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10 PETER ENGLANDER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 COASTAL PET PRODUCTS, INC.; *et al.*,

18 Defendants.

Case No. 112CV237082

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Peter Englander
4 (“Englander”), and defendant, Coastal Pet Products, Inc. (“CPPI”), with Englander and CPPI each
5 individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 CPPI 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, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that CPPI sold the Products, as defined below, with grips containing di(2-
16 ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning
17 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the
18 state of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are hand tools with grips that are imported,
21 manufactured, sold, or distributed for sale by CPPI in California, including, but not limited to, the
22 *Safari by Coastal Stainless Steel Nail File, W6108 (#0 76484 51308 4)* (collectively “Products”).

23 **1.6 Notice of Violation**

24 On or about June 15, 2012, Englander served CPPI and certain requisite public enforcement
25 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that CPPI was in violation of
26 Proposition 65 for failing to warn its customers and consumers in California that the Products expose
27 users to DEHP.

28

1 **1.7 Complaint**

2 On December 3, 2012, Englander filed the instant action against CPPI (the “Complaint”) for
3 the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

4 **1.8 No Admission**

5 CPPI denies the material, factual, and legal allegations contained in the Notice and
6 Complaint, and it maintains that all of the products that it has sold and distributed in California,
7 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
8 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
9 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
10 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
11 not, however, diminish or otherwise affect CPPI’s obligations, responsibilities, and duties under this
12 Consent Judgment.

13 **1.8 No Other Violations**

14 Englander represents and warrants that, as of the date of his execution of this Consent
15 Judgment, other than the violations alleged in the Notice as to the Products, he: (a) has no current
16 knowledge or information based upon any investigation or otherwise that CPPI is currently
17 manufacturing, distributing, shipping, selling or offering for sale in California any product(s) that
18 Englander believes is causing a violation of Proposition 65; and (b) that he has no present intention of
19 filing suit or providing a 60-Day Notice to CPPI with respect to any other listed chemical under
20 Proposition 65 with respect to any products manufactured or sold by CPPI, including but not limited
21 to the Products.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
24 jurisdiction over CPPI as to the allegations in the Complaint, that venue is proper in Santa Clara
25 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
26 Judgment.

1 **1.10 Effective Date**

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

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 Commencing on the Effective Date and continuing thereafter, CPPI shall only manufacture,
6 sell or distribute for sale in California “Reformulated Products.” For purposes of this Consent
7 Judgment, Reformulated Products contain a maximum of 1,000 parts per million (0.1%) DEHP
8 content in any accessible component (i.e., any component that may be touched during a reasonably
9 foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or
10 comparative GC/MS-based methodologies utilized by state or federal agencies for the purpose of
11 determining DEHP content in a solid substance.

12 **3. MONETARY PAYMENTS**

13 **3.1 Civil Penalty Payments**

14 Pursuant to Health and Safety Code section 25249.7(b), CPPI will pay \$3,000 in civil
15 penalties. The penalty payment will be allocated according to Health and Safety Code section
16 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount earmarked for the
17 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
18 twenty-five (25%) of the penalty amount earmarked for Englander.

19 **3.2 Reimbursement of Englander’s Fees and Costs**

20 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed by CPPI, thereby leaving
22 the issue to be resolved after the material terms of the agreement had been settled. Shortly after all
23 other settlement terms had been finalized, CPPI expressed a desire to resolve the fees and costs. The
24 Parties then attempted to (and did) reach an accord on the compensation due Englander and his
25 counsel under general contract principles and the private attorney general doctrine codified at Code
26 of Civil Procedure section 1021.5 for all work performed in this matter exclusive of fees and costs
27 incurred on appeal, if any. Under these legal principles, within five days of the Effective Date, CPPI
28 will pay \$9,000 for the fees and costs incurred investigating, litigating, and enforcing this matter,

1 including the fees and costs to be incurred drafting, negotiating, and obtaining the Court's approval
2 of this Consent Judgment in the public interest. No other amounts are due to Englander of any kind
3 from CPPI for any reason whatsoever.

4 **3.3 Payment Procedures**

5 **3.3.1 Payments Held in Trust**

6 All payments made under this Consent Judgment shall be held in trust until the Court
7 approves the settlement. Settlement payments to Englander shall be delivered to Englander's
8 counsel on or before September 15, 2013, and in the form of two checks for the for the following
9 amounts made payable as follows:

- 10 (a) "The Chanler Group in Trust for Peter Englander" in the amount of \$750; and
- 11 (b) "The Chanler Group in Trust" in the amount of \$9,000.

12
13 CPPI's penalty payment to OEHHA shall be held in trust by CPPI's counsel, and shall be disbursed
14 within 15 days of a ruling from the Court granting the motion to approve this Consent Judgment
15 contemplated by Section 5. At such time, CPPI's counsel shall deliver to the appropriate address in
16 Section 3.3.1(b) a check made payable to "OEHHA" in the amount of \$2,250.

17 **3.3.2 Issuance of 1099 Forms**

18 After the Consent Judgment has been approved, CPPI shall provide Englander's
19 counsel with a separate 1099 form for each of its payments to:

- 20 (a) "Office of Environmental Health Hazard Assessment," P.O. Box 4010,
21 Sacramento, CA 95814 (EIN: 68-0284486);
- 22 (b) "Peter Englander," whose address and tax identification number shall be
23 furnished after this Consent Judgment has been fully executed by the Parties; and
- 24 (c) "The Chanler Group" (EIN: 94-3171522).

25 **3.3.3 Payment Addresses**

26 (a) All payments and tax documentation for Englander and his counsel under this
27 Consent Judgment shall be delivered to the following address:
28

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 (b) All payments and tax documentation required to be transmitted to OEHHA under
7 this Consent Judgment shall be provided directly to OEHHA at one of the following addresses:

8 For United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010
13 Sacramento, CA 95814-4010

14 For Non-United States Postal Service Delivery or Courier:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street
19 Sacramento, CA 95814

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Englander’s Individual Release of Proposition 65 Claims**

22 This Consent Judgment is a full, final, and binding resolution between Englander and CPPI
23 and CPPI’s parents, shareholders, divisions, subdivisions, subsidiaries, affiliated entities under
24 common or joint ownership, directors, officers, employees, and their successors and assigns
25 (“**Releasees**”), and all to whom they directly or indirectly distribute or sell Products including, but
26 not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,
27 licensors and licensees (“**Downstream Releasees**”), of any violation of Proposition 65 or any other
28 statutory or common law claims that have been or could have been asserted against CPPI, any other
Releasee, and/or Downstream Releasee, based on (a) any exposure to DEHP in any Product, or (b)
the failure to warn about exposure to DEHP arising in connection with any Product manufactured,
distributed, or sold by CPPI prior to the Effective Date as set forth in the Notice (collectively the
“**Englander Claims**”) and Englander expressly releases, waives and forever discharges CPPI, the
Releasees and the Downstream Releasees from with respect to all of the Englander Claims.

1 **4.2 Englander’s Public Release of Claims**

2 Englander, for himself and acting in the public interest pursuant to Health & Safety Code §
3 25249.7(d), releases, waives, and forever discharges CPPI, the Releasees, and the Downstream
4 Releasees through the Effective Date, from all claims arising out of any violation(s) of Proposition 65
5 that have been or could have been asserted in the public interest regarding any exposure to DEHP
6 from any Product manufactured, distributed or sold by CPPI prior to the Effective Date, as set forth in
7 the Notice. Compliance with the terms of this Consent Judgment by CPPI constitutes compliance
8 with Proposition 65 by CPPI, the Releasees and their Downstream Releasees with respect to any
9 alleged failure to warn about any (a) exposures to DEHP in any Product, and (b) alleged failure to
10 warn about any exposure to DEHP in any Product manufactured, distributed or sold by CPPI after the
11 Effective Date, as set forth in the Notice.

12 **5. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and shall
14 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
15 has been fully executed by the Parties.

16 **6. SEVERABILITY**

17 If, subsequent to the Court’s approval and entry of this Consent Judgment, any provision is
18 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
19 affected.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the state of California
22 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
23 otherwise rendered inapplicable by reason of law generally, or as to the Products, then CPPI may
24 provide written notice to Englander of any asserted change in the law, and shall have no further
25 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
26 so affected. Nothing in this Consent Judgment shall be interpreted to relieve CPPI from any
27 obligation to comply with any pertinent state or federal toxics control laws.
28

1 **8. NOTICES**

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

5 For CPPI:

6 James Stout, President
7 Coastal Pet Products, Inc.
8 911 Leadway Avenue
9 Alliance, OH 44601

10 with a copy to:

11 Thomas N. FitzGibbon, Esq.
12 Pfeiffer, Thigpen, FitzGibbon & Ziontz, LLP
13 233 Wilshire Boulevard, Suite 220
14 Santa Monica, CA 90401

15 For Englander:

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

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 This Consent Judgment may be executed in counterparts and transmitted by facsimile or e-
25 mail transmission of a scanned signature in portable document format (PDF), each of which shall be
26 deemed an original, and all of which, when taken together, shall constitute one and the same
27 document.

28 **9. ENTIRE AGREEMENT**

 This Consent Judgment contains the sole and entire agreement and understanding of the
Parties with respect to its subject matter, and any and all prior discussions, negotiations,
commitments, or understandings related to it, if any, are merged into this Consent Judgment. There
are no warranties, representations, or other agreements between the Parties except as expressly set

1 forth in this Consent Judgment. No representations, oral or otherwise, express or implied, other than
2 those specifically referred to in this Consent Judgment have been made by any Party. No other
3 agreements not specifically contained or referenced in this Consent Judgment, oral or otherwise, shall
4 be deemed to exist or to bind any of the Parties. Any agreements specifically contained or referenced
5 in this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties
6 only to the extent that they are expressly incorporated in this Consent Judgment. No
7 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
8 unless executed in writing by the Party to be bound or charged with such waiver. No waiver of any
9 of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
10 other provisions of this Consent Judgment whether or not similar, nor shall such waiver constitute a
11 continuing waiver.

12 **10. POST EXECUTION ACTIVITIES**

13 Englander agrees to comply with the reporting form requirements referenced in Health and
14 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
15 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
16 furtherance of obtaining such approval, Englander and CPPI agree to mutually employ their best
17 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
18 judicial approval of their settlement in a timely manner, and that no additional amounts shall be due
19 to Englander, from CPPI or any person, in connection with obtaining such Court approval. For
20 purposes of this Section, “best efforts” shall include, at a minimum, cooperating on the drafting and
21 filing of the necessary moving papers, and supporting the motion, including appearing at the hearing
22 if so requested.

23 **12. RETENTION OF JURISDICTION; MODIFICATION**

24 This Court shall retain jurisdiction of this matter to implement, modify or enforce this
25 Consent Judgment. This Consent Judgment may be modified only by: (i) a written agreement of the
26 Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful
27 motion or application of any Party and the entry of a modified consent judgment by the Court.
28

1 **13. AUTHORIZATION**

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

4 **AGREED TO:**

AGREED TO:

5
6 Date: September 6, 2013

Date: _____

7
8 By:  _____
9 PETER ENGLANDER

By: _____
James Stout, President
COASTAL PET PRODUCTS, INC.

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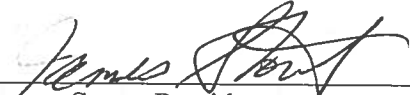
4 **AGREED TO:**

AGREED TO:

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6 Date: _____

Date: 9/10/13

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8 By: _____
PETER ENGLANDER

By: 
James Stout, President
COASTAL PET PRODUCTS, INC.

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