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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
12  
13

14 PETER ENGLANDER

15 Plaintiff,

16 v.

17 FOUR PAWS PRODUCTS, LTD.; *et al.*,

18 Defendants.

Case No. RG12655400

**[PROPOSED] CONSENT JUDGMENT**

(Health and Safety Code section 25249.6 *et seq.*)

1       **1. INTRODUCTION**

2               **1.1 Parties**

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

6               **1.2 Plaintiff**

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

10              **1.3 Defendant**

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

14              **1.4 General Allegations**

15              Englander alleges that Four Paws sold hand tools with grips containing di(2-ethylhexyl)  
16 phthalate (“DEHP”) without first providing the clear and reasonable warning required by Proposition  
17 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause  
18 birth defects or other reproductive harm.

19              **1.5 Product Description**

20              The products that are covered by this Consent Judgment are hand tools with grips containing  
21 DEHP, specifically pet grooming tools, including clippers, combs, files, and sheers that are used to  
22 cut the nails of dogs and cats or to trim matted fur, including, but not limited to, the *Four Paws*  
23 *Ultimate Touch Cat Claw Clipper, Item No. 11455 (#0 45663 11455 8)* (collectively, “Products”) that  
24 are sold or distributed for sale in California by Four Paws.

25              **1.6 Notice of Violation**

26              On or about June 15, 2012, Englander served Four Paws and certain requisite public  
27 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Four Paws  
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1 violated Proposition 65 by failing to warn its customers and consumers in California that the Products  
2 expose users to DEHP.

3 **1.7 Complaint**

4 On November 8, 2012, Englander filed the instant action against Four Paws (“Complaint”) for  
5 the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
17 jurisdiction over Four Paws as to the allegations in the Complaint, that venue is proper in Alameda  
18 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
19 Judgment.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date a Judge  
22 of the Superior Court grants the motion for judicial approval of this Consent Judgment contemplated  
23 by section 5.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 For purposes of this Consent Judgment, the “Reformulated Products” are Products that  
27 contain a maximum of 1,000 parts per million (0.1%) DEHP content in any accessible component  
28 (i.e., any component that may be touched or handled during a reasonably foreseeable use) analyzed

1 pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by  
2 state or federal agencies for the purpose of determining DEHP content in a solid substance.

3 **2.2 Reformulation Obligation; Vendor Notification**

4 As of the date that this Consent Judgment is fully executed by the Parties, Four Paws  
5 represents that it has provided all of its current vendors or other suppliers of Products that are known  
6 by it to be sold or offered for sale in California with the 1,000 ppm DEHP content limit agreed to for  
7 Reformulated Products, and has instructed each vendor or other supplier to use reasonable efforts to  
8 provide Reformulated Products expeditiously. In addressing this obligation, Four Paws did not  
9 employ statements to encourage a vendor or other supplier to delay.

10 **2.2.1 Compliance Deadline**

11 For purposes of this Consent Judgment the phrase “Compliance Deadline” shall mean  
12 twelve months after the Effective Date. Commencing on the Compliance Deadline and continuing  
13 thereafter, all Products manufactured for sale in California, purchased for sale in California, or  
14 distributed for sale in California shall be Reformulated Products as defined by section 2.1.

15 **2.2.2 Future Private Enforcement**

16 Provided that Four Paws has complied with the vendor/supplier notification  
17 requirements established by section 2.2, sales of Products manufactured for sale, purchased for sale,  
18 or distributed for sale in California prior to the Compliance Deadline shall not be separately  
19 actionable in another private enforcement action brought pursuant to Section 25249.7(d) of the  
20 Health and Safety Code alleging unwarned exposures to DEHP from the Products in violation of  
21 Proposition 65.

22 **3. MONETARY PAYMENTS**

23 **3.1 Civil Penalty Payments**

24 Pursuant to Health and Safety Code section 25249.7(b), Four Paws shall pay \$20,000 in civil  
25 penalties. Within 30 days of the execution of this Consent Judgment, Four Paws shall deliver to  
26 Englander’s counsel an initial civil penalty payment of \$4,000. On the Compliance Deadline, Four  
27 Paws shall pay the remaining penalty amount of \$16,000. The remaining portion of the civil penalty,  
28 however, shall be waived in its entirety if, no later than the Compliance Deadline, an officer of Four

1 Paws certifies in writing to Englander’s counsel that one hundred percent of the Products that Four  
2 Paws purchases for sale or manufactures for sale in California as of the date of such certification are  
3 Reformulated Products as defined by section 2.1.

4 Each penalty payment shall be allocated according to Health and Safety Code section  
5 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount earmarked for the  
6 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining  
7 twenty-five (25%) of the penalty amount earmarked for Englander.

8 **3.2 Reimbursement of Englander’s Fees and Costs**

9 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
11 the issue to be resolved after the material terms of the agreement had been settled. Shortly after all  
12 other settlement terms had been finalized, Four Paws expressed a desire to resolve the fees and  
13 costs. The Parties then attempted to (and did) reach an accord on the compensation due Englander  
14 and his counsel under general contract principles and the private attorney general doctrine codified  
15 at Code of Civil Procedure section 1021.5 for all work performed in this matter exclusive of fees and  
16 costs incurred on appeal, if any. Under these legal principles, Four Paws shall pay \$30,000 for the  
17 fees and costs incurred investigating, litigating, and enforcing this matter, which includes the fees  
18 and costs incurred (and to be incurred) drafting, negotiating, and obtaining the Court’s approval of  
19 this Consent Judgment in the public interest.

20 **3.3 Payment Procedures**

21 **3.3.1 Settlement Payments Held in Trust**

22 All payments made under this Consent Judgment shall be held in trust until the Court  
23 approves the settlement. The Parties acknowledge that Englander’s counsel gave Four Paws the  
24 option of depositing the funds into its attorney’s trust account, but that Four Paws elected to have  
25 The Chanler Group hold the settlement funds in its attorney’s trust account until such time as the  
26 hearing of the motion for judicial approval.  
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**3.3.2 Payment Schedule**

Within 30 days of the execution of this Consent Judgment, Four Paws shall deliver three checks for the for the following amounts made payable to:

- (a) “The Chanler Group in Trust for OEHHA” in the amount of \$3,000;
  - (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,000;
- and
- (c) “The Chanler Group in Trust” in the amount of \$30,000.

Unless waived, on or before the Compliance Deadline, Four Paws shall deliver two checks for the following amounts made payable to:

- (a) “The Chanler Group in Trust for OEHHA” in the amount of \$12,000; and
- (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$4,000.

**3.3.3 Issuance of 1099 Forms**

After the Consent Judgment has been approved, Four Paws shall provide Englander’s counsel with a separate 1099 form for each of its payments to:

- (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the 2012 calendar year;
- (b) “Peter Englander”, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties for the civil penalty payment in the 2012 calendar year; and
- (c) “The Chanler Group” (EIN: 94-3171522) for fees and costs reimbursed in them amount of \$30,000.

Four Paws shall also provide Englander’s counsel with two additional 1099 forms for civil penalty payments to OEHHA and Englander made in the 2014 calendar year, if any.

**3.3.4 Payment Address**

All payments and tax forms required by this Consent Judgment shall be delivered to the following address:

1 The Chanler Group  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Englander’s Public Release of Proposition 65 Claims**

8 Englander, acting on his own behalf and in the public interest, releases Four Paws and its  
9 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
10 and attorneys (“Releasees”) and each entity to whom Four Paws directly or indirectly distributes or  
11 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
12 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for  
13 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products  
14 sold by Four Paws prior to the Effective Date, as set forth in the Notice. Compliance with the terms  
15 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
16 DEHP from the Products sold by Four Paws before the Effective Date, as set forth in the Notice.

17 **4.2 Englander’s Individual Release of Claims**

18 Englander, in his individual capacity only and *not* in his representative capacity, also  
19 provides a release to Four Paws, Releasees, and Downstream Releasees which shall be effective as a  
20 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
21 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Englander of any  
22 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of  
23 alleged or actual exposures to DEHP from the Products sold or distributed for sale by Four Paws  
24 before the Effective Date.

25 **4.3 Four Paws’ Release of Englander**

26 Four Paws on behalf of itself and on behalf of its past and current agents, representatives, attorneys,  
27 successors, and/or assignees, hereby waives any and all claims against Englander and his attorneys  
28 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, whether in the course

1 of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with  
2 respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
5 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
6 has been fully executed by all Parties. If this Consent Judgment is explicitly disapproved by the  
7 Court or becomes null and void through the passage of time all payments made pursuant to Section  
8 3.3.2 shall be returned within five business days.

9 **6. SEVERABILITY**

10 If, subsequent to the Court's approval of this Consent Judgment, any provision of this  
11 Consent Judgment is held by a court to be unenforceable, the validity of the remaining provisions  
12 shall not be adversely affected.

13 **7. GOVERNING LAW**

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

21 **8. NOTICES**

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

25 For Four Paws:

26 George A. Yuhas, Secretary  
27 Four Paws, Ltd.  
28 1340 Treat Blvd., Suite 600  
Walnut Creek CA 94597



1 with a copy to:

2 Daniel Rapaport, Esq.  
3 Wendel Rosen Black & Dean LLP  
4 1111 Broadway, 24th Floor  
Oakland, CA 94607

5 For Englander:

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

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

11 **9. 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 **10. 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 Four Paws 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 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or  
27 application of any 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.

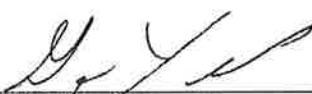
**AGREED TO:**

**AGREED TO:**

Date: November 30, 2012

Date: December 3, 2012

By:   
PETER ENGLANDER

By:   
Allen Simon, President  
FOUR PAWS PRODUCTS, LTD.  
George Yuhes, Secretary