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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 LDR INDUSTRIES, LLC; *et al.*,

18 Defendants.
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Case No. HG13671467

[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, LDR Industries, LLC (“LDR”), with Englander and LDR 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 LDR employs ten or more individuals 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 LDR sold hose bibbs with vinyl/PVC grips containing di(2-
16 ethylhexyl)phthalate (“DEHP”), di-n-butyl-phthalate (“DBP”) and lead without first providing the
17 exposure warning required by Proposition 65. DEHP, DBP and lead are listed pursuant to
18 Proposition 65 as chemicals known to the state of California to cause birth defects or other
19 reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are vinyl/PVC grips of hose bibbs
22 that are imported, manufactured, sold, and/or distributed for sale by LDR in California including, but
23 not limited to, the *Quarter Turn Heavy Duty-No Kink Hose Bibb, #020 7753 (#0 19442 43923 1)*
24 (collectively “Products”).

25 **1.6 Notice of Violation**

26 On or about November 21, 2012, Englander served LDR and certain requisite public
27 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that LDR was in
28

1 violation of Proposition 65 for failing to warn its customers and consumers in California that the
2 Products expose users to DEHP, DBP and lead.

3 **1.7 Complaint**

4 On March 15, 2013, Englander filed the instant action against LDR (“Complaint”) for the
5 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over LDR as to the allegations in the Complaint, that venue is proper in Alameda County,
18 and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 31,
21 2013.

22 **2. INJUNCTIVE RELIEF: REFORMULATION**

23 **2.1 Reformulation Standards**

24 “Reformulated Products” are defined as Products that: (a) contain a maximum of 1,000 parts
25 per million (“ppm”) (0.1%) of DEHP in the vinyl/PVC grips of the Products, when analyzed pursuant
26 to Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C; (b) contain a
27 maximum of 1,000 ppm of DBP in the vinyl/PVC grips of the Products, when analyzed pursuant to
28 EPA testing methodologies 3580A and 8270C; and (c) contain a maximum of 0.01% (100 ppm) of

1 lead in the vinyl/PVC grips of the Products analyzed pursuant to EPA testing methodologies 3050B
2 and 6010B. In addition to the testing methodologies set forth above, the Parties may utilize any other
3 testing methodology authorized by state or federal agencies for the purpose of determining DEHP,
4 DBP, and/or lead content in a solid substance to determine compliance with this Section.

5 The Parties acknowledge that LDR has already implemented a warning program for all non-
6 Reformulated Products manufactured, imported, distributed, sold and/or offered for sale by LDR in
7 California, that provides as follows:

8 **WARNING:** This product contains [one or more] chemicals,
9 including lead, known to the State of California to
10 cause cancer and birth defects or other
11 reproductive harm. **Wash hands after handling.**
12 [(California law requires this warning to be given
13 to customers in the State of California.)]

12 **2.2 Reformulation Commitment**

13 All Products manufactured and/or purchased for sale in the State of California by, or on
14 behalf of, LDR as of the Effective Date shall be Products that qualify as Reformulated Products as
15 defined in Section 2.1 above.

16 **3.0 SETTLEMENT PAYMENTS**

17 **3.1 Payments pursuant to Health and Safety Code § 25249.7(b)**

18 In settlement of all the claims referred to in this Consent Judgment, LDR shall pay \$41,000 in
19 civil penalties. Each civil penalty payment shall be allocated according to Health and Safety Code
20 section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California
21 Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of
22 the funds remitted to Englander.

23 **3.1.1 Initial Civil Penalty**

24 On or before November 15, 2013, LDR shall make an initial civil penalty payment of
25 \$13,000. LDR shall provide its payment in two checks for the following amounts made payable to:
26 (a) “OEHHA” in the amount of \$9,750; and (b) “The Chanler Group in Trust for Peter Englander” in
27 the amount of \$3,250.
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1 **3.1.2 Final Civil Penalty**

2 On or before September 15, 2014, LDR shall make a final civil penalty payment of \$28,000.
3 Pursuant to title 11 California Code of Regulations, section 3203(c), the final civil penalty payment
4 shall be waived in its entirety if, no later than September 1, 2014, an officer of LDR provides
5 Englander with written certification that as of the Effective Date, all of the Products manufactured
6 and/or purchased for sale in California are Reformulated Products and that LDR, as of the date of
7 certification and continuing into the future, will only manufacture, import, distribute, sell and offer
8 for sale in California Reformulated Products.

9 The certification in lieu of a final civil penalty payment is a material term, and time is of the
10 essence. Unless waived, LDR shall issue two checks for the following amounts payable to: (a)
11 “OEHHA” in the amount of \$21,000; and (b) “The Chanler Group in Trust for Peter Englander” in
12 the amount of \$7,000.

13 **3.2 Reimbursement of Fees and Costs**

14 The parties acknowledge that 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 the
16 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
17 the other settlement terms had been finalized, LDR expressed a desire to resolve the fee and cost
18 issue. The Parties then attempted to (and did) reach an accord on the compensation due to Englander
19 and his counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
21 execution of this Consent Judgment. LDR shall pay \$44,000 for fees and costs incurred as a result of
22 investigating, bringing this matter to LDR’s attention, and negotiating a settlement in the public
23 interest. LDR’s payment of fees and costs shall be delivered within five days of the date that this
24 Consent Judgment is approved by the Court, to the payment address provided in section 3.3.1(a).

1 **3.3 Payment Procedures**

2 **3.3.1 Payment Address**

3 (a) All payments to Englander and The Chanler Group shall be delivered to the
4 following address:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

10 (b) All payments to OEHHA (EIN: 68-0284486) made pursuant to section 3.1,
11 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the following
12 addresses:

13 For United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 For Non-U.S. Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the payment address
26 provided in section 3.3.1(a), as proof of payment to OEHHA.

27 **3.3.2 Required Tax Documentation**

28 (a) LDR agrees to provide appropriate 1099 form documentation for the civil
penalties paid to OEHHA. The form shall be transmitted to the “Office of Environmental Health
Hazard Assessment,” 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486);

(b) For the civil penalties paid to Englander, whose address and tax identification
number shall be furnished after this Consent Judgment is fully executed by the Parties, LDR agrees
to issue a 1099 form to “Peter Englander”;

1 (c) For the reimbursement of fees and costs pursuant to section 3.2, LDR shall
2 issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522).

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Englander’s Public Release of Proposition 65 Claims**

5 Englander, acting on his own behalf and in the public interest, releases LDR and its parents,
6 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
7 attorneys (“LDR Releasees”) and each entity to whom they directly or indirectly distribute or sell
8 the Products, including but not limited to all downstream distributors, wholesalers, customers,
9 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
10 any violations arising under Proposition 65 for unwarned exposures to DEHP, DBP and/or lead
11 from the Products vinyl/PVC grips manufactured, imported, distributed and/or sold by LDR prior to
12 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
13 constitutes compliance with Proposition 65 with respect to exposures to DEHP, DBP and/or lead
14 from the Products vinyl/PVC grips.

15 **4.2 Englander’s Individual Release of Claims**

16 Englander, in his individual capacity only and *not* in his representative capacity, also provides
17 a release to LDR, LDR Releasees, and Downstream Releasees which shall be effective as a full and
18 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
19 attorneys’ fees, damages, losses, claims, liabilities and demands of Englander of any nature, character
20 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
21 exposures to DEHP, DBP and lead in the Products manufactured, imported, sold and/or distributed
22 for sale by LDR before September 1, 2014.

23 In furtherance of the foregoing, Englander on its own behalf hereby waives any and all rights
24 and benefits which it now has, or in the future may have respecting the Products, conferred upon it
25 with respect to claims involving Products by virtue of the provisions of Section 1542 of the
26 California Civil Code, which provides as follows:
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1 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
2 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
3 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
4 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
5 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

6 By executing this Consent Judgment, Englander understands and acknowledges that the
7 significance and consequence of this waiver of California Civil Code Section 1542 is that even if
8 Englander suffers future damages arising out of or resulting from, or related directly or indirectly to,
9 in whole or in part, the Products, including but not limited to any exposure to, or failure to warn with
10 respect to exposure to lead or lead compounds from, the Products, Englander will not be able to make
11 any claim for those damages against LDR, LDR Releasees, and all Downstream Releasees, and the
12 successors and assigns of any of them, who may manufacture, use, maintain, distribute, retail or sell
13 the Products. Furthermore, Englander acknowledges that it intends these consequences for any such
14 claims and any other claims which may exist as of the date of this release pertaining to the Products
15 listed in the Notice but which Englander does not know exist, and which, if known, would materially
16 affect its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is
17 the result of ignorance, oversight, error, negligence, or any other cause.

18 **4.3 LDR's Release of Englander**

19 LDR, on its own behalf, and on behalf of its past and current agents, representatives,
20 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
21 attorneys and other representatives, for any and all actions taken or statements made by Englander
22 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
23 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall
26 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
27 has been fully executed by the Parties.
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1 **6. ENFORCEMENT OF JUDGMENT**

2 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The
3 Parties may, by noticed motion or order to show cause before the Superior Court of Alameda
4 County, after giving the notice required by law enforce the terms and conditions contained herein.
5 The Parties hereto agree that prior to any such enforcement action, they will notify each other of
6 any perceived violation of this Consent Judgment. The Parties further agree to take no enforcement
7 action for 30 days after such notice is given, in order to allow the parties to meet and confer in good
8 faith in an effort to resolve the alleged violation.

9 **7. SEVERABILITY**

10 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
11 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
12 adversely affected.

13 **8. MODIFICATION OF JUDGMENT**

14 This Consent Judgment may be modified only upon written agreement of the Parties and upon
15 entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided
16 by law and upon entry of a modified Consent Judgment by the Court.

17 **9. AUTHORITY TO STIPULATE**

18 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
19 party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party
20 represented and legally to bind that party.

21 **10 RETENTION OF JURISDICTION**

22 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

23 **11 ENTIRE AGREEMENT**

24 This Consent Judgment contains the sole and entire agreement and understanding of the
25 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
26 commitments and understandings related hereto. No representations, oral or otherwise, express or
27 implied, other than those contained herein have been made by any party hereto. No other agreements
28

1 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
2 Parties.

3 **12. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California
5 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
6 otherwise rendered inapplicable by reason of law generally, or as to the Products, then LDR may
7 provide written notice to Englander of any asserted change in the law, and shall have no further
8 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
9 so affected. Nothing in this Consent Judgment shall be interpreted to relieve LDR from any
10 obligation to comply with any pertinent state or federal toxics control laws.

11 **13. NOTICES**

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

15 For LDR:

16 David Pollans, V.P. Finance
17 LDR Industries, LLC
18 600 North Kilbourn Avenue
19 Chicago, IL 60624

20 with a copy to:

21 Michael J. Van Zandt, Esq.
22 Hanson Bridgett LLP
23 425 Market Street, 26th Floor
24 San Francisco, CA 94105

25 For Englander:

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

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

1 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
4 taken together, shall constitute one and the same document.

5 **15. POST EXECUTION ACTIVITIES**


6 Englander agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
8 Code section 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the settlement.
9 In furtherance of obtaining such approval, Englander and LDR agree to mutually employ their best
10 efforts, and that of their counsel, to support the entry of this agreement as a judgment, and to obtain
11 judicial approval of this settlement in a timely manner. For purposes of this Section, "best efforts"
12 shall include, at a minimum, supporting the motion for judicial approval, and appearing at the hearing
13 on the motion if requested.

14 **16. AUTHORIZATION**

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


17
18 **AGREED TO:**

19
20 Date: November 13, 2013

21 By: 
22 Peter Englander

AGREED TO:

23 Date: 11/1/13

24 By: 
25 David Pollans, V.P. Finance
26 LDR Industries, LLC