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10 PETER ENGLANDER

ENDORSED
2013 MAY 23 P 12:21
L. QUACH-MARCELLANA

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 WEEMS INDUSTRIES, INC.; *et al.*,
18 Defendants.

Case No. 113CV239935
~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT
Date: May 14, 2013
Time: 9:00 a.m.
Dept. 8
Judge: Hon. Peter Kirwan

1 Plaintiff Peter Englander and Defendant Weems Industries, Inc. d/b/a Legacy
2 Companies, having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and
4 following this Court's issuance of an order approving the Proposition 65 settlement and
5 Consent Judgment,

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

11 **IT IS SO ORDERED.**

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14 Dated: MAY 15 2013

Peter H. Kirwan
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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Attorneys for Plaintiff
PETER ENGLANDER

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

PETER ENGLANDER,
Plaintiff,
v.
WEEMS INDUSTRIES, INC.; *et al.*,
Defendants.

Case No. 113CV239935
[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, Weems Industries, Inc. d/b/a Legacy Company (“Legacy”), with
5 Englander and Legacy 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 Legacy 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 Legacy sold grease guns with hand grips containing lead without first
16 providing the exposure warning required by Proposition 65. Lead is listed pursuant to Proposition 65
17 as a chemical known to the state of California to cause birth defects or other reproductive harm.

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are grease guns with hand grips
20 containing lead that are imported, manufactured, sold, or distributed for sale by Legacy in California
21 including, but not limited to, the *Legacy Workforce PRO Heavy Duty Grease Gun, L1355 (#0 92329*
22 *01355 7)* (“Products”).

23 **1.6 Notice of Violation**

24 On or about August 1, 2012, Englander served Legacy and certain requisite public
25 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Legacy was in
26 violation of Proposition 65 for failing to warn its customers and consumers in California that the
27 Products expose users to lead.

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1 **1.7 Complaint**

2 On January 22, 2013, Englander filed the instant action against Legacy (“Complaint”) for the
3 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

4 **1.8 No Admission**

5 Legacy 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 for sale in
7 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
8 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
9 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
10 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
11 Section shall not, however, diminish or otherwise affect Legacy’ obligations, responsibilities, and
12 duties under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

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

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean February 15,
20 2013.

21 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

22 Commencing on July 1, 2013, and continuing thereafter, Legacy shall only purchase for sale,
23 manufacture for sale, or distribute for sale in California “Reformulated Products.” For purposes of
24 this Consent Judgment, Reformulated Products contain a maximum of 100 parts per million (0.01%)
25 lead by weight in any accessible component (i.e., any component that can be touched or handled
26 during reasonably a foreseeable use) when analyzed pursuant to Environmental Protection Agency
27 testing methodologies 3050B and/or 6010B, and that yield a result of more than 1.0 micrograms of
28 lead when sampled and analyzed pursuant to the NIOSH 9100 testing protocol, or by equivalent

1 methodology utilized by state and federal agencies for purposes of determining lead content in a solid
2 substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments pursuant to Health and Safety Code § 25249.7(b)**

5 In settlement of all the claims referred to in this Consent Judgment, Legacy shall pay
6 \$16,500 in civil penalties. Each civil penalty payment shall be allocated according to Health and
7 Safety Code section 25249.7(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the
8 California Office of Environmental Health Hazard Assessment and twenty-five percent (25%) of the
9 funds remitted to Englander. All civil penalty payments shall be delivered to the payment addresses
10 provided in section 3.3.1.

11 **3.1.1 Initial Civil Penalty**

12 Within five days of the Effective Date, Legacy shall make an initial civil penalty
13 payment of \$4,500. Legacy shall provide its payment in two checks for the following amounts made
14 payable to: (a) "OEHHA" in the amount of \$3,375; and (b) "The Chanler Group in Trust for Peter
15 Englander" in the amount of \$1,125.

16 **3.1.2 Final Civil Penalty**

17 On or before September 1, 2013, Legacy shall make a final civil penalty payment of
18 \$12,000. Pursuant to title 11 California Code of Regulations, section 3203(c), the final civil penalty
19 payment shall be waived in its entirety if, no later than May 1, 2013, an officer of Legacy provides
20 Englander with written certification that all of the Products purchased for sale or manufactured for
21 sale by Legacy as of such date, in California are Reformulated Products, and that Legacy will
22 continue to offer only Reformulated Products in California. The written certification of
23 reformulation in lieu of the final civil penalty payment required by this section is a material term, and
24 time is of the essence. Unless waived, Legacy shall issue two checks for the following amounts
25 payable to: (a) "OEHHA" in the amount of \$9,000; and (b) "The Chanler Group in Trust for Peter
26 Englander" in the amount of \$3,000.

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1 **3.2 Reimbursement of Fees and Costs**

2 The parties acknowledge that Englander and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
4 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
5 the other settlement terms had been finalized, Legacy expressed a desire to resolve the fee and cost
6 issue. The Parties then attempted to (and did) reach an accord on the compensation due to Englander
7 and his counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
9 execution of this Consent Judgment. Legacy shall pay \$27,500 for fees and costs incurred as a result
10 of investigating, bringing this matter to Legacy’ attention, and negotiating a settlement in the public
11 interest. Legacy payment of fees and costs shall be delivered within five days of the Effective Date
12 to the payment address provided in section 3.3.1.

13 **3.3 Payment Procedures**

14 **3.3.1. Payment Addresses**

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

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

20 (b) All payments to OEHHA (EIN: 68-0284486) made pursuant to section 3.1,
21 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:

22 Mike Gyrics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
 P.O. Box 4010
 Sacramento, CA 95812-4010

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

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1 **3.3.2 Required Tax Documentation**

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

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

8 (b) For the reimbursement of fees and costs pursuant to section 3.2, Legacy shall
9 issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522).

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Englander’s Public Release of Proposition 65 Claims**

12 Englander, acting on his own behalf and in the public interest, releases Legacy and its
13 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
14 and attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
15 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
16 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
17 violations arising under Proposition 65 for unwarned exposures to lead from the Products sold by
18 Legacy prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
19 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead
20 from the Products.

21 **4.2 Englander’s Individual Release of Claims**

22 Englander, in his individual capacity only and *not* in his representative capacity, also
23 provides a release to Legacy, Releasees, and Downstream Releasees which shall be effective as a
24 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
25 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Englander of any
26 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
27 alleged or actual exposures to lead in the Products sold or distributed for sale by Legacy before the
28 Effective Date.

1 **4.3 Legacy’ Release of Englander**

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

7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

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

23 **8. NOTICES**

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

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1 For Legacy:

2 Robert Weems, President
3 Weems Industries, Inc.
4 6281 North Gateway Drive
5 Marion, IA 52302

6 with a copy to:

7 Peter C. Riley, Esq.
8 Tom Riley Law Firm, P.L.C.
9 4040 1st Avenue NE
10 Cedar Rapids, IA 52402

11 For Englander:

12 The Chanler Group
13 Attn: Proposition 65 Coordinator
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Englander agrees to comply with the reporting form requirements referenced in Health and
25 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
26 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
27 furtherance of obtaining such approval, Englander and Legacy agree to mutually employ their best
28 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.

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

8 **AGREED TO:**

AGREED TO:

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10 Date: February 12, 2013

Date: 2-12-13

11 By: 
12 PETER ENGLANDER

By: 
13 Robert Weems, President
14 WEEMS INDUSTRIES, INC.

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