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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
13

14 PETER ENGLANDER,
15 Plaintiff,
16
17 v.
18 STEIN MART, INC.; STYLECRAFT
19 HOME COLLECTION, INC.; and DOES
20 1-150, inclusive,
21 Defendants.
22

23) Case No. RG 13-678155
24)
25) Assigned for All Purposes to
26) Judge George C. Hernandez, Jr.,
27) Department 17
28)
29) **[PROPOSED] CONSENT JUDGMENT AS**
30) **TO STYLECRAFT HOME COLLECTION,**
31) **INC.**
32)
33) **(Health & Safety Code § 25249.6 et seq.)**
34)
35) Complaint Filed: May 3, 2013

1 **1. INTRODUCTION**

2 1.1 **Parties**

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

6 1.2 **Peter Englander**

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

10 1.3 **StyleCraft Home Collection, Inc.**

11 StyleCraft 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 StyleCraft 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”) without the requisite Proposition 65 health hazard
18 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). Englander alleges
23 that TDCPP escapes from foam padding, leading to human exposures.

1 **1.5 Product Description**

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

7 **1.6 Notices of Violation**

8 On or around January 28, 2013, Englander served StyleCraft, other defendants and certain
9 requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided
10 the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to
11 warn customers, consumers, and workers in California that the Products expose users to TDCPP.

12 Based on his further investigation, Englander issued an additional 60-day notice (“Second
13 Notice”) to StyleCraft, other defendants and certain requisite public enforcement agencies alleging
14 that the Products contain and expose Californians to di(2-ethylhexyl)phthalate (“DEHP”). DEHP
15 and other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”)
16 are listed under Proposition 65 as chemicals known to cause birth defects and other reproductive
17 harm.

18 To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
19 prosecuting the allegations set forth in the Notice or the Second Notice.

20 **1.7 Complaint**

21 On May 3, 2013, Englander filed a Complaint in the Superior Court in and for the County of
22 Alameda against StyleCraft and Does 4 through 150, *Peter Englander v. Stein Mart, Inc, et al.*,
23 Case No. RG13678155, alleging violations of Proposition 65, based in part on the alleged unwarned
24 exposures to TDCPP contained in the Products. Upon entry of this Consent Judgment, the
25 Complaint shall be deemed amended *nunc pro tunc* to include the violations of Proposition 65
26 alleged by Englander in the Second Notice.

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1.8 No Admission

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

1.9 Consent to Jurisdiction

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

2. DEFINITIONS

2.1 California Customers

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

2.2 Detectable

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

1 2.3 **Effective Date**

2 “Effective Date” shall mean April 1, 2014.

3 2.4 **Private Label Covered Products**

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

7 2.5 **Reformulated Products**

8 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
9 and TCEP.¹

10 2.6 **Reformulation Standard**

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

13 2.7 **Retailer**

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

16 **3. INJUNCTIVE RELIEF: REFORMULATION**

17 3.1 **Reformulation Commitment**

18 Commencing on June 30, 2014, StyleCraft shall not manufacture or import for distribution
19 or sale to California Customers, or cause to be manufactured or imported for distribution or sale to
20 California Customers, any Products that are not Reformulated Products.

21 3.2 **Vendor Notification/Certification**

22 On or before the Effective Date, StyleCraft shall provide written notice to all of its then-
23 current vendors of the Products, instructing each such vendor to use reasonable efforts to provide it
24 with only Reformulated Products. In addressing the obligation set forth in the preceding sentence,
25 StyleCraft shall not employ statements that will encourage a vendor to delay compliance with the
26 Reformulation Standard. StyleCraft shall subsequently obtain written certifications, no later than

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28 ¹ The term “Reformulated 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 July 1, 2014, from such vendors, and any newly engaged vendors, that the Products manufactured
2 by such vendors are in compliance with the Reformulation Standard. Certifications shall be held by
3 StyleCraft for at least two years after their receipt and shall be made available to Englander upon
4 request.

5 **3.3 Products No Longer in a StyleCraft's Control**

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

22 **3.4 Current Inventory**

23 Any Products in, or manufactured and en route to, StyleCraft's inventory as of or after April
24 1, 2014, that do not qualify as Reformulated Products and that StyleCraft has reason to believe may
25 be sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth
26 in Section 3.5 below unless Section 3.6 applies.

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1 **3.5 Product Warnings**

2 **3.5.1 Product Labeling**

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

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

10 **WARNING:** This product contains TDCPP, a flame
11 retardant chemical known to the State
 of California to cause cancer.²

12 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
13 clear and reasonable for purposes of this Consent Judgment.³ Provided that the other requirements
14 set forth in this Section are addressed, including as to the required warning statement and method of
15 transmission as set forth above, StyleCraft remains free not to utilize the template warnings.

16 **3.5.2 Internet Website Warning**

17 A warning shall be given in conjunction with the sale of the Products to California, or
18 California Customers, via the internet, which warning shall appear on one or more web pages
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20 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
21 used if StyleCraft had begun to use it, prior to the Effective Date. If StyleCraft seeks to use
22 alternative warning language, other than the language specified above or the safe harbor warning
23 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,
24 it must obtain the Court’s approval of its proposed alternative and provide all Parties and the Office
25 of the Attorney General with timely notice and the opportunity to comment or object before the
26 Court acts on the request. The Parties agree that the following warning language shall not be
27 deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this
28 Consent Judgment: (a) “cancer or birth defects or other reproductive harm” and (b) “cancer, birth
defects or other reproductive harm.”

³ 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.

1 displayed to a purchaser during the checkout process. The following warning statement shall be
2 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
3 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

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

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

7 **3.6 Alternatives to Interim Warnings**

8 The obligations of StyleCraft under Section 3.3 shall be relieved provided StyleCraft
9 certifies on or before March 15, 2014 that only Exemplar Products meeting the Reformulation
10 Standard will be offered for sale in California, or to California Customers for sale in California,
11 after April 1, 2014. The obligations of StyleCraft under Section 3.4 shall be relieved provided
12 StyleCraft certifies on or before April 1, 2014 that, after September 1, 2014, it will only distribute or
13 cause to be distributed for sale in, or sell in, California, or to California Customers for sale in
14 California, Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation
15 Standard. The 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, StyleCraft 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”), and the remaining 25% of the penalty remitted to “The Chanler Group in
23 Trust for Englander.” Each penalty payment shall be made within two business days of the date it
24 is due and be delivered to the addresses listed in Section 4.5 below. StyleCraft shall be liable for
25 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
26 Section that are not received within two business days of the due date.

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⁴ Footnote 2, *supra*, applies in this context as well.

1 4.1.1 Initial Civil Penalty. On or before the Effective Date, StyleCraft shall make
2 an initial civil penalty payment. StyleCraft shall issue a check payable to “The Chanler Group” in
3 the amount identified on Exhibit A to be held by the law office of Buchalter Nemer for The Chanler
4 Group. Buchalter Nemer shall provide The Chanler Group with written confirmation within five
5 days of receipt that the check. Within two business days of the date this Consent Judgment is
6 approved by the Court, Buchalter Nemer shall forward the check to The Chanler Group at the
7 address found in Section 8 below.

8 4.1.2 Second Civil Penalty. On or before June 30, 2014, StyleCraft shall make a
9 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
10 penalty may be reduced according to any penalty waiver StyleCraft is eligible for under Sections
11 4.1.4(i) and 4.1.4(iii), below.

12 4.1.3 Third Civil Penalty. On or before January 30, 2015, StyleCraft shall make a
13 third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty
14 may be reduced according to any penalty waiver StyleCraft is eligible for under Sections 4.1.4(ii)
15 and 4.1.4(iv), below.

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

22 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
23 **Products Sold or Offered for Sale in California.**

24 As shown Exhibit A, a portion of the second civil penalty shall be waived, to the extent that
25 it has agreed that, as of April 1, 2014, and continuing into the future, it shall only manufacture or
26 import for distribution or sale to California Customers or cause to be manufactured or imported for
27 distribution or sale to California Customers, Reformulated Products. An officer or other authorized
28 representative of StyleCraft that has exercised this election shall provide Englander with a written

1 certification confirming compliance with such conditions, which certification must be received by
2 Englander’s counsel on or before April 15, 2014.

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

4 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
5 it has agreed that, as of June 30, 2014, and continuing into the future, it shall only manufacture or
6 import for distribution or sale in California or cause to be manufactured or imported for distribution
7 or sale in California, Reformulated Products which also do not contain tris(2,3-
8 dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per million
9 (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject product,
10 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
11 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
12 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
13 representative of StyleCraft that has exercised this election shall provide Englander with a written
14 certification confirming compliance with such conditions, which certification must be received by
15 Englander’s counsel on or before December 15, 2014.

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

18 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
19 other authorized representative of StyleCraft provides Englander with written certification, by April
20 30, 2014, confirming that each individual or establishment in California to which it supplied the
21 Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products
22 held for sale in California.⁵

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27 ⁵ For purposes of this Section, the term Exemplar Products shall further include Products for
28 which Plaintiffs have, prior to **August 31, 2013**, provided StyleCraft 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 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**
2 **California of Unreformulated Inventory.**

3 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
4 other authorized representative of StyleCraft provides Englander with written certification, on or
5 before December 31, 2014, confirming that, as of September 30, 2014, it has and will continue to
6 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
7 Products.

8 4.2 **Representations**

9 StyleCraft represents that the sales data and other information concerning its size,
10 knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Englander was
11 truthful to its knowledge and a material factor upon which Englander have relied to determine the
12 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
13 Judgment. If, within nine months of the Effective Date, Englander discovers and presents to
14 StyleCraft, evidence demonstrating that the preceding representation and warranty was materially
15 inaccurate, then StyleCraft shall have 30 days to meet and confer regarding Englander's contention.
16 Should this 30 day period pass without any such resolution between Englander and StyleCraft,
17 Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for
18 damages for breach of contract.

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

24 4.3 **Stipulated Penalties for Certain Violations of the Reformulation**
25 **Standard.**

26 If Englander provides notice and appropriate supporting information to StyleCraft that
27 levels of TDCPP in excess of the Reformulation Standard have been detected in one or more
28 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a

1 deadline for meeting the Reformulation Standard has arisen for StyleCraft under Sections 3.1 or 3.6
2 above, StyleCraft may elect to pay a stipulated penalty to relieve any further potential liability
3 under Proposition 65 or sanction under this Consent Judgment as to Products sourced from the
4 vendor in question.⁶ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm
5 and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any
6 amount in excess of the Reformulation Standards but under 250 ppm.⁷ Englander shall further be
7 entitled to reimbursement of their associated expense in an amount not to exceed \$5,000 regardless
8 of the stipulated penalty level. StyleCraft under this Section must provide notice and appropriate
9 supporting information relating to the purchase (e.g. vendor name and contact information
10 including representative, purchase order, certification (if any) received from vendor for the
11 exemplar or subcategory of products), test results, and a letter from a company representative or
12 counsel attesting to the information provided, to Englander within 30 calendar days of receiving test
13 results from Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the
14 full remedies provided pursuant to this Consent Judgment and at law.

15 4.4 Reimbursement of Fees and Costs

16 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
18 this fee reimbursement issue to be resolved after the material terms of the agreement had been
19 settled. Shortly after the other settlement terms had been finalized, StyleCraft expressed a desire to
20 resolve the fee and cost issue. StyleCraft then agreed to pay Englander and his counsel under
21 general contract principles and the private attorney general doctrine codified at California Code of
22 Civil Procedure section 1021.5 for all work performed through the mutual execution of this
23 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
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25 ⁶ This Section shall not be applicable where the vendor in question had previously been
26 found by StyleCraft to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
penalty for a second exceedance StyleCraft's vendor at a level between 100 and 249 ppm shall not
be available after July 1, 2015.

28 ⁷ 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 StyleCraft's attention, negotiating a settlement in the public interest, and seeking court approval of
2 the same. In addition, the negotiated fee and cost figure expressly includes the anticipated
3 significant amount of time Englander's counsel will incur to monitor various provisions in this
4 agreement over the next two years, with the exception of additional fees that may be incurred
5 pursuant to StyleCraft's election in Section 11. StyleCraft more specifically agreed, upon the
6 Court's approval, to pay Englander's counsel the amount of fees and costs indicated on Exhibit A.
7 StyleCraft shall, within five days of the Effective Date, issue a check payable to "Buchalter Nemer"
8 in the amount of fees and costs indicated on Exhibit A to be held in trust by Buchalter Nemer for
9 The Chanler Group. Buchalter Nemer shall provide The Chanler Group with written confirmation
10 within five days of receipt that the funds have been deposited in a trust account. Within two
11 business days of the date this Consent Judgment is approved by the Court, Buchalter Nemer shall
12 issue a check payable to "The Chanler Group" to the address found in Section 8 below.

13 **4.5 Payment Procedures**

14 4.5.1 Issuance of Payments.

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

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

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

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

6 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
7 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in
8 Section 4.5.1(a) above, as proof of payment to OEHHA.

9 4.5.3 Tax Documentation. StyleCraft shall issue a separate 1099 form for each
10 payment required by this Section to: (a) Peter Englander, whose address and tax identification
11 number shall be furnished upon request after this Consent Judgment has been fully executed by the
12 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard
13 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
14 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set
15 forth in Section 4.5.1(a) above.

16 **5. CLAIMS COVERED AND RELEASED**

17 **5.1 Englander's Release of Proposition 65 Claims**

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

1 Covered Product shall be released as to the Private Labeled Covered Products offered for sale in
2 California, or to California Customers, by the Retailer in question.

3 **5.2 Englander’s Individual Releases of Claims**

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

20 **5.3 StyleCraft’s Release of Englander**

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

27 _____
28 ⁸ The injunctive relief requirements of Section 3 shall apply to Additional Products as
otherwise specified.

1 **6. COURT APPROVAL**

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

17 **7. GOVERNING LAW**

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

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1 **8. NOTICES**

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

6 To StyleCraft:

7 At the address shown on Exhibit A

To Englander:

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

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

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

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

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

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

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

21 11.1 In addition to the Products, where StyleCraft has identified on Exhibit A additional
22 products that contain Listed Chemicals and that are sold or offered for sale by it in California, or to
23 California Customers, (“Additional Products”), then by no later than October 15, 2013, StyleCraft
24 may provide Englander with additional information or representations necessary to enable them to
25 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &
26 Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam that is
27 supplied, shaped or manufactured for use as a component of a product, such as upholstered
28 furniture, is specifically excluded from the definition of Additional Products and shall not be

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

21 11.2 Englander and StyleCraft agree to support the entry of this agreement as a Consent
22 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
23 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
24 motion is required to obtain judicial approval of this Consent Judgment, which Englander shall
25 draft and file. If any third party objection to the noticed motion is filed, Englander and StyleCraft
26 shall work together to file a reply and appear at any hearing before the Court. This provision is a
27 material component of the Consent Judgment and shall be treated as such in the event of a breach.

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1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9
10 AGREED TO:

11 
12 _____
13 Plaintiff Peter Englander

14 Date: March 19, 2014

AGREED TO:

Settling Defendant:
StyleCraft Home Décor, Inc.

Date: March __, 2014

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1 **12. MODIFICATION**

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7 respective Parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9
10 AGREED TO:

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12 _____
13 Plaintiff Peter Englander

14 Date: March __, 2014

AGREED TO:

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Setting Defendant:
StyleCraft Home Decor, Inc.

Date: March 13, 2014

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EXHIBIT A

I. Name of Settling Defendants (Mandatory)

STYLECRAFT HOME COLLECTION, INC.

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

STEIN MART, INC.

III. Types of Covered Products Applicable to StyleCraft Home Collection, Inc. (Check All That Match 60-Day Notice or Supplemental Notice Received)

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

Upholstered furniture

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

Car seats, strollers

Other (specify):

a. Padded Upholstered Chairs containing TDCPP

b. Ottomans with Vinyl/PVC containing DEHP

IV. Types of Additional Products StyleCraft Home Collection, Inc. Elects to Address (if any):

V. Settlement Payments:

A. Civil Penalties of \$48,000, shall be paid as follows:

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

\$24,000 second payment due on or before June 30, 2014, of which \$15,000 may be waived pursuant to Section 4.1.4(i) and \$9,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 collective third payment due on or before January 30, 2015, of which \$9,000 may be waived pursuant to Section 4.1.4(ii) and \$5,000 may be waived pursuant to Section 4.1.4(iv).

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

a. Fees and costs: \$40,000

b. Additional Fees and Costs:

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

Michael Fisher, Esq.

Name

Name

BuchalterNemer LLP

Title

Title

Address

Address

1000 Wilshire Boulevard, Suite 1500

Los Angeles, CA 90017-2457