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FILED
San Francisco County Superior Court

FEB 27 2018

5 Attorneys for Plaintiff
6 PETER ENGLANDER

CLERK OF THE COURT
BY: *Gene Gonzales* Deputy Clerk

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

12 PETER ENGLANDER,
13 Plaintiff,
14 v.
15 ARCTIC CAT INC., and DOES 1-150,
16 inclusive,
17 Defendants.

Case No. CGC-17-560070
66
[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: February 27, 2018
Time: 9:30 a.m.
Courtroom: 302
Judge: Hon. Harold E. Kahn

Reservation No.: 01110227-01 RICHARD B. ULMER

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

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and
7 Safety Code § 25249.7(f)(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: 2/27/18

Richard Ulmer (Ulmer)
JUDGE OF THE SUPERIOR COURT
RICHARD ULMER

Exhibit 1

1 Laralei Paras, State Bar No. 203319
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3 Berkeley, CA 94710-2565
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6 PETER ENGLANDER

7 Jad T. Davis, State Bar No. 219947
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8 KUTAK ROCK LLP
5 Park Plaza, Suite 1500
9 Irvine, CA 92614
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10 Facsimile: (949) 417-5394
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12 Attorneys for Defendant
13 ARCTIC CAT INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17

18 PETER ENGLANDER,
19 Plaintiff,
20 v.
21 ARCTIC CAT INC., and DOES 1-150,
22 inclusive,
23 Defendants.

Case No. CGC-17-560070
[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 Peter Englander (“Englander” or
4 “Plaintiff”) and Arctic Cat Inc. (“Arctic Cat” or “Defendant”), with Englander and Arctic Cat each
5 individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual
6 residing in the State of California who seeks to promote awareness of exposures to toxic chemicals
7 and to improve human health by reducing or eliminating hazardous substances used in consumer
8 products. Arctic Cat employs ten or more persons and is a person in the course of doing business for
9 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
10 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

11 **1.2 General Allegations**

12 Englander alleges that Arctic Cat manufactures, sells, and distributes for sale in California,
13 gloves with vinyl/PVC components containing the phthalate chemical di(2-ethylhexyl)phthalate
14 (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or
15 other reproductive harm. Englander alleges that Arctic Cat failed to provide the health hazard
16 warning required by Proposition 65 for exposures to DEHP from the products.

17 **1.3 Products Description**

18 The products covered by this Consent Judgment are limited to: (1) gloves with vinyl/PVC
19 components containing DEHP that are manufactured or distributed by Arctic Cat and sold or offered
20 for sale in California, including without limitation *Arctic Cat Genuine Parts & Accessories*
21 *Performance Gloves, #5252-260, UPC #8 84646 35961 2*, and *Arctic Cat Mountain Tec Gloves,*
22 *#5252-260, UPC #8 84646 35961 2*;; and (2) stickers containing DEHP that are manufactured or
23 distributed by Arctic Cat and sold or offered for sale in California, including without limitation *Arctic*
24 *Cat Tucker Team Arctic Sticker Sheet, 5273-111, UPC #8 84646 68552 0* (“Products”).

25 **1.4 Notices of Violation**

26 On October 14, 2016, Englander served Arctic Cat and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Arctic Cat violated Proposition
28 65 when it failed to warn its customers and consumers in California of the health hazards associated

1 with exposures to DEHP from its *Arctic Cat Genuine Parts & Accessories Performance Gloves*,
2 #5252-260, UPC #8 84646 35961 2, and *Arctic Cat Mountain Tec Gloves*, #5252-260, UPC #8
3 84646 35961 2, with vinyl/PVC components containing DEHP.

4 On or about December 13, 2017, Englander served Arctic Cat and the requisite public
5 enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”),
6 alleging that Arctic Cat violated Proposition 65 when it failed to warn its customers and consumers in
7 California of the health hazards associated with exposures to DEHP from its Products.

8 The Notice and Supplemental Notice are collectively referred to herein as the “Notices.” To
9 the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting
10 the allegations set forth in the Notices.

11 **1.5 Complaint**

12 On July 11, 2017, Englander filed the instant action (“Complaint”), for the violations of
13 Proposition 65 that are the subject of the Notice. As of the Effective Date, the Complaint shall be
14 deemed amended to incorporate Englander’s allegations in the Supplemental Notice, the definition of
15 the term Products in the Complaint shall be deemed amended to include all Products as defined in
16 this Consent Judgment as set forth in the Notices, so long as no public enforcer has commenced
17 prosecuting the allegations set forth in the Supplemental Notice.

18 **1.6 No Admission**

19 Arctic Cat denies the material, factual, and legal allegations contained in the Notices and
20 Complaint, and maintains that all of the products that it has sold and distributed in California,
21 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
22 Judgment shall be construed as an admission by Arctic Cat of any fact, finding, conclusion, issue of
23 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
24 as an admission by Arctic Cat of any fact, finding, conclusion, issue of law, or violation of law, such
25 being specifically denied by Arctic Cat. This Section shall not, however, diminish or otherwise affect
26 Arctic Cat’s obligations, responsibilities, and duties under this Consent Judgment.

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1 **1.7 Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Arctic Cat as to the allegations in the Complaint, that venue is proper in the City and
4 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
5 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

6 **1.8 Effective Date**

7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
8 which the motion for approval of the Consent Judgment contemplated by Sections 5 and 10 is granted
9 by the Court.

10 **2. INJUNCTIVE RELIEF: WARNING AND PRODUCT REFORMULATION**

11 **2.1 Reformulation Products**

12 Commencing on the Effective Date and continuing thereafter, Arctic Cat agrees to only sell,
13 manufacture or distribute Products sold or offered for sale in California that are (a) "Reformulated
14 Products"; or (b) accompanied by clear and reasonable warning pursuant to Section 2.2 below. For
15 purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing no
16 more than 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to
17 Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent
18 methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a
19 solid substance.

20 **2.2 Clear and Reasonable Warnings**

21 Warnings shall be prominently placed with such conspicuousness as compared with other
22 words, statements, designs or devices as to render it likely to be read and understood by an ordinary
23 individual under customary conditions prior to exposure. Arctic Cat shall affix a warning to the
24 packaging, labeling, or directly on any Product(s) that are not Reformulated Product(s) defined in
25 Section 2.1, above, sold, manufactured, or distributed for sale in California that states:

26 **⚠ WARNING:** This product can expose you to chemicals including
27 DEHP, which are known to the State of California to
28 cause cancer and birth defects or other reproductive harm.
 For more information, go to www.P65Warnings.ca.gov.

1 **3. MONETARY TERMS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in
4 the Notices or referred to in this Settlement Agreement, Arctic Cat agrees to pay \$2,500 in civil
5 penalties. The penalty payment will be allocated in accordance with California Health and Safety
6 Code § 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
7 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
8 amount paid to Englander, and delivered to the address in Section 3.3 herein. Within five days of the
9 Effective Date, Arctic Cat shall pay the civil penalty in two checks for the following amounts made
10 payable to: (a) "OEHHA" in the amount of \$1,875 and (b) "Peter Englander, Client Trust Account"
11 in the amount of \$625.

12 **3.2 Attorneys' Fees and Costs**

13 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
15 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
16 the other settlement terms had been reached, Arctic Cat expressed a desire to resolve Englander's
17 fees and costs. The Parties reached an accord on the compensation due to Englander and his counsel
18 under general contract principles and the private attorney general doctrine codified at Code of Civil
19 Procedure § 1021.5 for all work performed in this matter. Under these legal principles, within five
20 days of the Effective Date, Arctic Cat agrees to pay \$33,500 in the form of a check made payable to
21 "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to the attention
22 of Arctic Cat's management, and negotiating a settlement that provides a significant public benefit.

23 **3.3 Payment Address**

24 All payments under this Consent Judgment shall be 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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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Englander's Public Release of Arctic Cat**

3 This Consent Judgment is a full, final and binding resolution between Englander, acting on
4 his own behalf and in the public interest, and Arctic Cat, of any violation of Proposition 65 that was
5 or could have been asserted by Englander on behalf of himself, his past and current agents,
6 representatives, attorneys, successors, and assignees, against Arctic Cat, its parents, subsidiaries,
7 affiliated entities under common ownership, directors, officers, employees, attorneys, including
8 Textron Specialized Vehicles, Inc., and each entity to whom Arctic Cat directly or indirectly
9 distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers,
10 franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or
11 actual failure to warn about exposures to DEHP from the Products sold or distributed for sale by
12 Arctic Cat in California before the Effective Date, as alleged in the Notices. Compliance with the
13 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the
14 failure to warn about exposures to DEHP in Products sold by Arctic Cat after the Effective Date.

15 In further consideration of the promises and agreements herein, Englander, on his own
16 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or
17 assignees, hereby waives all his rights to institute or participate in, directly or indirectly, any form
18 of legal action and releases all claims that he may have, including, without limitation, all actions
19 and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs,
20 fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees,
21 and attorneys' fees relating to the Products and alleged violations described herein, arising under
22 Proposition 65 with respect to exposures to DEHP from Products manufactured, distributed, sold
23 and/or offered for sale by Arctic Cat before the Effective Date.

24 **4.2 Arctic Cat's Release of Englander**

25 Arctic Cat, on its own behalf, and on behalf of its past and current agents, representatives,
26 attorneys, successors, and/or assignees, hereby waives any and all claims against Englander and his
27 attorneys and other representatives, for any and all actions taken or statements made by Englander
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1 and his attorneys and other representatives, whether in the course of investigating claims, seeking to
2 enforce Proposition 65 against it in this matter, or with respect to the Products.

3 **4.3 Express Waiver of Benefit of California Civil Code Section 1542**

4 The Consent Judgment covers both those claims arising from or relating to the Products and
5 any disputes that the Parties know about arising from or relating to the Products and any disputes that
6 the Parties may not know about arising from or relating to the Products. The Parties expressly waive,
7 solely as to the matters released in Sections 4.1 and 4.2 of this Consent Judgment, all rights afforded
8 by any statute that limits the effect of a release with respect to unknown claims. The Parties are
9 aware of and familiar with the provisions of California Civil Code § 1542, which provides as follows:

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

13 It is expressly acknowledged and understood by the Parties that the foregoing waiver of the
14 provisions of Section 1542 of the California Civil Code was separately bargained for and agreed
15 upon. The Parties to this Consent Judgment consent that this waiver of Section 1542 shall be given
16 full force and effect as to the matters released in this Consent Judgment.

17 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise

1 rendered inapplicable by reason of law generally, or as to the Products, then Arctic Cat may provide
2 written notice to Englander of any asserted change in the law, and shall have no further injunctive
3 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
4 so affected.

5 **8. NOTICE**

6 Unless specified herein, all correspondence and notice required to be provided pursuant to this
7 Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or
8 certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the
9 other at the following addresses:

10 For Arctic Cat:

11 John Rupp
12 Senior Associate General Counsel
13 Textron Inc.
40 Westminster Street
Providence, RI 02903

For Englander:

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

14 With a copy on behalf of Arctic Cat to:

15 Aaron A. Myers, Partner
16 Kutak Rock LLP
60 South Sixth Street, Suite 3400
17 Minneapolis, MN 55402-4400

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

20 **9. COUNTERPARTS: FACSIMILE/PDF SIGNATURES**

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

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

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

1 efforts, and those of their counsel, to support the entry of this agreement as a judgment, and to obtain
2 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
3 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
4 supporting the motion, and, if required, appearing at the hearing before the Court.

5 **11. MODIFICATION**

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

9 **12. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
11 Parties and have read, understand, and agreed to all of the terms and conditions contained herein.

12 **AGREED TO:**

13 Date: 12/28/2017

14
15 By: 
16 PETER ENGLANDER

AGREED TO:

17 Date: _____

18 By: _____

19 John Rupp, Senior Associate General Counsel,
20 Textron Inc.,
21 the parent company of Arctic Cat, Inc.,
22 for defendant ARCTIC CAT INC.
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