

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Avenue, Suite 202
5 Mill Valley, CA 94941
6 Telephone: 415.388.0911
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff
9 PETER ENGLANDER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 UNLIMITED JURISDICTION

13 PETER ENGLANDER

14 Plaintiff,

15 vs.

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

25 Defendants.

Case No. R13673678

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

**CONSENT TO JUDGMENT AS
TO DEFENDANT MINSON
CORPORATION**

(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 defendant Minson Corporation (“Minson”), with Plaintiff and Minson
5 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 Minson**

11 Minson 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** Plaintiff alleges that Minson manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”) without
18 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 are identified on
5 Exhibit A (hereinafter "Products"). Polyurethane foam that is supplied, shaped or manufactured
6 for use as a component of another product, such as upholstered furniture, but which is not itself a
7 finished product, is specifically excluded from the definition of Products.

8 **1.6 Notices of Violation**

9 On January 24, 2013 and April 19, 2013, Plaintiff served Minson and certain requisite public
10 enforcement agencies with "60-Day Notices of Violation" ("Notices") that provided the recipients
11 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
12 consumers, and workers in California that the Products expose users to one or more Listed
13 Chemicals. To the best of the Parties' knowledge, no public enforcer has commenced or is
14 diligently prosecuting the allegations set forth in the Notices.

15 **1.7 Complaint**

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

20 **1.8 No Admission**

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

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1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the Minson as to the allegations contained in the Complaints, 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 Minson 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 TCEP in a solid substance.

2.3 Effective Date

“Effective Date” shall mean October 15, 2013.

2.4 Reformulated Products

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

2.5 Reformulation Standard

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

2.6 Retailer

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

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 **3.1 Reformulation Commitment**

3 Commencing on March 31, 2014, Minson shall not manufacture or import, or cause to be
4 manufactured or imported, any Products that are not Reformulated Products.

5 **3.2 Vendor Notification/Certification**

6 On or before the Effective Date, Minson shall provide written notice to all of its then-
7 current vendors of the Products, instructing each such vendor to use reasonable efforts to provide
8 it with only Reformulated Products. In addressing the obligation set forth in the preceding
9 sentence, Minson shall not employ statements that will encourage a vendor to delay compliance
10 with the Reformulation Standard. Minson shall subsequently obtain written certifications, no later
11 than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products
12 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications
13 shall be held by Minson for at least two years after their receipt and shall be made available to
14 Plaintiff upon request.

15 **3.3 Products No Longer in Minson's Control**

16 No later than 45 days after the Effective Date, Minson shall send a letter, electronic or
17 otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
18 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notices
19 Minson received from Plaintiff ("Exemplar Products"); and (2) any California Customer and/or
20 Retailer that the Minson reasonably understands or believes had any inventory for resale in
21 California of Exemplar Products as of the relevant Notice's dates. The Notification Letter shall
22 advise the recipient that the Exemplar Product "contains TDCPP and/or TCEP, chemicals known
23 to the State of California to cause cancer," and request that the recipient either: (a) label the
24 Exemplar Products remaining in inventory for sale in California, or to California Customers,
25 pursuant to Section 3.5; or (b) return, at Minson's sole expense, all units of the Exemplar Product
26 held for sale in California, or to California Customers, to Minson or a party Minson has otherwise
27 designated. The Notification Letter shall require a response from the recipient within 15 days
28 confirming whether the Exemplar Product will be labeled or returned. Minson shall maintain

1 records of all correspondence or other communications generated pursuant to this Section for two
2 years after the Effective Date and shall promptly produce copies of such records upon Plaintiff's
3 written request.

4 3.4 Current Inventory

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

9 3.5 Product Warnings

10 3.5.1 Product Labeling

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

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

19 **WARNING:** This product contains [TDCPP and/or
20 TCEP], flame retardant chemicals
21 known to the State of California to
22 cause cancer.¹

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25 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Minson had
26 begun to use it, prior to the Effective Date. A Settling Defendant that seeks to use alternative warning language, other
27 than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or that seeks to use an
28 alternate method of transmission of the warning, must obtain the Court's approval of its alternative warning 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."

1 Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be
2 clear and reasonable for purposes of this Consent Judgment.² Provided that the other
3 requirements set forth in this Section are addressed, including as to the required warning
4 statement and method of transmission as set forth above, Minson remains free not to utilize the
5 template warnings.

6 **3.5.2 Internet Website Warning**

7 A warning shall be given in conjunction with the sale of the Products to California, or
8 ~~California Customers, via the internet, which warning shall appear on one or more web pages~~
9 displayed to a purchaser during the checkout process. The following warning statement shall be
10 used and shall: (a) appear adjacent to or immediately following the display, description, or price
11 of the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.
12 The warning text shall be the same type size or larger than the Product description text:

13 **WARNING:** This product contains TDCPP and/or
14 TCEP, flame retardant chemicals
15 known to the State of California to
16 cause cancer.³

17 **3.6 Alternatives to Interim Warnings**

18 The obligations of Minson under Section 3.3 shall be relieved provided that Minson
19 certifies on or before December 15, 2013 that only Exemplar Products meeting the Reformulation
20 Standard will be offered for sale in California, or to California Customers for sale in California,
21 after December 31, 2013. The obligations of Minson under Section 3.4 shall be relieved provided
22 that Minson certifies on or before December 15, 2013 that, after June 30, 2014, it will only distribute
23 or cause to be distributed for sale in, or sell in, California, or to California Customers for sale in

24 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3" x 5", with no
25 less than 12 point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to
26 the Product; (b) a yellow warning sign measuring 8.5" x 11", with no less than 32 point font, with the warning language
27 printed on each side, which shall be affixed directly to the Product; and (c) for Products sold at retail in a box or
28 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.

³ Footnote 4, *supra*, applies in this context as well.

1 California, Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation
2 Standard. The certifications provided by this Section are material terms and time is of the essence.

3 **4. MONETARY PAYMENTS**

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

5 In settlement of all the claims referred to in this Consent Judgment, Minson shall pay the
6 civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty payment
7 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with
8 ~~75% of the funds remitted to the California Office of Environmental Health Hazard Assessment~~
9 (“OEHHA”) and 25% of the penalty remitted to “The Chanler Group in Trust for Englander.”
10 Each penalty payment shall be made within two business days of the date it is due and be
11 delivered to the addresses listed in Section 4.5 below. Minson shall be liable for payment of
12 interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are
13 not received within two business days of the due date.

14 4.1.1 Initial Civil Penalty. On or before the Effective Date, Minson shall make an
15 initial civil penalty payment in the amount identified on Exhibit A.

16 4.1.2 Second Civil Penalty. On or before January 15, 2014, Minson shall make a
17 second civil penalty payment in the amount identified on Exhibit A. The amount of the second
18 penalty may be reduced according to any penalty waiver Minson is eligible for under Sections
19 4.1.4(i) and 4.1.4(iii), below.

20 4.1.3 Third Civil Penalty. On or before November 30, 2014, Minson shall make a
21 third civil penalty payment in the amount identified on Exhibit A. The amount of the third
22 penalty may be reduced according to any penalty waiver Minson is eligible for under Sections
23 4.1.4(ii) and 4.1.4(iv), below.

24 4.1.4 Reductions to Civil Penalty Payment Amounts. Minson may reduce the
25 amount of the second and/or third civil penalty payments identified on Exhibit A by providing
26 Plaintiff with certification of certain efforts undertaken to reformulate their Products or limit the
27 ongoing sale of non-reformulated Products in California. The options to provide a written
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1 certification in lieu of making a portion of Minson's civil penalty payment constitute material
2 terms of this Consent Judgment, and with regard to such terms, time is of the essence.

3 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**
4 **Products Sold or Offered for Sale in California.**

5 As shown on an electing Minson's Exhibit A, a portion of the second civil penalty shall be
6 waived, to the extent that it has agreed that, as of November 1, 2013, and continuing into the
7 future, it shall only manufacture or import for distribution or sale to California Customers or cause
8 to be manufactured or imported for distribution or sale to California Customers, Reformulated
9 Products. An officer or other authorized representative of a Minson that has exercised this election
10 shall provide Plaintiff with a written certification confirming compliance with such conditions,
11 which certification must be received by Plaintiff's counsel on or before December 15, 2013.

12 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

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

25 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
26 **Exemplar Products from the California Market.**

27 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
28 other authorized representative of Minson provides Plaintiff with written certification, by

1 December 15, 2013, confirming that each individual or establishment in California to which it
2 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining
3 Exemplar Products held for sale in California.

4 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
5 **California of Unreformulated Inventory.**

6 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
7 other authorized representative of Minson provides Plaintiff with written certification, on or
8 before ~~November 15, 2014,~~ confirming that, as of ~~July 1, 2014,~~ it has and will continue to distribute,
9 offer for sale, or sell in California, or to California Customers, only Reformulated Products.

10 **4.2 Representations**

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

21 Each Settling Defendant further represents that in implementing the requirements set forth
22 in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts
23 to achieve reformulation of its Products and Additional Products on a nationwide basis and not
24 employ statements that will encourage a vendor to limit its compliance with the Reformulation
25 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 Minson that levels of
4 a Listed Chemical in excess of the Reformulation Standard have been detected in one or more
5 Products labeled or otherwise marked in an identifiable manner as manufactured or imported
6 after a deadline for meeting the Reformulation Standard has arisen for Minson under Sections 3.1
7 or 3.6 above, Minson may elect to pay a stipulated penalty to relieve any further potential liability
8 under Proposition 65 or sanction under this Consent Judgment as to Products sourced from the
9 vendor in question.⁴ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm
10 and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any
11 amount in excess of the Reformulation Standards but under 250 ppm.⁵ Plaintiff shall further be
12 entitled to reimbursement of their associated expense in an amount not to exceed \$5,000 regardless
13 of the stipulated penalty level. Minson under this Section must provide notice and appropriate
14 supporting information relating to the purchase (e.g. vendor name and contact information
15 including representative, purchase order, certification (if any) received from vendor for the
16 exemplar or subcategory of products), test results, and a letter from a company representative or
17 counsel attesting to the information provided, to Plaintiff within 30 calendar days of receiving test
18 results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the
19 full remedies provided pursuant to this Consent Judgment and at law.

20 **4.4 Reimbursement of Fees and Costs**

21 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
23 this fee reimbursement issue to be resolved after the material terms of the agreement had been
24 settled. Shortly after the other settlement terms had been finalized, Minson expressed a desire to

25 ⁴ This Section shall not be applicable where the vendor in question had previously been found by Minson to
26 have provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one
27 occasion. Notwithstanding the foregoing, a stipulated penalty for a second exceedance by Minson's vendor at a level
28 between 100 and 249 ppm shall not be available after July 1, 2015.

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

15 **4.5 Payment Procedures**

16 **4.5.1 Issuance of Payments.**

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

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

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

27 For United States Postal Service Delivery:

28 Mike Gyurics
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. Minson 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 Minson, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Minson 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. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the Products, as set forth in the Notices. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Minson, that

1 manufactured the Products or any component parts thereof, or any distributors or suppliers who
2 sold the Products or any component parts thereof to Minson.

3 **5.2 Plaintiff's Individual Releases of Claims**

4 Plaintiff, in his individual capacities only and *not* in his representative capacities, provides
5 a 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 Plaintiff 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) manufactured, imported, distributed, or sold by Minson prior to the
11 Effective Date.⁶ The Parties further understand and agree that this Section 5.2 release shall not
12 extend upstream to any entities that manufactured the Products or Additional Products, or any
13 component parts thereof, or any distributors or suppliers who sold the Products or Additional
14 Products, or any component parts thereof to Minson. Nothing in this Section affects Plaintiff's
15 rights to commence or prosecute an action under Proposition 65 against a Releasee that does not
16 involve Minson's Products or Additional Products.

17 **5.3 Minsons' Release of Plaintiff**

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

24 **6. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court

27 ⁶ The injunctive relief requirements of Section 3 shall apply to Additional Products as
28 otherwise specified.

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

14 **7. GOVERNING LAW**

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

24 **8. NOTICES**

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

1 To Minson:

To Plaintiff:

2 At the address shown on Exhibit A

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

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

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

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

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

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 11.1 In addition to the Products, where Minson has identified on Exhibit A additional
17 products that contain Listed Chemicals and that are sold or offered for sale by it in California, or to
18 California Customers, ("Additional Products"), then by no later than October 15, 2013, Minson
19 may provide Plaintiff with additional information or representations necessary to enable them to
20 issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health &
21 Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam that is
22 supplied, shaped or manufactured for use as a component of a product, such as upholstered
23 furniture, is specifically excluded from the definition of Additional Products and shall not be
24 identified by Minson on Exhibit A as an Additional Product. Except as agreed upon by Plaintiff,
25 Minson shall not include a product, as an Additional Product, that is the subject of an existing 60-
26 day notice issued by Plaintiff or any other private enforcer at the time of execution. After receipt
27 of the required information, Plaintiff agrees to issue a supplemental 60-day notice in compliance
28 with all statutory and regulatory requirements for the Additional Products. Plaintiff will, and in

1 no event later than October 1, 2014, prepare and file an amendment to this Consent Judgment to
2 incorporate the Additional Products within the defined term "Products" and serve a copy thereof
3 and its supporting papers (including the basis for supplemental stipulated penalties, if any) on the
4 Office of the California Attorney General. Upon the Court's approval thereof, and finding that the
5 supplemental stipulated penalty amount, if any, is reasonable, the Additional Products shall
6 become subject to Section 5.1 in addition to Section 5.2. Minson shall, at the time it elects to
7 utilize this Section and tenders the additional information or representations regarding the
8 Additional Products to Plaintiff, tender to The Chanler Group's trust account an amount not to
9 exceed \$8,750 as stipulated penalties and attorneys' fees and costs incurred by Plaintiff in issuing
10 the new notice and engaging in other reasonably related activities, which may be released from the
11 trust as awarded by the Court upon Plaintiff's application. Any fee award associated with the
12 modification of the Consent Judgment to include Additional Products shall not offset any
13 associated supplemental penalty award, if any. (Any tendered funds remaining in the trust
14 thereafter shall be refunded to Minson within 15 days). Such payment shall be made to "in trust
15 for The Chanler Group" and delivered as per Section 4.5.1(a) above.

16 11.2 Plaintiff and Minson agree to support the entry of this agreement as a Consent
17 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
18 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
19 motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft
20 and file. If any third party objection to the noticed motion is filed, Plaintiff and Minson shall work
21 together to file a reply and appear at any hearing before the Court. This provision is a material
22 component of the Consent Judgment and shall be treated as such in the event of a breach.

23 **12. MODIFICATION**

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

13. AUTHORIZATION

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

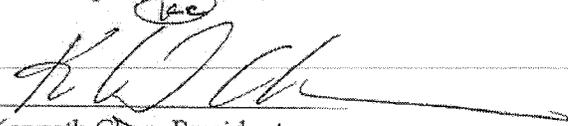
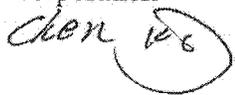
AGREED TO:

Date: ~~September~~ ^{Oct. 16} 2013


Plaintiff Peter Englander

AGREED TO:

Date: ~~September~~ ^{Oct. 15} 2013


Kenneth Chan, President
Minson Corporation


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EXHIBIT A

MINSON CORPORATION

Noticed Chemical(s): TDCPP and TCEP

Noticed Product: padded, upholstered furniture, including chairs

Exemplar Product: Pastel Furniture Classics Chair, Pastel Furniture Stool

Additional Product: none

Penalty 1 (Section 4.1.1) (due September 30, 2013): \$22,500

Penalty 2 (Section 4.1.2) (due January 15, 2014): \$42,000

Penalty 3 (Section 4.1.3) (due November 30, 2014): \$24,000

Section 4.1.4(i) penalty waiver: \$25,000

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

Section 4.1.4(iii) penalty waiver: \$17,000

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

Additional Releasees: none

Section 4.4 fee and costs reimbursement (due September 30, 2013): \$42,500

Supplemental fee for additional Releasees: (due September 30, 2013): none

Person(s) to receive Notices pursuant to Section 8

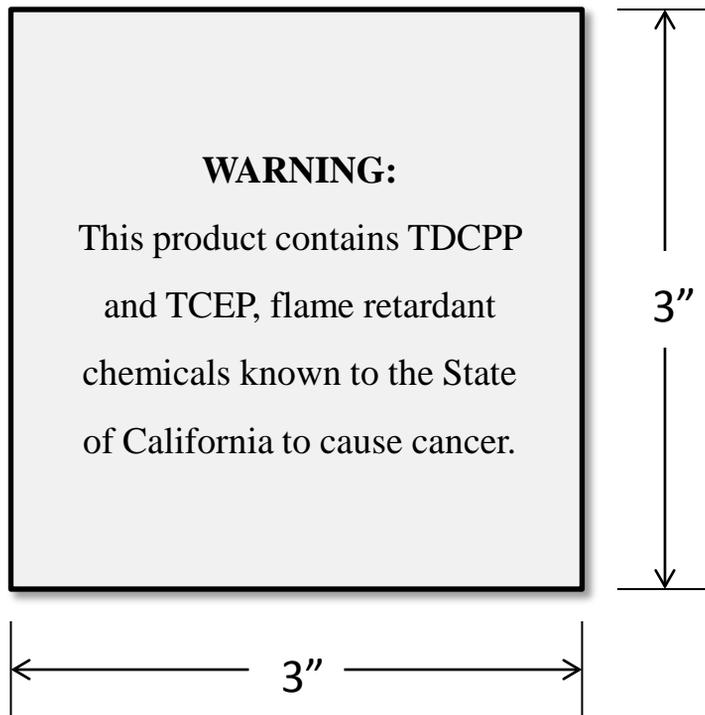
Kenneth Chan
President
Minson Corporation
One Minson Way
Montebello, CA 90640-6727

With a copy to:

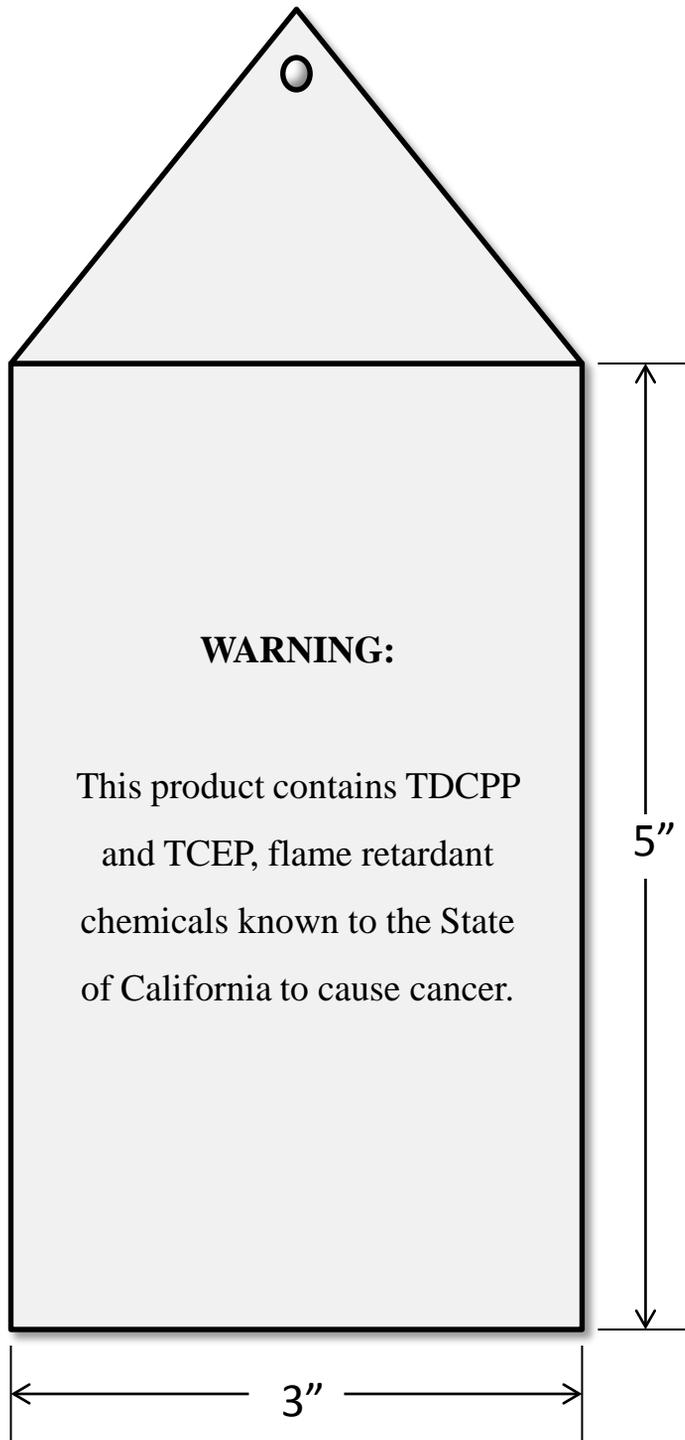
Jeffrey B. Margulies
Norton Rose Fulbright
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

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EXHIBIT B
(ILLUSTRATIVE WARNINGS)



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

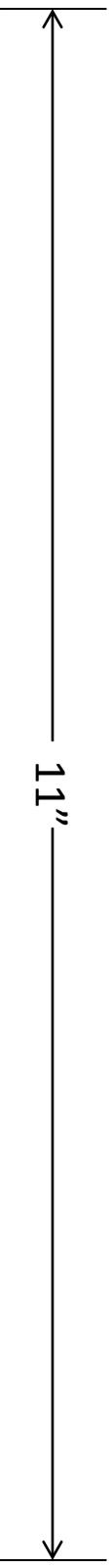


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. “WARNING:” text must be bold.

WARNING:

This product contains TDCPP and TCEP, flame
8.5"

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



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