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PETER ENGLANDER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,
Plaintiff,
v.
HANGZHOU GREATSTAR TOOL CO.,
LTD.; and DOES 1-150, inclusive
Defendants.

Case No. RG12661222
[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This settlement agreement in the form of a proposed Consent Judgment (“Consent
4 Judgment”) is entered into by and between plaintiff Peter Englander (“Englander”) on the one
5 hand, and defendant Hangzhou GreatStar Tool Co., Ltd. (“Hangzhou”) on the other hand.
6 Hangzhou and Englander are each individually referred to as a “Party” and collectively as the
7 “Parties.”

8 **1.2 Plaintiff**

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

12 **1.3 Defendant**

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

16 **1.4 General Allegations**

17 Englander alleges that Hangzhou manufactures, distributes or otherwise offers or has
18 offered for sale in the State of California tools with vinyl grips containing di(2-ethylhexyl)
19 phthalate (“DEHP”) and stools with vinyl seats containing DEHP without first providing the clear
20 and reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as
21 a chemical known to the State of California to cause birth defects or other reproductive harm.

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are: (a) tools containing DEHP
24 including, but not limited to, the *Lil’ Helper Junior Tool Set Item No. 0314797, Model No. 61461,*
25 *UPC No. 8 20909 61461 6;* and (b) stools containing DEHP including, but not limited to, the
26 *Orchard Supply Hardware Shop Stool, SKU No.6908990, UPC No. 8 20909 42001 9.*

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1 **1.6 Notices of Violation**

2 On October 12, 2012, Englander served Hangzhou and the requisite public enforcement
3 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Hangzhou was in violation
4 of Proposition 65 for failing to warn its customers and consumers in California that the tools
5 expose users to DEHP. Thereafter, on November 21, 2012, Englander sent a “Supplemental 60-
6 Day Notice of Violation” (“Supplemental Notice”) to Hangzhou and the requisite public
7 enforcers which, in addition to those allegations made in the Notice, included the additional
8 allegation that Hangzhou also violated Proposition 65 when it failed to warn its customers and
9 consumers in California that the stools expose users to DEHP.

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

13 **1.7 Complaint**

14 On December 26, 2012, Englander filed the instant action against Hangzhou
15 (“Complaint”) for the alleged violations of Health and Safety Code section 25249.6 that are the
16 subject of the Notice. On the date that the Court grants the motion approving this Consent
17 Judgment contemplated by Section 8.1, the Complaint shall be deemed amended *nunc pro tunc* to
18 include the violations alleged in the Supplemental Notice regarding Hangzhou’s unwarned sales
19 of stools containing DEHP in California.

20 **1.8 No Admission**

21 Hangzhou denies the material, factual and legal allegations contained in the Notices and
22 Complaint, as amended by this Consent Judgment, and it maintains that all of the products that it
23 has manufactured, distributed or otherwise offered for sale in California, including the Covered
24 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
25 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
26 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
27 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,
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1 however, diminish or otherwise affect Hangzhou’s obligations, responsibilities, and duties under
2 this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 personal jurisdiction over Hangzhou as to the allegations in the Complaint, that venue is proper in
6 Alameda County and that this Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment.

8 **2. DEFINITIONS**

9 **2.1** “Accessible Component” means a metal or a poly vinyl chloride or other soft
10 plastic, vinyl, or synthetic leather component of a Covered Product that could be used to grip the
11 Covered Product or Additional Product by a person during reasonably foreseeable use.

12 **2.2** “Covered Products” means tools with Accessible Components containing DEHP
13 exported or manufactured by Hangzhou and sold in California by Lowe’s Companies, Inc., and
14 stools with Accessible Components containing DEHP exported or manufactured by Hangzhou
15 and sold in California by Orchard Supply Hardware Stores Corporation.

16 **2.3** “Reformulation Standard” means a maximum DEHP concentration of 1,000 parts
17 per million (0.1%) by weight in any Accessible Component of a Covered Product.

18 **2.4** “Effective Date” means the date that this Consent Judgment is fully executed by
19 the Parties.

20 **3. INJUNCTIVE RELIEF: REFORMULATION**

21 **3.1 Reformulation Obligation**

22 Within thirty days of the Court’s approval of this Consent Judgment, Hangzhou shall
23 immediately begin taking measures to ensure that Covered Products manufactured for sale or
24 distributed for sale in California, comply with the Reformulation Standard at the earliest
25 commercially feasible date but not later than May 1, 2014. Commencing on May 1, 2014,
26 Hangzhou shall only purchase for sale, manufacture for sale, or distribute for sale in California
27 to an unaffiliated third party (such as a retailer that is not within Hangzhou’s corporate family),
28 Covered Products that comply with the Reformulation Standard defined in Section 2.3.

1 **4. ENFORCEMENT; ARBITRATION**

2 Either Party may, by motion or application for an order to show cause before this Court,
3 or by any other procedure available, enforce the terms and conditions contained in this Consent
4 Judgment. In addition, any dispute, controversy or claim arising out of or relating to this
5 Consent Judgment, including the formation, interpretation, breach or termination thereof, may,
6 at the election of the Party seeking to enforce the terms contained herein, be referred to and
7 finally determined by arbitration in accordance with the JAMS International Arbitration Rules.
8 In such a case, the tribunal will consist of a sole arbitrator. The place of arbitration will be in
9 either San Francisco or Hong Kong, China at the discretion of the Party alleging a breach or
10 otherwise seeking to enforce the agreement. The language to be used in the arbitral proceedings
11 will be English. Judgment upon the award rendered by the arbitrator may be entered by any
12 court having jurisdiction thereof, including those in Hong Kong, China or the United States.
13 Any award rendered may be executed by attachment to Hangzhou assets located in Hong Kong
14 or elsewhere, as Hangzhou has represented it has such assets, totaling more than \$10 million, as
15 of June 1, 2013, specifically in Hong Kong. If Englander successfully enforces the provisions
16 of this Consent Judgment against Hangzhou after arbitration, Englander shall be entitled to the
17 reimbursement of his reasonable attorneys' fees and costs incurred obtaining such relief
18 pursuant to Code of Civil Procedure section 1021.5.

19 **5. PAYMENTS**

20 **5.1 Civil Penalties**

21 Hangzhou shall pay \$30,000 in civil penalties. Each Penalty payment shall be allocated
22 according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent
23 of the penalty amount remitted to the California Office of Environmental Health Hazard
24 Assessment ("OEHHA") and the remaining twenty-five percent of each penalty payment
25 remitted to Englander.
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5.1.1 Initial Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b)(2), on or before the Effective Date, Hangzhou shall pay an initial civil penalty of \$10,000.

5.1.2 Final Civil Penalty; Waiver on Certification of Reformulation

On or before March 1, 2014, Hangzhou shall pay a final civil penalty of \$20,000. As an incentive to reformulate the Covered Products in advance of the compliance deadline established by Section 3.1.1, the final civil penalty will be waived in its entirety, if, no later than March 15, 2014, an officer of Hangzhou provides Englander’s counsel with written confirmation that all of the Covered Products manufactured for sale, purchased for sale, or distributed for sale in California as of such date, comply with the Reformulation Standard, and that all Covered Products offered for sale in California in the future will continue to comply with the Reformulation Standard.

5.2 Attorneys’ Fees and Costs

The Parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after all other settlement terms had been finalized, Hangzhou expressed a desire to resolve the fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due 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 exclusive of fees and costs incurred on appeal, if any. Under these legal principles, on or before the Effective Date, Hangzhou shall pay \$37,500 for the fees and costs incurred by Englander investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining the Court’s approval of this Consent Judgment in the public interest.

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5.3 Payment Procedures

5.3.1 Payments to Englander and His Counsel Held in Trust

All payments to Englander and his counsel shall be delivered on or before the Effective Date, and shall be held in trust until the Court approves the Consent Judgment. Hangzhou has the option of depositing the required payments into its attorneys’ trust account or into The Chanler Group’s trust account. If directed to the latter, the settlement funds shall be provided in two checks made payable to: (a) “The Chanler Group in Trust for Peter Englander” in the amount of \$2,500; and (b) “The Chanler Group in Trust” in the amount required pursuant to Section 5.2 above.

5.3.2 Court Approval Prerequisite to Release of Funds Held in Trust

If the Court does not approve the Consent Judgment, all funds tendered into any trust account shall be refunded in full as required by Section 8.4 below.

5.3.3 Payments to OEHHA

All payments to OEHHA made under this Consent Judgment are to be delivered directly to OEHHA within 10 days of the date the Court grants the motion for approval of this Consent Judgment (Memo line “Prop 65 Penalties”) at one of the addresses provided in Section 5.3.5. A copy of each check payable to OEHHA shall be mailed to The Chanler Group at the address set forth above in Section 5.3.5(a), as proof of payment to OEHHA.

5.3.4 Issuance of 1099 Forms

After the Consent Judgment has been approved, Hangzhou or its counsel shall issue a 1099 form to each of the following entities: (a) “Office of Environmental Health Hazard Assessment,” P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties paid to OEHHA; (b) “Peter Englander,” whose address and tax identification number shall be furnished upon request, for the civil penalties paid to Peter Englander; and (c) “The Chanler Group” (EIN: 94-3171522) for the amounts to be paid pursuant to Section 5.2 above.

1 **5.3.5 Payment Addresses**

2 (a) All payments to Englander and his counsel shall be delivered to:

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

8 (b) All payments to OEHHA shall be delivered to:

9 For United States Postal Service Delivery:

10 Mike Gyrics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Mike Gyrics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

21 **6. CLAIMS COVERED AND RELEASED**

22 **6.1 Public Release of Proposition 65 Claims**

23 In consideration of the promises and commitments herein contained, Englander, on his
24 own behalf and on behalf of his past and current agents, representatives, attorneys, successors,
25 and/or assignees, and in the public interest, hereby waives and releases Hangzhou, its parents,
26 subsidiaries, affiliated entities that are under common ownership or control, directors, officers,
27 employees, and attorneys (“Releasees”); and each entity to whom it directly or indirectly
28 distributes or sells Covered Products, including but not limited to its distributors, wholesalers,
customers, retailers, franchisees, cooperative members, licensors, and licensees (“Downstream
Releasees”), from all claims for violations of Proposition 65 based on exposures to DEHP from
the Covered Products as alleged in the Notices, arising through the date on which the Court
enters this Consent Judgment. For purposes of this Consent Judgment, Downstream Releasees
include, Orchard Supply Hardware, LLC, Lowe’s Companies, Inc. and LG Sourcing, Inc. This
waiver and release is limited to those claims arising under Proposition 65 with respect to DEHP

1 in the Covered Products as alleged in the Notices arising through the date on which the Court
2 enters this Consent Judgment.

3 **6.2 Private Release in Plaintiff’s Individual, Non-Representative Capacity**

4 Englander, in his individual capacity only and *not* in his representative capacity, also
5 provides a release to Hangzhou, Releasees, and Downstream Releasees which shall be effective
6 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
7 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Englander
8 of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising
9 out of alleged or actual the subject matter of the Complaint, including without limitation,
10 unwarned exposures to DEHP from the Covered Products.

11 **6.3 Hangzhou’s Release of Englander**

12 Hangzhou waives any and all claims against Englander and his attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Englander and his attorneys and other representatives, whether in the course
15 of investigating claims, otherwise seeking enforcement of Proposition 65 against it in this
16 matter, or with respect to the Covered Products.

17 **7. ENFORCEMENT; ARBITRATION**

18 Either Party may, by motion or application for an order to show cause before this Court,
19 or by any other procedure available, enforce the terms and conditions contained in this Consent
20 Judgment. In addition, any dispute, controversy or claim arising out of or relating to this
21 Consent Judgment, including the formation, interpretation, breach or termination thereof, may,
22 at the election of the Party seeking to enforce the terms contained herein, be referred to and
23 finally determined by arbitration in accordance with the JAMS International Arbitration Rules.
24 In such a case, the tribunal will consist of a sole arbitrator. The place of arbitration will be in
25 either San Francisco or Hong Kong, China at the discretion of the Party alleging a breach or
26 otherwise seeking to enforce the agreement. The language to be used in the arbitral proceedings
27 will be English. Judgment upon the award rendered by the arbitrator may be entered by any
28 court having jurisdiction thereof, including those in Hong Kong, China or the United States.

1 Any award rendered may be executed by attachment to Hangzhou assets located in Hong Kong
2 or elsewhere, as Hangzhou has represented it has such assets, totaling more than \$10 million, as
3 of June 1, 2013, specifically in Hong Kong. If Englander successfully enforces the provisions
4 of this Consent Judgment against Hangzhou after arbitration, Englander shall be entitled to the
5 reimbursement of his reasonable attorneys' fees and costs incurred obtaining such relief
6 pursuant to Code of Civil Procedure section 1021.5.

7 **8. NOTICE**

8 When any Party is entitled to receive any notice under this Consent Judgment, the notice
9 shall be sent by: (a) first class, registered or certified mail; (b) personal delivery; or (c) a
10 recognized overnight courier on any one Party by the other Party at the following addresses:

11 For Englander:

12 The Chanler Group
13 Attn: Proposition 65 Coordinator
14 Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710

15 For Hangzhou:

16 Peter Zhou
17 Hangzhou GreatStar Tool Co. Ltd.
18 No.35 Jiuhuan Road
Jiubao Town, Hangzhou
China 310019

19 With a copy to:

20 Robert D. Infelise, Esq.
21 Cox, Castle & Nicholson LLP
22 555 California Street, 10th Floor
San Francisco, California 94104

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

25 **9. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

26 **9.1** The Parties acknowledge that, pursuant to California Health and Safety Code
27 section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent
28 Judgment. In furtherance of obtaining such approval, the Parties and their respective counsel

1 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
2 Judgment and to obtain approval of the Consent Judgment by the Court in a timely manner. For
3 purposes of this Section, best efforts shall include, at a minimum, cooperating on the drafting
4 and filing of any papers in support of the required motion for judicial approval.

5 **9.2** If this Consent Judgment is not approved by the Court in its entirety, the Parties
6 shall meet and confer to determine whether to modify the terms of the Consent Judgment and to
7 resubmit it for approval. In meeting and conferring, the Parties agree to undertake any actions
8 reasonably necessary to amend and/or modify this Consent Judgment in order to further the
9 mutual intention of the Parties in entering into this Consent Judgment. Following entry and
10 approval of this Consent Judgment by the Court, this Consent Judgment may be modified only
11 by: (a) an agreement or stipulation of the Parties and the entry of a modified consent judgment
12 by the Court, or (b) by the successful motion, application, or such other procedure as is available
13 at law to any Party, and the entry of a modified consent judgment by the Court thereon.

14 **9.3** Unless the Parties decide to seek appellate review of a denial of entry of this
15 Consent Judgment, in the event this Consent Judgment is not entered by the Court within one
16 year of the Effective Date, it shall be of no force or effect and shall not be admissible or
17 otherwise used in any proceeding for any purpose other than to determine the rights or
18 obligations of a Party as a result of the fact that the Consent Judgment was not approved.

19 **9.4** If this Consent Judgment is not entered by the Court, and the Parties have
20 exhausted their meet and confer efforts pursuant to Section 8.2, upon 15 days written notice, the
21 law firm holding Hangzhou's funds in trust shall refund any and all payments made into its trust
22 account.

23 **10. ATTORNEYS' FEES**

24 Except as otherwise provided in this Consent Judgment including a successful
25 enforcement of this Consent Judgment under Section 4, which may entitle Englander to
26 attorneys' fees under Code of Civil Procedure section 1021.5, or any other applicable law, each
27 Party shall bear its own attorneys' fees and costs.
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1 **11. OTHER TERMS**

2 **11.1** The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed,
4 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
5 Products, then Hangzhou may provide written notice to Englander of any asserted change in the
6 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
7 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall
8 be interpreted to relieve Hangzhou from any obligation to comply with any pertinent state or
9 federal toxics control laws.

10 **11.2** This Consent Judgment contains the sole and entire agreement and understanding
11 of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and
12 any and all prior discussions, negotiations, commitments, or understandings related thereto, if
13 any, are deemed merged. There are no warranties, representations, or other agreements between
14 the Parties except as expressly set forth in this Consent Judgment. No representations, oral or
15 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
16 have been made by any Party. No other agreements not specifically contained or referenced in
17 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

18 **11.3** Nothing in this Consent Judgment shall release, or in any way affect any rights
19 that Hangzhou might have against any other party.

20 **11.4** This Consent Judgment may be executed in counterparts and by facsimile or
21 portable document format (PDF) signature, each of which shall be deemed an original, and all of
22 which, when taken together, shall constitute one and the same document.

23 **11.5** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to agree to the terms and conditions of this Consent
25 Judgment, and to enter into and execute the Consent Judgment on behalf of the Party
26 represented and to legally bind that Party.


27 **11.6** The Parties, including their counsel, have participated in the preparation of this
28 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

1 This Consent Judgment was subject to revision and modification by the Parties and has been
2 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
3 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
4 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
5 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
6 to be resolved against the drafting Party should not be employed in the interpretation of this
7 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code section
8 1654.

9 **11.7** Nothing in this Consent Judgment is intended to, or shall be construed to, infringe
10 upon or preclude the right of any public enforcer, including the Office of the Attorney General of
11 the State of California, to bring a public enforcement action under Proposition 65.

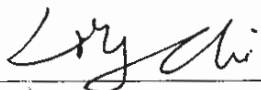
12 **AGREED TO:**

13 PETER ENGLANDER

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16 _____
Signature
17 Date: _____

AGREED TO:

HANGZHOU GREATSTAR TOOL CO.,
LTD.

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19 
20 _____
Signature
21 By: _____
Print Name
22 Its: EVP
Title
23 Date: June, 13, 2013

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