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11 Attorneys for Plaintiff  
12 PETER ENGLANDER

**FILED**

AUG 22 2018

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: E. Chais, Deputy

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF MARIN  
15 UNLIMITED CIVIL JURISDICTION

16 PETER ENGLANDER,  
17 Plaintiff,  
18 v.  
19 THE HOME DEPOT, INC.; *et al.*,  
20 Defendants.

Case No. CIV-1800115

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

**AUG 22 2018**

Date: \_\_\_\_\_  
Time: 1:30 p.m.  
Dept.: B  
Judge: Hon. Roy O. Chernus



# EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534  
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10 PETER ENGLANDER

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 THE HOME DEPOT, INC.; and DOES 1-  
19 150, inclusive,

20 Defendants.

Case No. CIV1800115

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 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 The Home Depot, Inc. (“Home Depot”), with Englander and Home  
5 Depot each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Englander is a resident of the State of California who seeks to promote awareness of  
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Home Depot employs ten or more persons and is a person in the course of doing business  
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Home Depot manufactures, imports, sells and/or distributes for sale  
16 in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without  
17 providing the health hazard warning that Englander alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are *Glacier Bay White Soft Round Toilet*  
20 *Seat, UPC# 6932162500095, Sku# 54218 and Glacier Bay White Soft Elongated Toilet Seat UPC#*  
21 *6932162500118, Sku# 543812* containing DEHP, that are manufactured, imported, distributed, sold  
22 and/or offered for sale in California by Home Depot (“Products”).

23 **1.6 Notice of Violation**

24 On August 1, 2017, Englander served Home Depot and the requisite public enforcement  
25 agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Home Depot violated  
26 Proposition 65 when it failed to warn its customers and consumers in California that the Products  
27 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced  
28 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1           **1.7 Complaint**

2           On January 11, 2018, Englander commenced the instant action, naming Home Depot as one  
3 of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

4           **1.8 No Admission**

5           Home Depot denies the material, factual, and legal allegations contained in the Notice and  
6 Complaint, and maintains that all of the products that it has sold or 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 by Home Depot of any fact, finding, conclusion of  
9 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or  
10 be construed as an admission by Home Depot of any fact, finding, conclusion of law, issue of law,  
11 or violation of law. This Section shall not, however, diminish or otherwise affect Home Depot's  
12 obligations, responsibilities, and duties under this Consent Judgment.

13           **1.9 Jurisdiction**

14           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
15 jurisdiction over Home Depot as to the allegations contained in the Complaint, that venue is proper  
16 in the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of  
17 this Consent 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" shall mean the date that  
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

21 **2. INJUNCTIVE SETTLEMENT TERMS**


22           **2.1 Reformulation Standard**

23           "Reformulated Products" are defined as those Products containing DEHP in concentrations  
24 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental  
25 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by  
26 federal or state government agencies for the purpose of determining DEHP content in a solid  
27 substance.



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1 on the same page as the price for any Product; or (d) on one or more web pages displayed to a  
2 purchaser during the checkout process. The following warning statement shall be used and shall  
3 appear in any of the above instances adjacent to or immediately following the display, description,  
4 or price of the Product for which it is given in the same type size or larger than the Product  
5 description text:

6  **WARNING:** This product can expose you DEHP, which is known to the  
7 State of California to cause cancer and birth defects or  
8 other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

9 Alternatively, where it is impracticable to provide the warning on the same page and in the  
10 same location as the display and/or description of the Product, Home Depot may utilize a  
11 designated symbol to cross reference the applicable warning with a “designated symbol” which  
12 may appear adjacent to or immediately following the display, description, or price of the Product  
13 for which a warning is being given, provided that the following warning statement also appears  
14 elsewhere on the same web page, as follows:

15  **WARNING:** Certain products identified with this symbol  and offered  
16 for sale in this website can expose you to DEHP, which is  
17 known to the State of California to cause cancer and birth  
18 defects or other reproductive harm. For more information  
go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### 19 **3. MONETARY SETTLEMENT TERMS**

#### 20 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

21 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
22 claims referred to in this Consent Judgment, Home Depot shall pay a total of \$12,000 in civil  
23 penalties in accordance with this Section. The penalty payment will be allocated in accordance  
24 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to  
25 the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining  
26 25% of the penalty remitted to Englander, as follows: Home Depot shall, within ten business days  
27 of the Effective Date, issue the following checks: (1) to “Peter Englander, Client Trust Account”  
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1 totaling \$3,000; and (2) to the "Office of Environmental Health Hazard Assessment" totaling  
2 \$9,000. Upon receipt, The Chanler Group will then ensure payment to OEHHA. All penalty  
3 payments shall be delivered to the address listed in Section 3.3 below. Home Depot shall issue three  
4 separate 1099 forms to OEHHA, Englander, and The Chanler Group for the respective amount paid  
5 to each under this agreement.

6 **3.2 Reimbursement of Attorneys' Fees and Costs**

7 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
8 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
9 the issue to be resolved after the material terms of the agreement had been settled. Shortly after  
10 the other settlement terms had been finalized, Home Depot expressed a desire to resolve  
11 Englander's fees and costs. The Parties then negotiated a resolution of the compensation due to  
12 Englander and his counsel under general contract principles and the private attorney general  
13 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through  
14 the mutual execution of this agreement and the Court's approval of the same, but exclusive of fees  
15 and costs on appeal, if any, Home Depot shall reimburse Englander and his counsel \$30,000.  
16 Home Depot shall, within ten business days of the Effective Date issue a check to "The Chanler  
17 Group" in the amount of \$30,000, and shall deliver it to the address listed in Section 3.3 below.  
18 The reimbursement shall cover all fees and costs incurred by Englander investigating, bringing this  
19 matter to Home Depot's attention, litigating, and negotiating a settlement of the matter in the  
20 public interest.

21 **3.3 Payment Address**

22 All payments required by this Consent Judgment shall be delivered to the following  
23 address:

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

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Englander's Release of Proposition 65 Claims**

3 Englander, acting on his own behalf and in the public interest, releases Home Depot and its  
4 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
5 and attorneys ("Releasees") and each entity to whom Home Depot directly or indirectly distributes  
6 or sells the Products including, but not limited to, its downstream distributors, wholesalers,  
7 customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream  
8 Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from  
9 the Products manufactured, imported, distributed or sold by Home Depot prior to the Effective  
10 Date, as set forth in the Notice.

11 **4.2 Englander's Individual Release of Claims**

12 Englander, in his individual capacity only and *not* in his representative capacity, also  
13 provides a release to Home Depot, Releasees, and Downstream Releasees which shall be effective  
14 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
15 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any  
16 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of  
17 alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by  
18 Home Depot before the Effective Date.

19 **4.3 Home Depot's Release of Englander**

20 Home Depot, on its own behalf and on behalf of its past and current agents,  
21 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against  
22 Englander and his attorneys and other representatives, for any and all actions taken or statements  
23 made (or those that could have been taken or made) by Englander and his attorneys and other  
24 representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in  
25 this matter, or with respect to the Products.

26 **5. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and  
28 shall be null and void if, for any reason, it is not approved and entered by the Court within one year

1 after it has been fully executed by all Parties. The Parties acknowledge that, pursuant to California  
2 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this  
3 Consent Judgment, which motion Englander shall draft and file. If any third-party objection to the  
4 motion is filed, Englander and Home Depot agree to work together to address the objection. This  
5 provision is a material component of the Consent Judgment and shall be treated as such in the event  
6 of a breach.

7 **6. SEVERABILITY**

8 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,  
9 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
10 remaining provisions shall not be adversely affected unless contrary to the intent of the Parties.

11 **7. GOVERNING LAW**

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

19 **8. NOTICE**

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

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To Home Depot:  
  
General Counsel  
Home Depot, Inc.  
2455 Paces Ferry Road, N.W.  
Atlanta, Georgia 30339

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

With copy to:  
  
Jeffrey Margulies, Esq.  
Norton Rose Fulbright US LLP  
555 South Flower Street  
Forty-First Floor  
Los Angeles, CA 90071

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

**9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

**10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

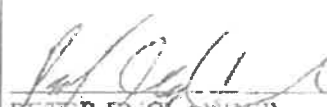
**11. MODIFICATION**

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

1 **12. AUTHORIZATION**

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

5  
6 **AGREED TO:**

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8   
9 \_\_\_\_\_  
10 PETER ENGLANDER

11 Dated: 6/28/2018

6 **AGREED TO:**

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9 \_\_\_\_\_  
10 THE HOME DEPOT, INC.

11 By: DAVID STEELE  
(Print Name)

12 Its: Asst. Sec.  
(Title)

13 Dated: 6/28/18

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