuant to Section 8:

Barbara Adams, Esq.  
Adams Nye Becht LLP  
222 Kearny Street, 7th Floor  
San Francisco, CA 94108-4521

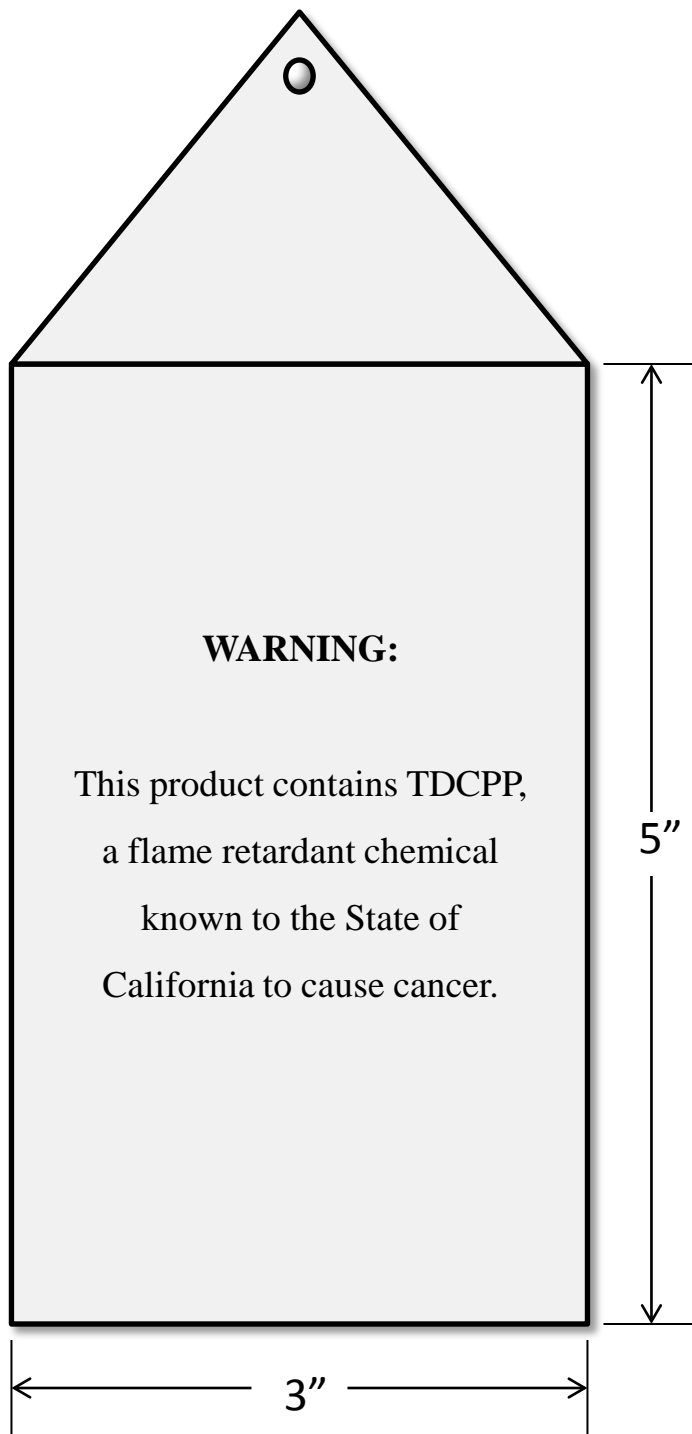
EXHIBIT B  
(ILLUSTRATIVE WARNINGS)

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

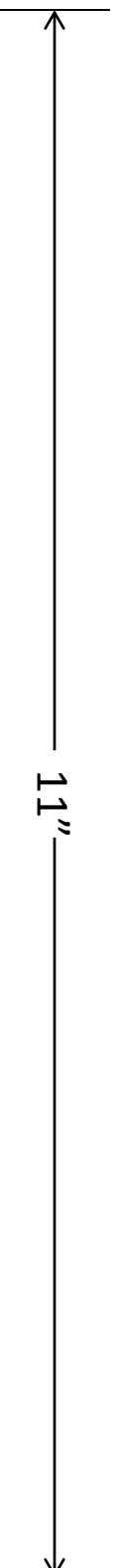


**INSTRUCTIONS:** Print warning on each side of hang tag.  
Minimum 12 pt. font. "WARNING:" text must be bold.

**WARNING:**

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to  
cause cancer.



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