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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

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11 PETER ENGLANDER,) CASE NO. CIV1302908
12 Plaintiff,)
13 v.)
14 THE ADVANCE EQUIPMENT) **[PROPOSED] CONSENT JUDGMENT**
15 MANUFACTURING COMPANY;)
16 F & M PLASTICS, INC.;)
LAKESIDE PLASTICS, INC.; and)
DOES 1 through 150, inclusive,)
17 Defendants.)

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1 **1. INTRODUCTION**

2 **1.1 Peter Englander and F & M Plastics, Inc.**

3 This Consent Judgment is entered into by and between Peter Englander (hereinafter
4 “Englander”) and F & M Plastics, Inc. (hereinafter “F&M Plastics”), with Englander and F&M
5 Plastics collectively referred to as the “Parties.” Englander is an individual residing in California
6 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in consumer products. F&M Plastics
8 employs ten or more persons and is a person in the course of doing business for purposes of the
9 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
10 section 25249.6, et seq. (“Proposition 65”).

11 **1.2 General Allegations**

12 Englander alleges that F&M Plastics has manufactured, distributed, sold and offered for
13 sale in the State of California certain hand tool grips containing di(2-ethylhexyl)phthalate
14 (“DEHP”) and lead. DEHP and lead are listed under Proposition 65 as chemicals known to cause
15 birth defects and other reproductive harm. DEHP and lead are collectively referred to herein as
16 “Listed Chemicals.”

17 **1.3 Product Description**

18 The products that are addressed by this Consent Judgment are hand tool grips containing
19 the Listed Chemicals including, but not limited to, the *Advance Do-All Professional Grade All-*
20 *Purpose Painting & Decorating Tool, Model No. DA-20 (#0 99922 13020)* manufactured,
21 distributed, sold and offered for sale in the State of California (referred to hereinafter as the
22 “Products”).

23 **1.4 Notice of Violation**

24 On or about December 28, 2012, Englander served F&M Plastics, and others including
25 various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of
26 Violation” (the “Supplemental Notice”) that provided F&M Plastics, and such others, including
27 public enforcers, with notice that alleged that F&M Plastics was in violation of Proposition 65 for
28 failing to warn consumers and customers that the Products exposed users in California to DEHP

1 and lead. No public enforcer has diligently prosecuted the allegations set forth in the
2 Supplemental Notice.

3 **1.5 Complaint**

4 On or about July 9, 2013, Englander filed a complaint in the Superior Court in and for the
5 County of Marin against the F&M Plastics, other defendants, and Does 1 through 150, *Peter*
6 *Englander v. The Advance Equipment Manufacturing Company, et al.*, Case No. CIV1302908,
7 alleging violations of Proposition 65, based on, *inter alia*, the alleged exposures to DEHP and
8 lead in Products (“Complaint”).

9 **1.6 No Admission**

10 F&M Plastics denies the material factual and legal allegations contained in Englander’s
11 Notice and Complaint, and maintains that all products that it has sold and distributed in
12 California, including the Products, have been and are in compliance with all laws. Nothing in this
13 Consent Judgment shall be construed as an admission by F&M Plastics, of any fact, finding, issue
14 of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
15 construed as an admission by F&M Plastics of any fact, finding, conclusion, issue of law or
16 violation of law, such being specifically denied by F&M Plastics. However, this section shall not
17 diminish or otherwise affect the obligations, responsibilities and duties of F&M Plastics under
18 this Consent Judgment.

19 **1.7 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over F&M Plastics as to the allegations contained in the Complaint, that venue is
22 proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the
23 provisions of this Consent Judgment. As an express part of this Consent Judgment, pursuant to
24 Code of Civil Procedure section 664.6, the Court in which this Complaint was filed shall retain
25 jurisdiction over the Parties to enforce the settlement until performance in full of the terms of the
26 settlement.

1 **1.8 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean September
3 30, 2013.

4 **2. INJUNCTIVE RELIEF:**

5 **2.1 Reformulation Standard**

6 Reformulated Products are defined as Products which yield: (i) less than or equal to 1,000
7 ppm of DEHP, when analyzed pursuant to Environmental Protection Agency testing
8 methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state
9 agencies for the purpose of determining phthalate content; and (ii) less than or equal to 100 parts
10 per million lead by weight when analyzed pursuant to Environmental Protection Agency testing
11 methodologies 3050B and/or 6010B, and that yield a result of less than 1.0 microgram of lead
12 when analyzed pursuant to the NIOSH 9100 testing protocol.

13 **2.2 Reformulation Commitment**

14 As of the Effective Date, F&M Plastics shall not manufacture, or cause to be
15 manufactured, Products for sale in the State of California unless they are Reformulated Products
16 pursuant to Section 2.1 above.

17 **3. PENALTIES PURSUANT TO HEALTH AND SAFETY CODE SECTION**
18 **25249.7(b)**

19 In settlement of all the claims referred to in this Consent Judgment, F&M Plastics shall
20 pay a total of \$47,600 in civil penalties in accordance with this Section. Each penalty payment
21 will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1)
22 and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
23 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

24 **3.1 Initial Civil Penalty**

25 F&M Plastics shall pay an initial civil penalty in the amount of \$17,600 on or before the
26 Effective Date. F&M Plastics shall issue two separate checks to: (a) “OEHHA” in the amount of
27 \$13,200; and (b) “The Chanler Group in Trust for Englander in the amount of \$4,400. All
28 penalty payments shall be delivered to the addresses listed in Section 3.3.1 below.

1 **3.2 Final Civil Penalty**

2 F&M Plastics shall pay a final civil penalty of \$30,000 on or before January 31, 2014.
3 The final civil penalty shall be waived in its entirety, however, if, no later than January 15, 2014,
4 an officer of F&M Plastics provides Englander with written certification that it, as of January 15,
5 2014, has manufactured and/or caused to be manufactured, for sale in California only
6 Reformulated Products and that it will continue to manufacture, distribute, sell and offer for sale
7 in California only Reformulated Products. Such certification must be received by The Chanler
8 Group on or before January 15, 2014. The certification in lieu of paying the final civil penalty
9 provided by this section is a material term, and time is of the essence. Unless waived, F&M
10 Plastics shall issue two separate checks for the final civil penalty payment to: (a) "OEHHA" in
11 the amount of \$22,500; and (b) "The Chanler Group in Trust for Englander" in the amount of
12 \$7,500.

13 **3.3 Payment Procedures**

14 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 15 (a) All payments owed to Englander and Englander's counsel pursuant to
16 Sections 3.1 and 3.2 (unless waived), shall be delivered to the following
17 payment address:

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

- 21 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
22 Sections 3.1 and 3.2 (unless waived), shall be delivered directly to OEHHA
23 (Memo line "Prop 65 Penalties") at the following addresses:

24 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

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

7 A copy of the checks payable to OEHHA shall be mailed to The Chanler
8 Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

9 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, F&M Plastics
10 shall issue separate 1099 forms for each payment to Englander, whose address and tax
11 identification number shall be furnished upon request after this Consent Judgment has been fully
12 executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

13 **4. REIMBURSEMENT OF FEES AND COSTS**

14 The Parties acknowledge the Englander and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
16 this fee issue to be resolved after the material terms of the agreement had been settled. Englander
17 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
18 had been finalized. The Parties reached an accord on the compensation due to Englander and his
19 counsel under the private attorney general doctrine and principles codified at California Code of
20 Civil Procedure section 1021.5, for all work performed through the mutual execution of this
21 agreement. Under these legal principles, F&M Plastics shall reimburse Englander's counsel for
22 fees and costs, incurred as a result of investigating, bringing this matter to F&M Plastics'
23 attention, and negotiating a settlement in the public interest. F&M Plastics shall pay Englander
24 and his counsel \$55,150 for all attorneys' fees, expert and investigation fees, and related costs.
25 The payment shall be issued in a fourth separate check made payable to "The Chanler Group" and
26 shall be delivered on or before the Effective Date, at the following address:

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

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Release of F&M Plastics and Downstream Customers and Entities**

3 Englander acting on his own behalf and in the public interest, releases Lakeside Plastics,
4 Inc., F&M Plastics and F&M’s parents, subsidiaries, affiliated entities under common ownership,
5 directors, officers, agents, employees, attorneys, and each entity to whom F&M Plastics directly
6 or indirectly distributes or sells Products including, but not limited to, downstream distributors,
7 wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively
8 “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on
9 their failure to warn about alleged exposures to the Listed Chemicals contained in the Products
10 that were manufactured, distributed, sold and/or offered for sale by F&M Plastics.

11 In further consideration of the promises and agreements herein contained, and for the
12 payments to be made pursuant to Sections 3 and 4 above, Englander, on behalf of himself, his
13 past and current agents, representatives, attorneys, successors and/or assignees, provides a release
14 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,
15 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities,
16 and demands of F&M Plastics or the Releasees of any nature, character, or kind, whether known
17 or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposure to
18 the Listed Chemicals in the Products that were manufactured, distributed, sold and/or offered for
19 sale by F&M Plastics.

20 **5.2 F&M Plastics’ Release of Englander**

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

1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved by the Court, including any
3 tentative ruling not challenged by either of the Parties, and shall be null and void if, for any
4 reason, it is not approved, including any tentative ruling not challenged by either of the Parties, by
5 the Court within one year after it has been fully executed by all Parties. In the event the Court
6 does not approve this Consent Judgment within one year, (a) this Consent Judgment and any and
7 all prior agreements between the Parties merged herein shall terminate and become null and void,
8 and the action shall revert to the status that existed prior to the execution date of this Consent
9 Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
10 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect,
11 nor shall any such matter be admissible in evidence for any purpose in this action, or in any other
12 proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms
13 of the Consent Judgment and to resubmit it for approval.

14 **7. SEVERABILITY**

15 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
16 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
17 provisions remaining shall not be adversely affected.

18 **8. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California and apply within the State of California. In the event that Proposition 65 is repealed or
21 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then F&M
22 Plastics shall provide written notice to Englander of any asserted change in the law, and shall
23 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
24 that, the Products are so affected.

25 **9. NOTICES**

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

3 For F&M Plastics:

4 Melissa A. Jones, Esq.
5 Stoel Rives LLP
6 500 Capitol Mall, Suite 1600
7 Sacramento, CA 95814

For Englander:

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

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

10 **10. COUNTERPARTS; SIGNATURES**

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

14 **11. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(f)**

15 Englander agrees to comply with the reporting form requirements referenced in Health
16 and Safety Code section 25249.7(f).

17 **12. MODIFICATION**

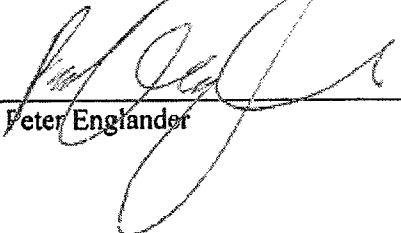
18 This Consent Judgment may be modified only: (1) by written agreement of the parties and
19 upon entry of a modified Consent Judgment thereon; or (2) upon a successful motion of any party
20 and entry of a modified Consent Judgment by the Court.

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and have read,
3 understood and agree to all of the terms and conditions of this Consent Judgment.

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5 **AGREED TO:**

6 Date: September 12, 2013

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8 By: 
9 Peter Englander

AGREED TO:

Date: September 11, 2013

By: 
F&M Plastics, Inc.

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