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Brian C. Johnson, State Bar No. 235965
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
PETER ENGLANDER

**ENDORSED
FILED**
San Francisco County Superior Court

OCT 22 2013
CLERK OF THE COURT
BY: KAREN LIU
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

INGERSOLL-RAND COMPANY; *et al.*,

Defendants.

Case No. CGC-13-529207

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: October 7, 2013
Time: 9:30 a.m.
Dept. 302
Judge: Hon. Marla J. Miller

1 Plaintiff Peter Englander and Defendant Ingersoll-Rand Company, having agreed
2 through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an order approving the Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
7 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
8 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
9 enforce the terms of the settlement under Code of Civil Procedure section 664.6.

10 **IT IS SO ORDERED.**

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Dated: 10/22/2022


JUDGE OF THE SUPERIOR COURT
PETER J. BUSCH

EXHIBIT 1

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

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

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 INGERSOLL-RAND COMPANY; *et al.*,

18 Defendants.

Case No. CGC-13-529207

[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, Ingersoll-Rand Company (“Ingersoll-Rand”), with Englander and
5 Ingersoll-Rand each 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 Ingersoll-Rand employs ten or more persons and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Ingersoll-Rand sold vinyl coated steel cables containing di(2-
16 ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition
17 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
18 birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl coated steel cables
21 containing DEHP that are imported, manufactured, sold, or distributed for sale by Ingersoll-Rand in
22 California including, but not limited to, the *Schlage Steel Cable Models 999249, 997719, 994800,*
23 *994862, 999201, 999218, 999225, 999256, 999263, and 999270* (collectively “Products”).

24 **1.6 Notice of Violation**

25 On or about July 11, 2012, Englander served Ingersoll-Rand and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Ingersoll-Rand
27 was in violation of Proposition 65 for failing to warn its customers and consumers in California that
28 the Products expose users to DEHP.

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1.7 Complaint

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

1.8 No Admission

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

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Ingersoll-Rand as to the allegations in the Complaint, that venue is proper in San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the Court grants the motion for approval of this Consent Judgment contemplated by Section 10.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulated Products

Commencing on May 1, 2014, and continuing thereafter, Ingersoll-Rand shall only purchase for sale, manufacture for sale, or distribute for sale in California “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products contain a maximum of 1,000 parts per million (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies

1 3580A and 8270C, CPSC-WH-C1001-09.3, or equivalent methodologies utilized by state or federal
2 agencies for the purpose of determining DEHP content in a solid substance.

3 **2.2 Interim Warnings**

4 Commencing on the Effective Date and continuing thereafter, Ingersoll-Rand shall not
5 manufacture for sale in California any Products that are not Reformulated Products unless such
6 Products are sold or shipped with a clear and reasonable warning. Each warning shall be prominently
7 placed with such conspicuousness as compared with other words, statements, designs, or devices as
8 to render it likely to be read and understood by an ordinary individual under customary conditions
9 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
10 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
11 confusion.

12 Ingersoll-Rand agrees that it will affix a warning to the Product packaging or labeling, if any,
13 or directly on each Product with the following language:

14 **WARNING:** This product contains DEHP, a chemical known
15 to the State of California to cause birth defects or
16 other reproductive harm.

17 Alternatively, Ingersoll-Rand may affix a warning with the following language to the packaging or
18 labeling, if any, or directly on each Product:

19 **WARNING:** This product contains chemicals known to the
20 State of California to cause birth defects or other
21 reproductive harm.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

24 In settlement of all the claims referred to in this Consent Judgment, Ingersoll-Rand
25 shall pay \$16,000 in civil penalties. Each civil penalty payment shall be allocated according to
26 Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds
27 paid to the California Office of Environmental Health Hazard Assessment and twenty-five percent
28 (25%) of the funds remitted to Englander. All civil penalty payments shall be delivered to the
payment addresses provided in section 3.3.1.

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3.1.1 Initial Civil Penalty

Within ten days of the Effective Date, Ingersoll-Rand shall make an initial civil penalty payment of \$4,000. Ingersoll-Rand shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$3,000; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$1,000.

3.1.2 Final Civil Penalty

On or before May 1, 2014, Ingersoll-Rand shall make a final civil penalty payment of \$12,000. Pursuant to title 11 California Code of Regulations, section 3203(c), the final civil penalty payment shall be waived in its entirety if, no later than April 15, 2014, an officer of Ingersoll-Rand provides Englander with written certification that all of the Products purchased for sale or manufactured for sale in California are Reformulated Products, and that Ingersoll-Rand will continue to offer only Reformulated Products in California. The written certification of reformulation in lieu of the final civil penalty payment required by this section is a material term, and time is of the essence. Unless waived, Ingersoll-Rand shall issue two checks for the following amounts payable to: (a) "OEHHA" in the amount of \$9,000; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$3,000.

3.2 Reimbursement of Fees and Costs

The parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, Ingersoll-Rand expressed a desire to resolve the fee and cost issue. The Parties then attempted to (and did) reach an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. Ingersoll-Rand shall pay \$30,000 for fees and costs incurred investigating, bringing this matter to Ingersoll-Rand's attention, and negotiating a settlement in the public interest. Ingersoll-Rand payment of fees and costs shall be delivered within five days of the Effective Date to the payment address provided in section 3.3.1.

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3.3 Payment Procedures

3.3.1 Payment Addresses

(a) All payments and tax documentation for Englander and his counsel shall be delivered to:

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

(b) All payments to OEHHA (EIN: 68-0284486), shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
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 or Courier:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

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

3.3.2 Required Tax Documentation

(a) Ingersoll-Rand agrees to provide appropriate 1099 form documentation for the civil penalties paid to OEHHA (EIN: 68-0284486). The form shall be transmitted to the "Office of Environmental Health Hazard Assessment" at the addresses provided in Section 3.3.1

(b) For the civil penalties paid to Englander, Ingersoll-Rand agrees to issue a 1099 form to "Peter Englander," whose address and tax identification number shall be furnished after this Consent Judgment is fully executed by the Parties.

(c) For the reimbursement of fees and costs pursuant to section 3.2, Ingersoll-Rand shall issue a separate 1099 form to "The Chanler Group" (EIN: 94-3171522).

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Englander's Public Release of Proposition 65 Claims**

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

12 **4.2 Englander's Individual Release of Claims**

13 Englander, in his individual capacity only and *not* in his representative capacity, also provides
14 a release to Ingersoll-Rand, Releasees, and Downstream Releasees which shall be effective as a full
15 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
16 attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any nature, character
17 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
18 exposures to DEHP in the Products sold or distributed for sale by Ingersoll-Rand before the Effective
19 Date.

20 **4.3 Ingersoll-Rand's Release of Englander**

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

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1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW**

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

17 **8. NOTICE**

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

21 For Ingersoll-Rand:

22 Ingersoll-Rand Company – Litigation Department
23 800-E Beaty Street
Davidson, NC 28036

24 with a copy to:

25 Peg Carew Toledo, Esq.
26 Toledo Don, LLP
3001 Douglas Blvd., Suite 340
27 Roseville, CA 95661

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For Englander:

The Chanler Group
Attn: Proposition 65 Coordinator
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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. POST EXECUTION ACTIVITIES

Englander agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Englander and Ingersoll-Rand agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, and supporting the motion for judicial approval.

12. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court.

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13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: July 29, 2013

Date: July 26, 2013

By: 
PETER ENGLANDER

By: 
John T. Evans, President,
Residential Security Solutions,
INGERSOLL-RAND COMPANY