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6 PETER ENGLANDER

FILED

MAY 14 2014

KIM HICKNER, CLERK, CLERK'S OFFICE
MARIN COUNTY SUPERIOR COURT

By: R. Smith, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

10
11 PETER ENGLANDER

12 Plaintiff,

13 v.

14 Q.E.P. CO., INC. and DOES 1-150,

15 Defendants.

Case No. CIV1301305

**JUDGMENT AGAINST Q.E.P. CO., INC.
UPON PROPOSITION 65 SETTLEMENT**

Action Filed: March 26, 2013
Trial Date: Not Assigned

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JUDGMENT PURSUANT TO PROPOSITION 65 SETTLEMENT

1 In the above-entitled action, Plaintiff Peter Englander and Defendant Q.E.P. Co., Inc.,
2 having agreed through their respective counsel that a judgment be entered pursuant to the terms
3 of the Consent To Judgment entered into by the parties in resolution of this Proposition 65
4 action, and following the issuance of an order approving the Parties' Consent to Judgment on
5 this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in
7 accordance with the terms of the Consent To Judgment attached hereto as Exhibit A. By
8 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code
9 of Civil Procedure § 664.6.
10

11 IT IS SO ORDERED.

12
13 Dated: MAY 14 2014

ROY CHERNUS

Honorable Roy Chernus
Judge Of The Superior Court

EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
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5
6 Attorneys for Plaintiff
PETER ENGLANDER

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8
9 IN AND FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11 PETER ENGLANDER
12 Plaintiff,
13
14 v.
15 Q.E.P. CO., INC. and DOES 1-150,
16 Defendants.

Case No. CIV1301305
**CONSENT TO JUDGMENT AS TO
DEFENDANT Q.E.P. CO., INC.**
Action Filed: March 26, 2013
Trial Date: Not Assigned

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1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Peter Englander,
4 (“Englander” or “Plaintiff”) and Defendant Q.E.P. Co., Inc. (“QEP”) with Englander and QEP
5 collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 For purposes of this Consent to Judgment only, QEP agrees that it employs 10 or more
12 persons and is a person in the course of doing business for purposes of the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.*
14 (“Proposition 65”).

15 **1.4 General Allegations**

16 Englander alleges that QEP manufactured, distributed and/or sold, in the State of
17 California, hand tools with vinyl/PVC grips containing DEHP, including, but not limited to,
18 scrapers, tile cutters and tile nippers, that exposed users to DEHP without first providing any
19 “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and
20 developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed
21 Chemical.”

22 **1.5 Notice of Violation**

23 On November 21, 2012, Englander served Defendant and various public enforcement
24 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
25 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
26 for failing to warn consumers of the presence of DEHP, a toxic chemical found in and on
27 Defendant’s tile cutter products sold in California. To the best of the Parties’ knowledge, no
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1 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
2 Notice.

3 On October 18, 2013, Englander served Defendant and various public enforcement
4 agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental
5 Notice") that provided public enforcers and these entities with notice of alleged violations of
6 Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic
7 chemical found in and on Defendant's hand tool and tile cutter products sold in California.

8 To the best of the Parties' knowledge, no public enforcer is diligently prosecuting a
9 Proposition 65 action regarding the allegations set forth in the Supplemental Notice. This
10 agreement is contingent upon no public enforcer diligently prosecuting a Proposition 65 action
11 regarding the allegations set forth in the Supplemental Notice within 60 days of service of the
12 Supplemental Notice.

13 1.6 Complaint

14 On March 26, 2013, Englander, acting, in the interest of the general public in California,
15 filed a Complaint in the Superior Court of the State of California for the County of Marin,
16 alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the
17 alleged exposures to DEHP contained in the referenced tile cutter products (the "Action").

18 As part of, and upon execution of, this Consent To Judgment, the parties stipulate and
19 agree that Englander shall lodge, as an exhibit to his motion to approve this settlement, a First
20 Amended Complaint to include the parties, recitals, and allegations against QEP in conformity
21 with the Notice and Supplemental Notice served by Englander upon QEP ("FAC"). As part of
22 Englander's motion to approve this settlement and enter judgment, Englander shall also move
23 this Court for an order either deeming the FAC filed as of the date of the hearing on the motion
24 to approve or an order permitting Plaintiff to immediately file the FAC with the Court.

25 QEP stipulates to such filing of the FAC as part of Englander's motion to approve the
26 settlement and agrees to waive any service of the FAC other than such service of the FAC as an
27 exhibit to the motion to approve this settlement sent by mail to QEP's counsel of record. The
28 parties hereby stipulate that QEP's answer to the Complaint already on file in this action shall be

1 deemed to be its answer to the FAC, stipulate that the FAC shall be deemed at issue as to QEP
2 upon issuance of the order of the Court either deeming the FAC filed or permitting its immediate
3 filing, and stipulate that this Court may and shall immediately enter judgment on the FAC, as
4 against QEP, but only pursuant to these stipulations and after approval of this Consent To
5 Judgment.

6 **1.7 No Admission**

7 This Consent To Judgment resolves claims that are denied and disputed by QEP. The
8 Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all
9 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies
10 the material factual and legal allegations contained in the Notice and Action, maintains that it
11 did not knowingly or intentionally expose California consumers to DEHP through the
12 reasonably foreseeable use of the Exemplar or Covered Products and otherwise contends that all
13 Exemplar or Covered Products it has manufactured, distributed and/or sold in California have
14 been and are in compliance with all applicable laws. Nothing in this Consent To Judgment shall
15 be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law;
16 nor shall compliance with this Consent To Judgment constitute or be construed as an admission
17 by the Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
18 specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not
19 diminish or otherwise affect QEP's obligations, responsibilities, and duties under this Consent
20 To Judgment.

21 **1.8 Consent to Jurisdiction**

22 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
23 jurisdiction over QEP as to the allegations contained in the Complaint, that venue is proper in
24 the County in which the Complaint is filed, and that this Court has jurisdiction to enter and
25 enforce the provisions of this Consent Judgment. As an express part of this Agreement,
26 pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over
27 the parties to enforce the settlement until performance in full of the terms of the settlement.
28

1 **2. DEFINITIONS**

2 2.1 The term "Complaint" shall mean the FAC.

3 2.2 The term "Exemplar Products" shall mean the QEP 14" Tile Cutter (10214) with
4 SKU #548755 and QEP Glass Tile Nipper (32010Q) with SKU #867683.

5 2.3 The term "Covered Products" shall mean all hand tools with vinyl/PVC grips
6 except Exemplar Products.

7 2.4 The term "DEHP Free" Exemplar or Covered Products shall mean Exemplar or
8 Covered Products containing materials or other components that may be handled, touched or
9 mouthed by a consumer, and which components contain less than or equal to 1,000 parts per
10 million ("ppm") of DEHP as determined by a minimum of duplicate quality controlled test
11 results using Environmental Protection Agency ("EPA") testing methodologies 3580A and
12 8270C.

13 2.5 The term "DEHP Free Standards" shall mean those DEHP component
14 concentration standards that will result in an Exemplar or Covered Product being DEHP Free.

15 2.6 The Term "Vendor" shall mean any manufacturer that supplies any Exemplar or
16 Covered Products to QEP.

17 **3. INJUNCTIVE RELIEF**

18 **3.1 Formulation Commitment**

19 No later than the December 15, 2013, Defendant shall provide the DEHP Free Standards,
20 to its then-current Vendors of any Exemplar or Covered Products that will be sold or offered for
21 sale to United States consumers and shall instruct each Vendor to provide Exemplar or Covered
22 Products that comply with such DEHP Free Standards expeditiously. In addressing the
23 obligation set forth in the preceding sentence, Defendant shall not employ statements that will
24 encourage a Vendor to delay compliance with the DEHP Free Standard. Upon request,
25 Defendant shall provide Plaintiff with copies of such Vendor notification and Plaintiff shall
26 regard such copies as confidential business information.

27 As of March 1, 2014, Defendant shall not order, cause to be ordered, manufacture or
28 cause to be manufactured any Exemplar Product for distribution to or sale in the United States

1 that the Vendor of the product has not expressly certified is DEHP Free. For every Exemplar
2 Product ordered, caused to be ordered, manufactured or caused to be manufactured for
3 distribution to or sale in California after the March 1, 2014, Defendant shall maintain copies of
4 any Vendor certification received by Defendant or Defendant certification or testing of the
5 Exemplar Product demonstrating compliance with this section until, at least, February 1, 2016.

6 As of June 1, 2014, Defendant shall not order, cause to be ordered, manufacture or cause
7 to be manufactured any Covered Product for distribution to or sale in the United States that the
8 Vendor of the product has not expressly certified is DEHP Free. For every Covered Product
9 ordered, caused to be ordered, manufactured or caused to be manufactured for distribution to or
10 sale in California after June 1, 2014, Defendant shall maintain copies of any Vendor certification
11 received by Defendant or Defendant certification or testing of the Covered Products
12 demonstrating compliance with this section until, at least, June 1, 2016.

13 **3.2 Previously Obtained Exemplar Products or Covered Products.**

14 **3.2.1 Post-Settlement Product Warnings**

15 Subject to the limited exception contained in Section 3.2.2, commencing on January 15,
16 2014, QEP shall not distribute or sell to any customer, retailer or consumer in California, or that
17 QEP reasonably understands has a retail outlet in California, any Exemplar or Covered Products
18 unless such Exemplar or Covered Products are DEHP Free under Section 2.4 or are
19 manufactured, distributed or shipped with one of the clear and reasonable warnings set forth
20 hereafter.

21 Each such warning shall be prominently placed with such conspicuousness as compared
22 with other words, statements, designs, or devices as to render it likely to be read and understood
23 by an ordinary individual under customary conditions of purchase or use. Each such warning
24 shall be affixed to or printed on the Exemplar or Covered Product itself, the labeling for the
25 Exemplar or Covered Product or on the exterior of the packaging in which the Exemplar or
26 Covered Product is sold to consumers, as set forth hereafter.

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(a) **Retail Store Sales.**

Subject to the limited exceptions contained in Section 3.2.2, for distribution of Exemplar or Covered Products obtained by QEP prior to January 15, 2014, that are not certified to be DEHP Free, QEP shall affix or provide to its distributors and retailers a warning to be affixed on the packaging, labeling, or directly on any Exemplar or Covered Products that states:

WARNING: This product contains a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

(b) **Mail Order Catalog and Internet Sales.** QEP may satisfy its Proposition

65 warning obligations for Exemplar or Covered Product obtained by QEP prior to January 15, 2014, that are not certified to be DEHP Free and are sold by QEP by mail order catalogue or from the QEP website by providing a warning: (1) in the mail order catalogue as specified in Section 3.2.1(b)(i); on the website as specified in Section 3.2.1(b)(ii); and/or by affixing the warning specified in Section 3.2.1(a) to the packaging, labeling, or directly on any Exemplar or Covered Product.

(i) **Mail Order Catalog Warning.** For sales by QEP by mail order

catalog, any warning provided in a QEP mail order catalog must be in the same type size or larger than the Exemplar or Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Exemplar or Covered Product:

WARNING: This product contains a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Exemplar or Covered Product, QEP may utilize a designated symbol to cross-reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Exemplar or Covered Product:

1 **WARNING:** Certain products identified with this
2 symbol ▼ and offered for sale in this
3 catalog contain a chemical known to the
4 State of California to cause cancer, birth
5 defects and other reproductive harm.

6 The designated symbol must appear on the same page and in close proximity to the
7 display and/or description of the Exemplar or Covered Product. On each page where the
8 designated symbol appears, QEP must provide a header or footer directing the consumer to the
9 warning language and definition of the designated symbol.

10 If QEP provides warnings in any mail order catalog from which QEP sells any Exemplar
11 or Covered Product, then the warnings must be included in all QEP catalogs printed after
12 February 1, 2014, offering to sell one or more Exemplar or Covered Product not certified to be
13 DEHP Free.

14 (ii) **Internet Website Warning.** A warning may be given in
15 conjunction with the sale by QEP of any Exemplar or Covered Product via QEP's website,
16 provided it appears either: (a) on the same web page on which a Exemplar or Covered Product
17 is displayed; (b) on the same web page as the order form for a Exemplar or Covered Product; (c)
18 on the same page as the price for any Exemplar or Covered Product; or (d) on one or more web
19 pages displayed to a purchaser during the checkout process. The following warning statement
20 shall be used and shall appear in any of the above instances adjacent to or immediately following
21 the display, description, or price of the Exemplar or Covered Product for which it is given in the
22 same type size or larger than the Exemplar or Covered Product description text:

23 **WARNING:** This product contains a chemical known to
24 the State of California to cause cancer, birth
25 defects and other reproductive harm.

26 Alternatively, the designated symbol may appear adjacent to or immediately following
27 the display, description, or price of the Exemplar or Covered Product for which a warning is
28 being given, provided that the following warning statement also appears elsewhere on the same
29 web page, as follows:

1 **WARNING:** Products identified on this page with the
2 following symbol ▼ contain a chemical
3 known to the State of California to cause
 cancer, birth defects and other
 reproductive harm.

4 QEP shall maintain records of compliance correspondence, inventory reports or other
5 communication confirming compliance with § 3.2.1 until December 31, 2016, and shall produce
6 copies of such records upon written request by Englander.

7 **3.2.2 Pre-Settlement Product Warnings**

8 Defendant has attempted compliance with the warning requirements of Proposition 65
9 by placing warnings on certain products and delivering warning materials to certain distributors
10 and retailers of Exemplar or Covered Products in California prior to the execution of this
11 settlement agreement. The warning language included in such attempted compliance is as
12 follows:

13 **WARNING:** This product contains a chemical known to
14 the State of California to cause cancer and
 other reproductive harm.

15 Defendant's use of such warning language shall only comply with the terms of this
16 settlement agreement to the extent that such attempted compliance with the warning
17 requirement for non-DEHP Free Exemplar or Covered Products was completed before October
18 15, 2013. Pursuant to this agreement, any further provision of warnings or warning materials as
19 to Exemplar or Covered Products shall comply with all aspects of Section 3.2.1, including the
20 enhanced warning language found therein.

21 QEP shall maintain records of any implementation of any Proposition 65 warning
22 program it completed before execution of this agreement until December 31, 2016 and shall
23 produce copies of such records upon written request by Englander.

24 **4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(B)**

25 In settlement of all the claims referred to in this Consent To Judgment, QEP shall pay a
26 total civil penalty of \$22,000.00 under this Section, as follows:

27 ///

1 **4.1 Initial Civil Penalty**

2 QEP shall pay an initial civil penalty in the amount of \$12,000.00 on or before January 17,
3 2014. The civil penalty shall be apportioned in accordance with California Health & Safety Code
4 § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of
5 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
6 remitted to Englander. QEP shall issue two separate checks for the penalty payment: (a) one
7 check made payable to "OEHHA" in the amount of \$9,000.00 representing 75% of the total
8 penalty; and (b) one check made payable to "The Chanler Group in Trust for Peter Englander" in
9 the amount of \$3,000.00, representing 25% of the total penalty. Two separate 1099s shall be
10 issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in
11 Section 4.3 below.

12 **4.2 Final Civil Penalty**

13 QEP shall pay a final civil penalty of \$10,000.00 on or before May 1, 2014. The final civil
14 penalty shall be waived in its entirety, however, if an Officer of QEP provides Englander, care of
15 his counsel, with written certification that QEP has met the reformulation standard specified in
16 Section 3.1 above in advance of the Section 3.1 compliance deadlines, such that all Exemplar
17 Products ordered, caused to be ordered, manufactured or caused to be manufactured by
18 Defendant as of February 1, 2013, and all Covered Products ordered, caused to be ordered,
19 manufactured or caused to be manufactured by Defendant as of April 1, 2014, are certified by
20 the Vendor to be DEHP Free. Englander must receive any such certification on or before April
21 15, 2014, and time is of the essence. The final civil penalty shall be apportioned in accordance
22 with California Health & Safety Code § 25249.12 (c)(1) & (d), with 75% of these funds remitted to
23 OEHHA and the remaining 25% of the penalty remitted to Englander, as provided by California
24 Health & Safety Code § 25249.12(d). QEP shall issue two separate checks for the penalty
25 payment: (a) one check made payable to "OEHHA" in the amount of \$7,500.00, representing 75%
26 of the total penalty; and (b) one check made payable to "The Chanler Group in Trust for
27 Englander" in the amount of \$2,500.00, representing 25% of the total penalty. Two separate
28

1 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the
2 addresses listed in Section 4.3 below.

3 **4.3 Payment Procedures**

4 **4.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 5 (a) All payments owed to Englander, pursuant to Sections 4.1 through
6 4.2, shall be delivered to the following payment address:

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

- 12 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
13 Sections 4.1 through 4.2, shall be delivered directly to OEHHA (Memo
14 line "Prop 65 Penalties") at the following addresses:

15 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street
26 Sacramento, CA 95814

27 With a copy of the checks payable to OEHHA mailed to The Chanler
28 Group at the address set forth above in 4.3.1(a), as proof of payment to
OEHHA.

Any failure by defendant to deliver the above-referenced payments to either OEHHA or
The Chanler Group within two days of the required date shall result in imposition of a 10%
simple interest assessment on the undelivered payment(s) until delivery.

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1 **4.3.2 Issuance of 1099 Forms.** After each payment, QEP shall issue separate
2 1099 forms for each payment, as follows:

- 3 (a) For each penalty payment owed in Sections 4.1 through 4.2, a 1099
4 shall be issued to the Office of Environmental Health Hazard
5 Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
6 0284486) in the amount of 75% of the total penalty payment;
- 7 (b) For each penalty payment owed in Sections 4.1 through 4.2, a 1099
8 shall be issued to Englander, whose address and tax identification
9 number shall be furnished upon request, in the amount of 25% of
10 the total penalty payment.

11 **5. REIMBURSEMENT OF FEES AND COSTS**

12 The parties acknowledge that Englander and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
14 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
15 Englander then expressed a desire to resolve the fee and cost issue shortly after the other
16 settlement terms had been finalized. The parties then attempted to (and did) reach an accord on
17 the compensation due to Englander and his counsel under general contract principles and the
18 private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5,
19 for all work performed through the mutual execution of this agreement. QEP shall pay
20 \$50,000.00 for fees and costs incurred as a result of investigating, bringing this matter to QEP's
21 attention, and negotiating a settlement in the public interest. QEP shall issue a separate 1099 for
22 fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall
23 deliver payment on or before January 17, 2014, to the following address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

Any failure by defendant to deliver the above-referenced payments to The Chanler

1 Group within two days of the required date shall result in imposition of a 10% simple interest
2 assessment on the undelivered payment(s) until delivery.

3 **6. CLAIMS COVERED AND RELEASE**

4 **6.1 Englander's Releases of QEP**

5 **6.1.1** This Consent To Judgment is a full, final, and binding resolution between
6 Englander, on behalf of himself, his past and current agents, representatives, attorneys,
7 successors, and/or assignees, and in the interest of the general public, and QEP and its attorneys,
8 successors, licensors and assigns ("Defendant Releasees"), and all entities to which QEP directly
9 or indirectly distributes or sells Exemplar or Covered Products, including but not limited to
10 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
11 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could
12 have been asserted against Defendant Releasees and Downstream Defendant Releasees regarding
13 the failure to warn about exposure to the Listed Chemical arising in connection with Exemplar or
14 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
15 June 1, 2014. QEP's compliance with this Consent To Judgment shall constitute compliance with
16 Proposition 65 with respect to the Listed Chemical in the Exemplar or Covered Products after
17 June 1, 2014.

18 **6.1.2** Englander on behalf of himself, his past and current agents,
19 representatives, attorneys, successors, and/or assignees, and in the interest of the general public,
20 hereby waives with respect to Exemplar or Covered Products all rights to institute or participate
21 in, directly or indirectly, any form of legal action and releases all claims, including, without
22 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
23 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
24 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
25 unknown, fixed or contingent (collectively "claims"), against Defendant Releasees and
26 Downstream Defendant Releasees that arise under Proposition 65 or any other statutory or
27 common law claims that were or could have been asserted in the public interest, as such claims
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1 relate to Defendant Releasees' and Downstream Defendant Releasees' alleged failure to warn
2 about exposures to the Listed Chemical contained in the Exemplar or Covered Products.

3 **6.1.3** Englander also, in his individual capacity only and *not* in his representative
4 capacity, provides a general release herein which shall be effective as a full and final accord and
5 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
6 damages, losses, claims, liabilities and demands of Englander of any nature, character or kind,
7 known or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint
8 as to Exemplar or Covered Products manufactured, distributed or sold by Defendant Releasees.
9 Englander acknowledges that it is familiar with Section 1542 of the California Civil Code, which
10 provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
13 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
14 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
15 WITH THE DEBTOR.

16 Englander expressly waives and relinquishes any and all rights and benefits that
17 it may have under, or which may be conferred on it by the provisions of Section 1542 of
18 the California Civil Code as well as under any other state or federal statute or common
19 law principle of similar effect, to the fullest extent that it may lawfully waive such rights
20 or benefits pertaining to the released matters. In furtherance of such intention, the release
21 hereby given shall be and remain in effect as a full and complete release notwithstanding
22 the discovery or existence of any such additional or different claims or facts arising out of
23 the released matters.

24 This Section 6.1 release is expressly limited to those claims that arise under Proposition
25 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
26 identification of the Listed Chemical contained in the Exemplar or Covered Products and as such
27 claims are identified in the Proposition 65 60-Day Notice to Defendant.
28

1 This Section 6.1 release is expressly limited to any alleged violations that occur prior to
2 June 1, 2014 and does not release any person, party or entity from any liability for any violation
3 of Proposition 65 regarding the Exemplar or Covered Products that occur after June 1, 2014.

4 The Parties further understand and agree that this Section 6.1 release shall not
5 extend upstream to any entities, other than Defendant, that manufactured the Exemplar
6 or Covered Products or any component parts thereof, or any distributors or suppliers
7 who sold the Exemplar or Covered Products or any component parts thereof to
8 Defendant.

9 Upon court approval of the Consent To Judgment, the Parties waive their respective
10 rights to a hearing or trial on the allegations of the Complaint.

11 **6.2 QEP's Release of Englander**

12 **6.2.1** QEP waives any and all claims against Englander, his attorneys, and other
13 representatives for any and all actions taken or statements made (or those that could have been
14 taken or made) by Englander and his attorneys and other representatives, whether in the course
15 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
16 matter, and/or with respect to the Exemplar or Covered Products.

17 **6.2.2** QEP also provides a general release herein which shall be effective as a full
18 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
19 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of QEP of any nature,
20 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter
21 of the Action. QEP acknowledges that it is familiar with Section 1542 of the California Civil
22 Code, which provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
25 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
26 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
27 WITH THE DEBTOR.

28 QEP expressly waives and relinquishes any and all rights and benefits that it may
have under, or which may be conferred on it by the provisions of Section 1542 of the

1 California Civil Code as well as under any other state or federal statute or common law
2 principle of similar effect, to the fullest extent that it may lawfully waive such rights or
3 benefits pertaining to the released matters. In furtherance of such intention, the release
4 hereby given shall be and remain in effect as a full and complete release notwithstanding
5 the discovery or existence of any such additional or different claims or facts arising out of
6 the released matters.

7 **7. SEVERABILITY**

8 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
9 this Consent To Judgment are held by a court to be unenforceable, the validity of the enforceable
10 provisions remaining shall not be adversely affected, unless the Court finds that any
11 unenforceable provision is not severable from the remainder of the Consent To Judgment.

12 **8. COURT APPROVAL**

13 This Consent To Judgment is effective upon execution but must also be approved by the
14 Court. Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
15 California Health & Safety Code §25249.7(f) and approval of the FAC and Defendant shall
16 support approval of the FAC and the entry of this Consent Judgment and entry of Judgment
17 thereupon. The Consent to Judgment shall become null and void if, for any reason, it is not
18 approved and entered by the Court within nine months after it has been fully executed by all
19 Parties. If the Consent to Judgment becomes null and void after any payment of monies under
20 this agreement to The Chanler Group in trust, such monies shall be returned to defendant by
21 payment of such monies to its counsel, in trust for QEP.

22 **9. GOVERNING LAW**

23 The terms of this Consent To Judgment shall be governed by the laws of the State of
24 California.

25 **10. NOTICES**

26 When any Party is entitled to receive any notice under this Consent To Judgment, the
27 notice shall be sent by certified mail and electronic mail to the following:

28 For QEP to:

1 Leonard Gould, President
2 Q.E.P. Co., Inc.
3 1001 Broken Sound Parkway NW
4 Boca Raton, FL 33487

5 For Englander to:

6 Proposition 65 Coordinator
7 The Chanler Group
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710-2565

11 Any Party may modify the person and address to whom the notice is to be sent by sending each
12 other Party notice by certified mail and/or other verifiable form of written communication.

13 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

14 Englander agrees to comply with the reporting form requirements referenced, in
15 California Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent
16 Judgment.

17 **12. MODIFICATION**

18 This Consent To Judgment may be modified only: (1) by written agreement of the
19 Parties; or (2) upon a successful motion of any party and entry of a modified Consent To
20 Judgment by the Court.

21 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

22 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
23 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
24 obtaining such approval, Englander and QEP and their respective counsel agree to mutually
25 employ their best efforts to support the entry of this agreement as a Consent To Judgment and
26 obtain approval of the Consent To Judgment - sufficient to render a formal judgment approving
27 this agreement - by the Court in a timely manner. Any effort by plaintiff or QEP to impede
28 judicial approval of this Consent To Judgment shall subject such impeding party to liability for
attorney fees and costs incurred by plaintiff or his counsel in their efforts to meet or oppose
QEP's impeding conduct.

1 **14. ENTIRE AGREEMENT**

2 This Consent To Judgment contains the sole and entire agreement and understanding of
3 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any Party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **15. ATTORNEY'S FEES**

9 15.1 Should Englander prevail on any motion, application for order to show cause or
10 other proceeding to enforce a violation of this Agreement, Englander shall be entitled to his
11 reasonable attorney fees and costs incurred as a result of such motion, order or application,
12 consistent with C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to
13 show cause or other proceeding to enforce a violation of this Consent Judgment, Defendant may
14 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or
15 application upon a finding that Englander's prosecution of the motion or application lacked
16 substantial justification. For purposes of this Agreement, the term substantial justification shall
17 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
18 2016, et seq.

19 15.2 Except as specifically provided in the above paragraph and in Section 5, each
20 Party shall bear its own costs and attorney's fees in connection with this action.

21 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
22 sanctions pursuant to law.

23 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

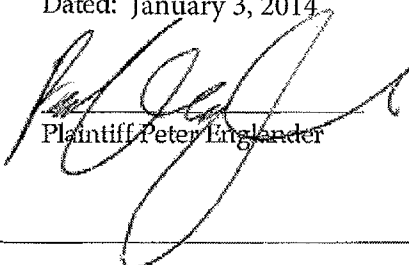

24 This Consent To Judgment may be executed in counterparts and by facsimile or portable
25 document format (PDF), each of which shall be deemed an original, and all of which, when taken
26 together, shall constitute one and the same document.

27
28

1 17. AUTHORIZATION

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

5 IT IS SO AGREED

6 Dated: January 3, 2014 7  8 Plaintiff Peter Englander 9	10 Dated: ^{December 2, 2013} November __, 2013 11  12 Leonard Gould, President 13 Q.E.P. Co., Inc. 14 Lawrence P. Lennie 15 SVP + General Counsel 16 17 18 19 20 21 22 23 24 25 26 27 28
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