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FILED *mc*
San Francisco County Superior Court

JUL 18 2014

CLERK OF THE COURT
BY: MA. BENIGNA D. GOODMAN *mg*
Deputy Clerk

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

PETER ENGLANDER,
Plaintiff,
v.
HILLSDALE FURNITURE LLC, *et al.*,
Defendants.

Case No. CGC-13-534926

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

Date: May 1, 2014
Time: 9:30 a.m.
Dept. 302
Judge: Hon. Ernest L. Goldsmith

Reservation No. 031114-18

EXHIBIT 1

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PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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PETER ENGLANDER,
Plaintiff,
v.
HILLSDALE FURNITURE LLC; *et al.*,
Defendants.

Case No. CGC-13-534926
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

1 **1.6 Notices of Violation**

2 On or about March 27, 2013, Englander served Hillsdale and certain requisite public
3 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Hillsdale was in
4 violation of Proposition 65 for failing to warn its customers and consumers in California that the
5 Stool Products expose users to DEHP. Thereafter, on October 25, 2013, Englander served Hillsdale
6 and the same requisite public enforcement agencies with a second 60-Day Notice of Violation
7 (“Second Notice”) alleging that Hillsdale was in violation of Proposition 65 for failing to warn its
8 customers and consumers in California that the Furniture Products expose users to DEHP. The
9 Notice and Second Notice are referred to collectively hereinafter as the “Notices.” To the best of the
10 Parties’ knowledge, no public enforcer has elected to enforce the claims alleged in the Notices.

11 **1.7 Complaint**

12 On October 17, 2013, Englander filed the instant action (“Complaint”), naming Hillsdale as a
13 defendant for the violations of Health and Safety Code section 25249.6 that are the subject of the
14 Notice. At the time the Complaint was filed, Englander had not perfected standing to file an action
15 for the alleged unwarned exposures to DEHP from the Furniture Products that are the subject of the
16 October 25, 2013 Notice. Upon the latter of the day that is sixty-six days from the date of service of
17 the Second Notice, or the Effective Date, provided no public enforcer has elected to enforce the
18 violations alleged in the October 25, 2013, notice of violation, the Complaint shall be deemed
19 amended *nunc pro tunc* to include Englander’s allegations against Hillsdale for unwarned exposures
20 to DEHP from Furniture Products sold in California.

21 **1.8 No Admission**

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

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Hillsdale as to the allegations in the Complaint, that venue is proper in the County of
6 San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
7 Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" means the date that the
10 Court grants the motion to approve this Consent Judgment contemplated by Section 10.

11 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

12 **2.1 Reformulated Products**

13 Commencing on the Effective Date, and continuing thereafter, Hillsdale shall only purchase
14 for sale in California or manufacture for sale in California "Reformulated Products," or Products that
15 are sold with a clear and reasonable warning pursuant to Section 2.2. For purposes of this Consent
16 Judgment, Reformulated Products contain a maximum of 1,000 parts per million (0.1%) each of
17 DEHP, butyl benzyl phthalate ("BBP") and/or di-n-butyl phthalate ("DBP") in any component
18 analyzed pursuant to EPA testing methodologies 3580A and 8270C or equivalent methodologies
19 utilized by state or federal agencies for the purpose of determining DEHP, BBP, or DBP content in a
20 solid substance.

21 **2.2 Interim Warnings for Non-Reformulated Products**

22 Commencing on the Effective Date, for all Products other than Reformulated Products,
23 Hillsdale agrees that it will only sell such Products in California with a clear and reasonable warning
24 in accordance with this Section.

25 Hillsdale shall affix the warning directly to the Product, or on Product packaging or labeling,
26 if any. The warning shall be prominently placed with such conspicuousness as compared with other
27 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
28 individual under customary conditions before purchase or use. Any warning Hillsdale elects to

1 employ shall be provided in a manner such that the consumer or user understands to which *specific*
2 Product the warning applies, so as to minimize the risk of confusion.

3 Any warning provided under this Consent Judgment shall contain the following statement:

4 **WARNING:** This product contains a chemical known to the
5 State of California to cause birth defects or other
6 reproductive harm.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
10 to in this Consent Judgment, Hillsdale shall pay the following civil penalties as set forth in Sections
11 3.1.1 and 3.1.2 below. Each civil penalty payment shall be allocated according to Health and Safety
12 Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the
13 California Office of Environmental Health Hazard Assessment ("OEHHA") and twenty-five percent
14 (25%) of the funds remitted to Englander.

15 **3.1.1 Initial Civil Penalty**

16 Within fifteen days of the date that this Consent Judgment is fully executed by the
17 Parties, Hillsdale shall make an initial civil penalty payment of Eight Thousand Dollars (\$8,000.00).
18 Hillsdale shall provide its payment in two checks for the following amounts made payable to: (a)
19 "OEHHA" in the amount of Six Thousand Dollars (\$6,000.00); and (b) "The Chanler Group in Trust
20 for Peter Englander" in the amount of Two Thousand Dollars (\$2,000.00).

21 **3.1.2 Final Civil Penalty**

22 On July 1, 2014, Hillsdale shall make a final civil penalty payment of Sixteen
23 Thousand Dollars (\$16,000.00). Pursuant to title 11 California Code of Regulations, section 3203(c),
24 Englander agrees that the final civil penalty payment shall be waived in its entirety if, no later than
25 June 15, 2014, an officer of Hillsdale provides Englander with written certification that all of the
26 Products manufactured or received by Hillsdale for sale in California are Reformulated Products as
27 defined by Section 2.1, and that Hillsdale will continue to offer only Reformulated Products in
28 California in the future. The option to certify reformulation in lieu of making the final civil penalty

1 payment required by this Section is a material term, and with regard to such term, time is of the
2 essence.

3 **3.2 Reimbursement of Fees and Costs**

4 The parties acknowledge that Englander and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
6 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
7 the other settlement terms had been finalized, Hillsdale expressed a desire to resolve Englander's fees
8 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
9 Englander and his counsel under general contract principles and the private attorney general doctrine
10 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
11 mutual execution of this Consent Judgment. Hillsdale shall pay Thirty-Five Thousand Dollars
12 (\$35,000.00) for the fees and costs incurred by Englander investigating, bringing this matter to
13 Hillsdale's attention, and negotiating a settlement in the public interest.

14 **3.3 Payment Procedures**

15 Except the final civil penalty payment required by Section 3.1.2, all payments due under this
16 agreement shall be paid within fifteen (15) days of the date that this Consent Judgment is fully
17 executed by the Parties. Payments to Englander and his counsel will be held in trust until such time
18 as the Court grants the motion to approve the settlement contemplated by Section 10. Payments to
19 OEHHA shall remain with Hillsdale or its counsel and shall be disbursed within five (5) days of the
20 Effective Date.

21 Payments shall be made and delivered in accordance with the following subsections:

22 **3.3.1 Payment Addresses**

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

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

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2 (b) All payments and tax documentation for OEHHA shall be delivered directly
3 to OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
4 appropriate:

5 For United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery or Courier:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95812-4010

17 **3.3.2 Proof of Payment to OEHHA**

18 Hillsdale shall provide Englander's counsel with a copy of the checks sent to OEHHA
19 enclosed with the payments to Englander and his counsel sent to the address in Section 3.3.1(a).

20 **3.3.3 Required Tax Documentation**

21 Hillsdale agrees to provide an IRS 1099 form for its payments under this Consent
22 Judgment to each of the following payees: (a) "Office of Environmental Health Hazard Assessment"
23 (EIN: 68-0284486); (b) "Peter Englander," whose address and tax identification number shall be
24 furnished after this Consent Judgment is fully executed by the Parties; and (c) "The Chanler Group"
25 (EIN: 94-3171522).

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Englander's Public Release of Proposition 65 Claims**

28 Englander, acting on his own behalf and in the public interest, releases Hillsdale and its
parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,

1 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
2 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products sold by
3 Hillsdale prior to the Effective Date, as set forth in the Notices. Compliance with the terms of this
4 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP
5 from the Products.

6 **4.2 Englander’s Individual Release of Claims**

7 Englander, in his individual capacity only and *not* in his representative capacity, also provides
8 a release to Hillsdale, Releasees, and Downstream Releasees which shall be effective as a full and
9 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
10 attorneys’ fees, damages, losses, claims, liabilities and demands of Englander of any nature, character
11 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
12 exposures to DEHP, BBP, or DBP in the Products sold or distributed for sale by Hillsdale before the
13 Effective Date.

14 **4.3 Hillsdale’s Release of Englander**

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

20 **5. COURT APPROVAL**

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

24 **6. SEVERABILITY**

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

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1 **7. ENFORCEMENT OF CONSENT JUDGMENT**

2 Any Party may, by motion or application for an order to show cause before the Superior Court
3 for the County of San Francisco, enforce the terms and conditions contained in this Consent
4 Judgment. A Party may file such a motion or application, however, only after that Party asserting a
5 breach or other violation, first provides 30 days' notice to the Party allegedly failing to comply with
6 the Consent Judgment, and attempts to resolve the alleged failure to comply in an open and good
7 faith manner for a period of no less than 30 days. Englander agrees that for a claimed breach by
8 Hillsdale after the Effective Date relating to the chemical content of the Products, or the provision of
9 warnings under this Consent Judgment by Hillsdale, that he will proceed under this Section to allow
10 Hillsdale an opportunity to correct the alleged violations, including, without limitation, by providing
11 warnings for the Products or recalling Products in the California market. The Parties further agree
12 and understand that the meet and confer requirement of this Section 7 shall not apply to an
13 application or motion to enforce the monetary settlement terms specified in Section 3.

14 **8. GOVERNING LAW**

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

22 **9. NOTICE**

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

26 For Hillsdale:

27 David Brill, Chief Operating Officer
28 Hillsdale Furniture LLC
 3901 Bishop Lane

1 Louisville, KY 40218

2 with a copy to:

3 Merrit M. Jones, Esq.
4 Bryan Cave LLP
Two Embarcadero Center, Suite 1410
San Francisco, CA 94111

5 For Englander:

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

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

11 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

15 **11. POST EXECUTION ACTIVITIES**

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

24 **12. MODIFICATION**

25 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
26 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
27 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: January 3, 2014

Date: 12/26/13

By: 

PETER ENGLANDER

By: 

David Brill, Chief Operating Officer
HILLSDALE FURNITURE LLC