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Laralei Paras, State Bar No. 203319
THE CHANLER GROUP
2560 Ninth Street
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Attorneys for Plaintiff
PETER ENGLANDER

ENDORSED
FILED
San Francisco County Superior Court

OCT 25 2016

CLERK OF THE COURT
By: FELICIA M. GREEN
Deputy Clerk

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

PETER ENGLANDER,
Plaintiff,
v.
CARLISLE FOOD SERVICE PRODUCTS,
INC.; and DOES 1-150, inclusive,
Defendants.

Case No. CGC-16-553451
[PROPOSED]
**JUDGMENT PURSUANT TO TERMS
OF PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**
Date: October 25, 2016
Time: 9:30 a.m.
Courtroom: 302
Judge: Hon. Harold E. Kahn
Reservation No.: 08301025-06

1 In the above-entitled action, Plaintiff Peter Englander and Defendant Carlisle Food
2 Service Products, Inc. (collectively, the "Parties") having agreed through their respective counsel
3 that judgment be entered pursuant to the terms of their settlement agreement in the form of a
4 Consent Judgment, and following this Court's issuance of an Order Approving Proposition 65
5 Settlement and Consent Judgment.

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

11 **IT IS SO ORDERED.**

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Dated: OCT 25 2016

WALTER W. KAHN
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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6 PETER ENGLANDER

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11 Attorneys for Defendant
12 CARLISLE FOOD SERVICE PRODUCTS, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17 PETER ENGLANDER,

18 Plaintiff,

19 v.

20 CARLISLE FOOD SERVICE PRODUCTS,
21 INC.; and DOES 1-150, inclusive,

22 Defendants.

Case No. CGC-16-553451

[PROPOSED]
CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*,
& Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”), and defendant Carlisle Food Service Products, Inc. (“CFSP”), with Englander and
5 CFSP each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Englander is an individual residing in California and alleges that he seeks to promote
8 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 CFSP employs ten or more individuals and is alleged to be a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“**Proposition 65**”).

14 **1.4 General Allegations**

15 Englander alleges that CFSP manufactures, distributes, sells, and offers for sale in California,
16 products with vinyl/PVC grips containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”),
17 above the allowable state limits without first providing the requisite Proposition 65 exposure
18 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to
19 cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products (hereinafter “**Products**”) covered by this Consent Judgment are the following
22 products with vinyl/PVC parts or components containing one or more phthalates that are
23 manufactured, imported, distributed, sold and/or offered for sale in California by CFSP: vinyl/PVC
24 dustpan grips containing DEHP including, but not limited to, *Lobby Pan Metal, #4066300, UPC #0*
25 *85404 14907 4*; tongs with vinyl/PVC handles/grips containing DEHP including, but not limited to,
26 *Dura-Kool Tong 16”, Item # 60756603*; vinyl covers containing DEHP including, but not limited to,
27 *Clear Vinyl Transport Cover, Item # DXDHOR20UCOVR2*; vinyl flatware carriers containing DEHP
28 including, but not limited to, *Carrier 6 Compartment, Item #CW6C38*; squeegees with vinyl/PVC

1 blades containing DEHP including, but not limited to, *24" Push/Pull Vinyl Squeegee, Item*
2 *#36602400*; vinyl/PVC washer bases (suction cups used in sink) containing di-isodecyl phthalate
3 ("DIDP") including, but not limited to, *8" Triple Glass Washer White, Item #4046102*; vinyl/PVC
4 tethers containing DIDP and diisononyl phthalate ("DINP") including, but not limited to, *Hand &*
5 *Nail Brush Kit - with 36" coiled security line, Item #2454002100*; and vehicle brushes with
6 vinyl/PVC bumpers containing DEHP, DIDP and DINP including, but not limited to, *Vehicle Wash*
7 *Brush With Polystyrene Bristles 9", Item #36120902*.

8 **1.6 Notices of Violation**

9 On or about September 24, 2015, Englander served CFSP, the California Attorney General,
10 and all other requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"),
11 alleging that CFSP violated Proposition 65 when it failed to warn its customers and consumers in
12 California of the health hazards associated with exposures to DEHP from vinyl/PVC dustpan grips.

13 On or about August 8, 2016, Englander served CFSP, the California Attorney General, and all
14 other requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation
15 ("Supplemental Notice"), alleging that CFSP violated Proposition 65 when it failed to warn its
16 customers and consumers in California of the health hazards associated with exposures to DEHP
17 from tongs with vinyl/PVC handles/grips, vinyl transport covers, vinyl flatware carriers, and
18 squeegees with vinyl/PVC blades, exposures to DIDP from vinyl/PVC washer bases (suction cups
19 used in sink), exposures to DIDP and/or DINP from vinyl/PVC tethers, and exposures to DEHP,
20 DIDP and/or DINP from vehicle brushes with vinyl/PVC bumpers.

21 The Notice and Supplemental Notice are collectively referred to herein as the "Notices." No
22 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
23 alleged in the Notices.

24 **1.7 Complaint**

25 On July 11, 2016, Englander filed the instant action ("Complaint"), for the violations of
26 Proposition 65 that are the subject of the Notice. As of the Effective Date, the Complaint shall be
27 deemed amended to incorporate Englander's allegations in the Supplemental Notice, the definition of
28 the term Products in the Complaint shall be deemed amended to include all Products as defined in

1 this Consent Judgment that are manufactured, imported, distributed and/or offered by CFSP for sale
2 in the State of California as set forth in the Notices, so long as no public enforcer has commenced
3 prosecuting the allegations set forth in the Supplemental Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over CFSP as to the allegations in the Complaint, that venue is proper in San Francisco
16 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
17 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
20 the motion for approval of the Consent Judgment contemplated by Section 5 is granted by the Court.

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

22 Commencing on October 1, 2016, and continuing thereafter, CFSP agrees to only
23 manufacture for sale or distribute for sale in California, "Reformulated Products." For purposes of
24 this Consent Judgment, "Reformulated Products" are defined as Products with a maximum DEHP,
25 DIDP and/or DINP concentration of 1,000 parts per million (0.1 %) in any vinyl/PVC part or
26 component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
27 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose
28 of determining DEHP, DIDP and DINP content in a solid substance.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, CFSP shall pay \$5,000 in civil penalties. CFSP shall provide its
5 payment in a single check made payable to "Peter Englander, Client Trust Account." The civil
6 penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and
7 (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental
8 Health Hazard Assessment ("OEHHA"), and twenty-five percent (25%) of the funds remitted to
9 Englander. Englander's counsel shall be responsible for delivering any penalty paid under this
10 Consent Judgment to OEHHA.

11 **3.2 Representations**

12 CFSP represents that the sales data, product reformulation and/or knowledge of DEHP that it
13 provided to Englander in negotiating this Settlement Agreement was truthful and a material factor
14 upon which Englander relied to determine the amount of civil penalties assessed pursuant to Health &
15 Safety Code § 25249.7. If, within nine months of the Effective Date, Englander discovers and
16 presents to CFSP evidence demonstrating that the preceding representation was materially inaccurate,
17 then CFSP shall have 30 days to meet and confer regarding Englander's contention. In the event the
18 30-day meet and confer period passes without any such resolution between Englander and CFSP,
19 then Englander shall be entitled to make an appropriate motion to the Court to cure any breach of this
20 Section 3.2 of the Settlement Agreement pursuant to Code of Civil Procedure § 664.6. The
21 prevailing Party on the motion shall be entitled to its reasonable attorneys' fees as approved by the
22 Court. The parties hereby stipulate and request for the Court to retain jurisdiction over the parties to
23 enforce the settlement until the expiration of the nine (9) months following the Effective Date
24 pursuant to Code of Civil Procedure § 664.6.

25 **3.3 Reimbursement of Attorney's Fees and Costs**

26 The parties acknowledge that Englander and his counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
28 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after

1 the other settlement terms had been finalized, CFSP expressed a desire to resolve Englander's fees
2 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
3 Englander and his counsel under general contract principles and the private attorney general doctrine
4 codified at Code of Civil Procedure section 1021.5 for all work performed through the mutual
5 execution of this Consent Judgment. CFSP shall pay \$45,000 for the fees and costs incurred by
6 Englander investigating, bringing this matter to the attention of CFSP's management, litigating, and
7 negotiating a settlement in the public interest.

8 **3.4 Payments Englander in Trust**

9 All payments due under this Consent Judgment shall be delivered within five (5) business
10 days from the date of receipt of the Court Order granting the motion for approval of this Consent
11 Judgment.

12 **3.5 Payment Address**

13 All payments required by this Consent Judgment shall be delivered to:

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

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Englander's Public Release of Proposition 65 Claims**

21 Englander, acting on his own behalf and in the public interest, releases CFSP and its parents,
22 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
23 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
24 Products including, but not limited to, its downstream distributors, wholesalers, customers,
25 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
26 any violations arising under Proposition 65 for the failure to warn about exposures to DEHP, DIDP
27 and/or DINP from Products manufactured for sale or distributed for sale by CFSP prior to the
28 Effective Date, as set forth in the Notices. Compliance with the terms of this Consent Judgment
constitutes compliance with Proposition 65 with respect to the failure to warn about exposures to
DEHP, DIDP and/or DINP in Products sold by CFSP after the Effective Date.

1 **4.2 Englander's Individual Release of Claims**

2 Englander, in his individual capacity only and *not* in his representative capacity, also provides
3 a release to CFSP, Releasees, and Downstream Releasees which shall be effective as a full and final
4 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any nature, character
6 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to DEHP, DIDP and/or DINP in Products manufactured for sale or distributed for sale by
8 CFSP before the Effective Date.

9 **4.3 CFSP's Release of Englander**

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

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall
17 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
18 has been fully executed by the Parties, or by such additional time as the Parties may agree to in
19 writing.

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
27 otherwise rendered inapplicable by reason of law generally, or as to the Products, then CFSP may
28 provide written notice to Englander of any asserted change in the law, and shall have no further

1 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
2 Products are so affected.

3 **8. NOTICE**

4 All correspondence and notice required by this Consent Judgment shall be in writing and sent
5 by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a
6 recognized overnight courier to the following addresses:

7 For CFSP:

8 Trent Freiberg, President
9 Carlisle Food Service Products, Inc.
10 4711 East Hefner Road
11 Oklahoma City, OK 73131

11 with a copy to:

12 Jay W. Connolly
13 Seyfarth Shaw LLP
14 560 Mission Street, 31st Floor
15 San Francisco, CA 94105-2930

7 For Englander:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **10. POST EXECUTION ACTIVITIES**

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

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11. MODIFICATION

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

12. 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: 8/5/2016

Date: 8/9/16

By: 

PETER ENGLANDER

By: 

Trent Freiberg, President
CARLISLE FOOD SERVICE
PRODUCTS, INC.