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PETER ENGLANDER

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 23 2016

CLERK OF THE COURT
BY: JOSE RIOS MERIDA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

TENACIOUS HOLDINGS, INC.; and DOES 1-150, inclusive,

Defendants.

Case No. CGC-16-549936

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

Date: June 23, 2016
Time: 9:30
Dept.: 302
Judge: Hon. Harold E. Kahn

Reservation No. 04290623-02

In the above-entitled action, plaintiff Peter Englander and defendant Tenacious Holdings, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent Judgment ("Consent Judgment"), and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on 6/23/16.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 6/23/16

/S/ HAROLD KAHN
JUDGE OF THE SUPERIOR COURT

HON. HAROLD KAHN

EXHIBIT A

Clifford A. Chanler, Bar No. 135534
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Attorneys for Plaintiff
PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

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Case No. CGC-16-549936

[PROPOSED] CONSENT JUDGMENT

1. INTRODUCTION

1.1 Peter Englander and Tenacious Holdings, Inc.

This Consent Judgment is entered into by and between Peter Englander. ("Englander" or "Plaintiff"), and Tenacious Holdings, Inc. ("Tenacious" or "Defendant"), with Plaintiff and Defendant collectively referred to as the "Parties."

1.2 Peter Englander

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

1.3 Tenacious Holdings, Inc.

Englander alleges that Tenacious employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

1.4 General Allegations

Englander alleges that Tenacious has manufactured, imported, distributed and/or sold gloves with vinyl/PVC components containing di(2-ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65 warnings. DEHP is listed under Proposition 65 a chemical known to cause cancer and birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are Gloves with vinyl/PVC components, including, but not limited to the *Tenacious Work Gear Ergodyne Proflex Hand Protection #820 (UPC# 7 20476 16224)*, manufactured, imported, distributed and/or sold by Tenacious, hereinafter specifically defined as "Covered Products."

1.6 Notice of Violation

On September 24, 2015, Englander served Tenacious and various public enforcement agencies, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on Tenacious' alleged failure to

warn consumers that the Covered Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1.7 Complaint

On January 15, 2016, Englander filed a complaint in the Superior Court in and for the County of San Francisco against Tenacious and Does 1 through 150, *Englander v. Tenacious Holdings, Inc., et al.*, Case No. CGC-16-549936 ("Complaint" or "Action"), alleging violations of Proposition 65, based on the alleged exposures to DEHP contained in Covered Products sold by Tenacious.

1.8 No Admission

Tenacious denies the material, factual and legal allegations contained in Englander's Notice and Complaint and maintains that all products that it has sold, manufactured, imported and/or distributed in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Tenacious of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Tenacious of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Tenacious' obligations, responsibilities, and duties under this Consent Judgment as to Covered Products.

1.9 Consent to Jurisdiction

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

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" means five business days after the date on which the Motion for Approval of the Consent Judgment is granted by the Court.

2. INJUNCTIVE RELIEF: WARNINGS & REFORMULATION COMMITMENTS

Commencing on the effective date, Tenacious shall not ship or offer to be shipped for sale in California any Covered Products containing the listed chemical unless such Covered Products are sold or shipped with clear and reasonable warnings as set forth below or such Products qualify as Reformulated Products, as defined in Section 2.3 below.

2.1 Warnings Commitment

With respect to Covered Products sold or shipped with warnings, each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For Products containing DEHP, Tenacious shall use the following warning language:

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

2.2 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Commitment

Tenacious hereby commits that one hundred percent (100%) of the Covered Products that they offer for sale in California after April 30, 2017, shall qualify as Reformulated Products or shall otherwise be exempt from the warning requirements of Section 2.1. For purposes of this Consent Judgment, "Reformulated Products" are defined as Covered Products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Consent Judgment, Tenacious shall pay a total of $10,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Englander. Tenacious shall issue the above payments as follows:

3.1 Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Consent Judgment, Tenacious agrees to pay $10,000.00 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Englander, and delivered to the address in Section 3.3 herein. On or before the Effective Date, Tenacious shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of $7,500.00 and (b) "Peter Englander, Client Trust Account" in the amount of $2,500.00.

3.2 Reimbursement of Plaintiff's Attorneys Fees and Costs

The Parties reached an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Tenacious agrees to pay $40,000.00 to Englander and his counsel for all attorneys' fees and costs incurred investigating, bringing this matter to the attention of Tenacious' management, initiating the Action and negotiating and obtaining approval of this settlement, that provides a significant public benefit. Tenacious' payment of attorneys' fees and costs shall be due on or before the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

3.3 Payment Procedures

All payments owed by Tenacious pursuant to Sections 3.1 and 3.2, shall be delivered on or

before the Effective Date in three separate checks payable to: (i) "Peter Englander, Client Trust Account" in the amount of $2,500.00; (ii) "OEHHA" in the amount of $7,500.00; and (iii) "The Chanler Group" in the amount of $40,000.00, to:

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

At its option, Tenacious may make these payments via paper checks or wire transfers.

4. CLAIMS COVERED AND RELEASED

4.1 Englander's Release of Proposition 65 Claims

Englander acting on his own behalf and in the public interest releases Tenacious, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, stockholders, employees, attorneys, and each entity to whom Tenacious directly or indirectly distributes or sells Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), from all claims for violations of Proposition 65 based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, or sold by Tenacious prior to the Effective Date, including but not limited to all claims that were actually raised, or could have been raised, by Englander in the Action. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Covered Products as set forth in the Notice.

4.2 Englander's Individual Release of Claims

Englander also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to Proposition 65 Listed Chemicals in Covered Products manufactured, distributed or sold by Tenacious.

4.3 Tenacious' Release of Englander

Tenacious on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Englander, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Englander and his attorneys and other representatives prior to the Effective Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to Covered Products.

5. COURT APPROVAL

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

6. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable by preemption or reason of law generally as to Covered Products, then Tenacious shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

To Tenacious:

Susan Horvath, Vice President &
Chief Financial Officer
Tenacious Holdings, Inc.
1020 Bandana Boulevard East, Ste. 220
St. Paul, MN 55108

To Englander:

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

With copies to:

Cooper S. Ashley, Esq.
Maslon, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Englander and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Englander and Tenacious agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Englander shall draft and file, and Tenacious shall join. If any third party objection to the noticed motion is filed, Englander and Tenacious shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. MODIFICATION

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

13. AUTHORIZATION

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

AGREED TO:

Date: 4/9/2016

By: _____
Plaintiff, Peter Englander

AGREED TO:

Date: _____

By: _____
Susan Horvath, Vice President &
Chief Financial Officer
Tenacious Holdings, Inc.

12. MODIFICATION

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

13. AUTHORIZATION

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

AGREED TO:

Date: _____

By: _____
Plaintiff, Peter Englander

AGREED TO:

Date: April 13, 2016

By: Susan Horvath
Susan Horvath, Vice President &
Chief Financial Officer
Tenacious Holdings, Inc.