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10 PETER ENGLANDER

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION  
15

16 PETER ENGLANDER,  
17 Plaintiff,  
18 v.  
19 CONBRACO INDUSTRIES, INC.; and  
20 DOES 1-150, inclusive,  
21 Defendants.

Case No. CGC-16-549935

**[PROPOSED] CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Peter Englander and Conbraco Industries, Inc.**

3 This Consent Judgment is entered into by and between Peter Englander (“Englander” or  
4 “Plaintiff”), and Conbraco Industries, Inc. (“Conbraco” or “Defendant”), with Plaintiff and  
5 Defendant collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

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

10 **1.3 Conbraco Industries, Inc.**

11 Englander alleges that Conbraco employs ten or more persons and is a person in the course  
12 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Conbraco has manufactured, imported, distributed and/or sold tools  
16 with vinyl/PVC Grips containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite  
17 Proposition 65 warnings. DEHP is listed under Proposition 65 a chemical known to cause cancer  
18 and birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The product that is covered by this Consent Judgment is a hand tool with vinyl/PVC grips  
21 to wit: the *Apollo Tools Poly Pipe Pinch Clamp Tool, #194845, LWSPOLYPTK, (UPC#6 70750*  
22 *20853 9)*, manufactured, imported, distributed and/or sold by Conbraco, hereinafter specifically  
23 defined as “Covered Product.”

24 **1.6 Notice of Violation**

25 On September 24, 2015, Englander served Conbraco and various public enforcement  
26 agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the  
27 recipients with notice of alleged violations of Proposition 65 based on Conbraco’s alleged failure  
28

1 to warn consumers that the Covered Product exposed users in California to DEHP. To the best of  
2 the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On January 15, 2016, Englander filed a complaint in the Superior Court in and for the  
5 County of San Francisco against Conbraco and Does 1 through 150, *Englander v. Conbraco*  
6 *Industries, Inc., et al.*, Case No. CGC-16-549935 ("Complaint"), alleging violations of Proposition  
7 65, based on the alleged exposures to DEHP contained in Covered Product.

8 **1.8 No Admission**

9 Conbraco denies the material, factual and legal allegations contained in Englander's Notice  
10 and Complaint and maintains that all products that it has sold, manufactured, imported and/or  
11 distributed in California, including the Covered Product, have been and are in compliance with all  
12 laws. Nothing in this Consent Judgment shall be construed as an admission by Conbraco of any  
13 fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
14 constitute or be construed as an admission by Conbraco of any fact, finding, conclusion, issue of  
15 law, or violation of law. However, this section shall not diminish or otherwise affect Conbraco's  
16 obligations, responsibilities, and duties under this Consent Judgment as to the Covered Product.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
19 jurisdiction over Conbraco as to the allegations contained in the Complaint, that venue is proper in  
20 the County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions  
21 of this Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" means the date on which  
24 the Motion for Approval of the Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: WARNINGS**

26 Commencing on the Effective Date, Conbraco shall not ship or offer to be shipped for sale  
27 in California the Covered Product containing DEHP unless the Covered Product is sold or shipped  
28 with clear and reasonable warnings as set forth below. All units of the Covered Product already

1 shipped on or before the Effective Date, for which a civil penalty has been paid, are deemed to be  
2 covered by the waiver and release provisions of this Consent Judgment and shall not be subject to  
3 any enforcement action by Plaintiff other than that delineated in Paragraph 12 of this Consent  
4 Judgment.

5 With respect to the Covered Product sold or shipped with warnings, each warning shall be  
6 prominently placed with such conspicuousness as compared with other words, statements, designs  
7 or devices as to render it likely to be read and understood by an ordinary individual under  
8 customary conditions before purchase or use. Each warning shall be provided in a manner such  
9 that the consumer or user understands to which *specific* Covered Product the warning applies, so as  
10 to minimize the risk of consumer confusion. For the Covered Product containing DEHP,  
11 Conbraco shall use the following warning language:

12 **WARNING:** This product contains DEHP, a chemical known to  
13 the state of California to cause cancer and birth  
14 defects and other reproductive harm.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty**

17 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims  
18 alleged in the Notice, Complaint, or referred to in this Consent Judgment, Conbraco agrees to pay  
19 seven thousand five hundred dollars (\$7,500.00) in civil penalties. The penalty payment will be  
20 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with  
21 75% of the penalty amount remitted to the California Office of Environmental Health Hazard  
22 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Englander, and  
23 delivered to the address in Section 3.3 herein. Within five (5) business days of the Effective Date,  
24 Conbraco shall provide its payment in two checks for the following amounts made payable to: (a)  
25 “OEHHA” in the amount of five thousand six hundred twenty five dollars (\$5,625.00) and (b)  
26 “Peter Englander, Client Trust Account” in the amount of one thousand eight hundred seventy five  
27 dollars (\$1,875.00).  
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1           **3.2     Reimbursement of Plaintiff’s Attorneys Fees and Costs**

2           The Parties reached an accord on the compensation due to Englander and his counsel  
3 under general contract principles and the private attorney general doctrine codified at Code of  
4 Civil Procedure section 1021.5 for all work performed in this matter. Under these legal  
5 principles, Conbraco agrees to pay thirty-seven thousand five hundred dollars (\$37,500.00) to  
6 Englander and his counsel for all attorneys’ fees and costs incurred investigating, bringing this  
7 matter to the attention of Conbraco’s management, serving the 60 Day Notice, filing the  
8 Complaint, and negotiating and obtaining approval of this settlement, that provides a significant  
9 public benefit. Conbraco’s payment of attorneys’ fees and costs shall be due within five (5)  
10 business days of the Effective Date, and delivered to the address in Section 3.3 in the form of a  
11 check payable to “The Chanler Group.”

12           **3.3     Payment Procedures**

13           All payments owed by Conbraco pursuant to Sections 3.1 and 3.2, shall be delivered  
14 within five (5) business days of the Effective Date in three separate checks payable to:

15                                 The Chanler Group  
16                                 Attn: Proposition 65 Controller  
17                                 2560 Ninth Street  
                                       Parker Plaza, Suite 214  
                                       Berkeley, CA 94710

18           **4.     CLAIMS COVERED AND RELEASED**

19           **4.1     Englander’s Release of Proposition 65 Claims**

20           Englander acting on his own behalf and in the public interest releases Conbraco, its past,  
21 present and future parents, subsidiaries, affiliates, predecessors, successors, assigns, affiliated  
22 entities under common ownership, directors, officers, stockholders, employees, attorneys, and each  
23 entity to whom Conbraco directly or indirectly distributes or sells the Covered Product, including,  
24 but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees,  
25 cooperative members, and licensees (“Releasees”), from all claims arising from any alleged  
26 violations of Proposition 65 based on their alleged failure to warn about alleged exposures to  
27 DEHP contained in the Covered Product that were manufactured, distributed, or sold by Conbraco  
28 up through the Effective Date of this Consent Judgment including all claims that were raised, by

1 Englander in the Notice or Complaint. Compliance with the terms of this Consent Judgment  
2 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Covered  
3 Product as set forth in the Notice and Complaint.

4 **4.2 Englander’s Individual Release of Claims**

5 Englander also, in his individual capacity only and *not* in his representative capacity,  
6 provides a release herein to all Releasees which shall be effective as a full and final accord and  
7 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,  
8 damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind,  
9 whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or  
10 actual exposures to DEHP in Covered Product manufactured, distributed or sold by Conbraco.

11 **4.3 Conbraco’s Release of Englander**

12 Conbraco on behalf of itself, its past and current agents, representatives, attorneys,  
13 successors, and/or assignees, hereby waives any and all claims against Englander, his attorneys  
14 and other representatives, for any and all actions taken or statements made by Englander and his  
15 attorneys and other representatives prior to the Effective Date, whether in the course of  
16 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
17 respect to the Covered Product.

18 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of  
28 California and apply within the State of California. In the event that Proposition 65 is repealed,

1 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the  
2 provisions of this Consent Judgment are rendered inapplicable by preemption or reason of law  
3 generally as to the Covered Product, then Conbraco shall have no further obligations pursuant to  
4 this Consent Judgment with respect to, and to the extent that, the Covered Product is so affected.

5 **8. NOTICES**

6 Unless specified herein, all correspondence and notices required to be provided pursuant to  
7 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
8 (registered or certified mail) return receipt requested; (ii) overnight courier on any Party by the  
9 other Party to the following addresses:

10 To Conbraco:

11 Glenn Mosack, President  
12 Conbraco Industries, Inc.  
13 701 Matthews Mint Hill Road  
14 Matthews, NC 28105

To Englander:

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

15 With copies to:

16 William Funderburk, Esq.  
17 Anna Le May, Esq.  
18 CASTELLON & FUNDERBURK,  
19 LLP  
20 811 Wilshire Blvd., Suite 1025  
21 Los Angeles, CA 90017

22 Steven DeGeorge  
23 Robinson, Bradshaw & Hinson, P.A.  
24 101 N. Tryon St., Suite 1900  
25 Charlotte, NC 28246

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

28 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 Englander and Conbraco agree to mutually employ their best efforts to support the entry of  
6 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court  
7 in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code §  
8 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
9 Englander shall draft and file, and Conbraco shall join. If any third party objection to the noticed  
10 motion is filed, Englander and Conbraco shall work together to file a joint reply and appear at any  
11 hearing before the Court. This provision is a material component of the Consent Judgment and  
12 shall be treated as such in the event of a breach.

13 **12. ENFORCEMENT OF CONSENT JUDGMENT**

14 In the event any dispute between the Parties arises out of this Consent Judgment, the  
15 Parties shall meet and confer in an attempt to resolve the dispute informally. If after thirty (30)  
16 days such attempts at informal resolution fail, the disputing party may pursue enforcement of this  
17 Consent Judgment through any legal means available including by motion or application for an  
18 order to show cause before the Court.

19 **13. MODIFICATION**

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

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**14. AUTHORIZATION**

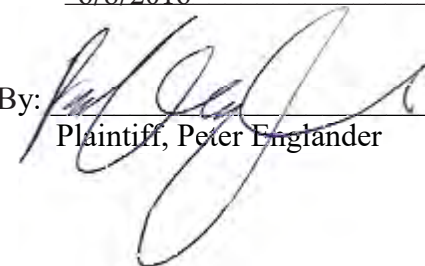
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

**AGREED TO:**

Date: 6/8/2016

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Plaintiff, Peter Englander

By: \_\_\_\_\_  
Glenn Mosack, President  
Conbraco Industries, Inc.

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**14. 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: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff, Peter Englander

**AGREED TO:**

Date: 6/10/2012

By: Arthur Kramer  
Arthur Kramer, Director of Legal  
Affairs  
Conbraco Industries, Inc.