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HANS JOHNSEN COMPANY

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 UNLIMITED CIVIL JURISDICTION

16
17 PETER ENGLANDER,) Case No. RG13667221
18)
Plaintiff,) **[PROPOSED] CONSENT JUDGMENT AS**
19) **TO DEFENDANT HANS JOHNSEN**
v.) **COMPANY**
20)
HANS JOHNSEN COMPANY; *et al.*,)
21)
Defendants.) Date:
22) Time:
23) Dept: 17
Judge: Hon. George Hernandez

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28 ACTIVE 25124005v1 03/20/2014

[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT HANS JOHNSEN COMPANY

1 **1. INTRODUCTION**

2 **1.1 Peter Englander and Hans Johnsen Company.**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander” or “Plaintiff”) and defendant Hans Johnsen Company (“Hans Johnsen” or
5 “Defendant”), with Englander and Hans Johnsen collectively referred to as the “Parties.”

6 **1.2 Peter Englander.**

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

10 **1.3 Hans Johnsen Company.**

11 Hans Johnsen is a family-owned business founded in 1901 and based in Dallas, TX. It
12 employs ten or more persons and is a person in the course of doing business for purposes of the
13 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
14 §25249.5 et seq. (“Proposition 65”).

15 **1.4 General Allegations.**

16 Englander alleges that Hans Johnsen has manufactured, imported, distributed and/or sold
17 seat post binders with vinyl/PVC handles, causing an exposure to di(2-ethylhexyl)phthalate
18 (“DEHP”), for use in the State of California without the requisite Proposition 65 warnings.
19 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to
20 cause birth defects and other reproductive harm.

21 **1.5 Notice of Violation.**

22 On November 21, 2012, Englander served Hans Johnsen and various public enforcement
23 agencies with a document entitled “60-Day Notice of Violation” alleging that Hans Johnsen
24 violated Proposition 65 by failing to warn consumers that seat post binders with vinyl/PVC
25 handles including, but not limited to, the *Summit Cycling Products Genuine Components QR*
26 *Seat Post Binder, SUM30689568M (#7 45755 04423 6)* exposed users in California to DEHP
27 (“Notice”).

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1.6 Complaint.

On February 13, 2013, Englander filed a complaint in the Superior Court in and for the County of Alameda against Hans Johnsen and Does 1 through 150, *Englander v. Hans Johnsen Company, et al.*, Case No. RG13667221 (“Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain seat post binders with vinyl/PVC handles sold by Hans Johnsen in the State of California.

1.7 No Admission.

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising out of the facts or conduct alleged therein. Hans Johnsen denies the material, factual and legal allegations contained in the Notice and the Complaint, and maintains that all of the products it has manufactured, imported, distributed and/or sold in the State of California, including the Covered Products, have been, and are, in compliance with all laws. By execution of this Consent Judgment and agreeing to comply with its terms, Hans Johnsen does not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to DEHP in Covered Products, such being specifically denied by Hans Johnsen. Nothing in this Consent Judgment shall be construed as an admission by Hans Johnsen of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Hans Johnsen of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense Hans Johnsen may have in this or any other future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by Hans Johnsen for purposes of settling, compromising, and resolving issues disputed in this action. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Hans Johnsen under this Consent Judgment.

1 **1.8 Consent to Jurisdiction.**

2 For purposes of this Consent Judgment only, Hans Johnsen stipulates that this Court has
3 jurisdiction over Hans Johnsen as to the allegations contained in the Complaint, that venue is
4 proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment.

6 **2. DEFINITIONS**

7 **2.1** “Covered Product[s]” means any seat post binders with vinyl/PVC handles,
8 bicycle storage hooks with vinyl/PVC hooks, and sprocket removers with vinyl/PVC handles
9 manufactured, imported, distributed and/or sold in the State of California by Hans Johnsen
10 including, but not limited to, the *Summit Cycling Products Genuine Components QR Seat Post*
11 *Binder, SUM30689568M (#7 45755 04423 6), Summit Cycling Products Bicycle Storage Hooks,*
12 *#394-532, UPC #7 45755 05030 5, and Summit Cycling Products Chain Whip Sprocket*
13 *Remover, Stock No. 373-932, UPC #7 45755 04790 9.*

14 **2.2** “Effective Date” means April 14, 2014.

15 **2.3** “Vendor” means a person or entity that manufactures, imports, distributes, or
16 supplies a product to Hans Johnsen.

17 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

18 **3.1 Reformulation Commitment and Standards.**

19 As of the Effective Date, Hans Johnsen shall only manufacture and/or distribute
20 Covered Products which contain less than or equal to 1,000 parts per million (“ppm”) of DEHP
21 when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent
22 methodologies utilized by federal or state agencies for the purpose of determining DEHP
23 content in a solid substance (“Reformulated Covered Products”). By entering into this Consent
24 Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that
25 may be imposed upon Hans Johnsen by laws other than Proposition 65, nor do the Parties
26 intend this Consent Judgment to affect any defenses available to Hans Johnsen under such other
27 laws.

1 **3.2 Vendor Notification Requirement.**

2 To the extent it has not already done so, on or before the Effective Date, Hans Johnsen
3 shall provide the reformulation standards specified in Section 3.1 for Reformulated Covered
4 Products to any and all of its vendors of Covered Products or their component parts that will be
5 sold or offered for sale to California consumers, and shall instruct each vendor to provide only
6 Reformulated Covered Products or component parts that meet the reformulation standards for
7 Reformulated Covered Products in Section 3.1 above.

8 **4. MONETARY PAYMENTS**

9 In settlement of all the claims referred to in this Consent Judgment, Hans Johnsen shall
10 pay a total of \$12,000 in civil penalties in accordance with this Section. Each penalty payment
11 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d),
12 with 75% of the funds remitted to the California Office of Environmental Health Hazard
13 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as
14 follows:

15 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §
16 25249.7(b).**

17 Hans Johnsen shall pay an initial civil penalty in the amount of \$3,000 on, or before, the
18 Effective Date. Hans Johnsen shall issue two separate checks to: (a) OEHHA, in the amount of
19 \$2,250.00; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$750.00.
20 All penalty payments shall be delivered to the addresses listed in Section 4.4.1 below.

21 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

22 Hans Johnsen shall pay a final civil penalty in the amount \$9,000.00 on, or before, July
23 15, 2014. The final civil penalty shall be waived in its entirety, if, on or before July 1, 2014, an
24 Officer of Hans Johnsen certifies in writing that it, as of July 1, 2014, has manufactured and/or
25 distributed for sale in California only Reformulated Covered Products and that it will continue to
26 manufacture, distribute, sell and/or offer for sale in California only Reformulated Covered
27 Products. Such certification must be received by The Chanler Group on or before July 1, 2014.
28 The certification in lieu of paying the final civil penalty provided by this Section is a material

1 term, and time is of the essence. Unless waived, Hans Johnsen shall issue two separate checks
2 for its final civil penalty payment to: (a) OEHHA, in the amount of \$6,750.00; and (b) "The
3 Chanler Group in Trust for Peter Englander" in the amount of \$2,250.00.

4 **4.3 Reimbursement of Plaintiff's Fees and Costs.**

5 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
7 leaving the fee issue to be resolved after the material terms of the agreement had been settled.
8 Hans Johnsen then expressed a desire to resolve the fee and cost issue shortly after the other
9 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
10 the compensation due to Englander and his counsel under general contract principles and the
11 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
12 for all work performed (and to be performed) in this matter, except fees that may be incurred in
13 connection with a third-party, including the Office of the Attorney General, appeal (if any).
14 Under these legal principles, Hans Johnsen shall pay the amount of \$33,500.00 to reimburse
15 Plaintiff's fees and costs incurred investigating, litigating and enforcing this matter, including
16 the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the
17 Court's approval of this Consent Judgment in the public interest. This payment shall be made
18 payable no later than the Effective Date to The Chanler Group and shall be delivered to the
19 address in Section 4.4.1(a) below. **4.4 Payment Procedures.**

20 **4.4.1 Funds Held In Trust**

21 (a) All payments owed to Englander, pursuant to Sections 4.1
22 through 4.2, shall be delivered to the following payment address:

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

28 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo

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line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.4.1(a), as proof of payment to OEHHA.

If for any reason this Consent Judgment is not entered by the Court within nine (9) months of March 20, 2014, Plaintiff shall meet and confer with Hans Johnsen about mutually agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid and held in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon Hans Johnsen's written request.

4.4.2 Issuance of 1099 Forms

After each penalty payment, Hans Johnsen shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, and OEHHA at the addresses listed in Section 4.4.1 above.

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5. CLAIMS COVERED AND RELEASED

1 **5.1** Englander, acting on behalf of himself and in the public interest, hereby releases
2 Hans Johnsen, its parents, subsidiaries, affiliated entities that are under common ownership,
3 directors, officers, employees, attorneys, shareholders (“Defendant Releasees”), and any of its
4 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
5 licensors, licensees, and any other person or entity to whom they directly or indirectly distribute
6 or sell Covered Products (“Downstream Defendant Releasees”), from any alleged or actual
7 violation of Proposition 65 that has or could have been asserted by Englander in the public
8 interest in his Notice and Complaint regarding the alleged failure to warn about exposure to
9 DEHP in Covered Products sold or distributed by Hans Johnsen prior to the Effective Date.
10 Hans Johnsen’s compliance with this Consent Judgment shall constitute compliance with
11 Proposition 65 with respect to DEHP in Covered Products.

12 **5.2** Englander on behalf of himself, his past and current agents, representatives,
13 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
14 all rights to institute or participate in, directly or indirectly, any form of legal action and releases
15 all claims, including, without limitation, all actions, and causes of action, in law or in equity,
16 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
17 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature
18 whatsoever, fixed or contingent (collectively “Claims”), against Hans Johnsen, Defendant
19 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65
20 regarding the failure to warn about exposure to DEHP in Covered Products sold or distributed
21 prior to the Effective Date.

22 **5.3** Englander also, in his individual capacity only and *not* in his representative
23 capacity, provides a general release herein which shall be effective as a full and final accord and
24 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
25 damages, losses, claims, liabilities and demands of Englander of any nature, character or kind,
26 known or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical
27 listed under Proposition 65 from use of the Covered Products manufactured prior to the Effective
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1 Date. Englander acknowledges that he is familiar with Section 1542 of the California Civil
2 Code, which provides as follows:

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

8 Englander, in his individual capacity only and *not* in his representative capacity, expressly
9 waives and relinquishes any and all rights and benefits which he may have under, or which may
10 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
11 under any other state or federal statute or common law principle of similar effect, to the fullest
12 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
13 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
14 complete release notwithstanding the discovery or existence of any such additional or different
15 claims or facts arising out of the released matters.

16 The Parties further understand and agree that this release shall not extend upstream to
17 any entities, other than Hans Johnsen, that manufactured the Covered Products or any
18 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
19 component parts thereof to Hans Johnsen.

20 **5.4** Hans Johnsen waives any and all Claims against Englander, his attorneys, and
21 other representatives for any and all actions taken or statements made (or those that could have
22 been taken or made) by Englander and his attorneys and other representatives, whether in the
23 course of investigating claims or otherwise seeking enforcement of Proposition 65 against them
24 in this matter, and/or with respect to the Covered Products.

25 **5.5** Hans Johnsen also provides a general release herein which shall be effective as a
26 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
27 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Hans Johnsen of
28 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the

1 subject matter of the Action. Hans Johnsen acknowledges that it is familiar with Section 1542 of
2 the California Civil Code, which provides as follows:

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

8 Hans Johnsen expressly waives and relinquishes any and all rights and benefits which it may
9 have under, or which may be conferred on it by, the provisions of Section 1542 of the California
10 Civil Code, as well as under any other state or federal statute or common law principle of similar
11 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
12 released matters. In furtherance of such intention, the release hereby given shall be and remain
13 in effect as a full and complete release notwithstanding the discovery or existence of any such
14 additional or different claims or facts arising out of the released matters.

14 **6. COURT APPROVAL**

15 **6.1** By this Consent Judgment and upon its approval, the Parties waive their right to a
16 trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment,
17 and of any and all interim rulings, including all pleading, procedural, and discovery orders.

18 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code §
19 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
20 which Englander shall file and which Hans Johnsen shall support as reasonably necessary.

21 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
22 and any and all prior agreements between the Parties merged herein shall terminate and become
23 null and void, and the action shall revert to the status that existed prior to the execution date of
24 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
25 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
26 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
27 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
28 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

1 **7. GOVERNING LAW**

2 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
3 California, and shall apply only to Covered Products offered for sale in the State of California.
4 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
5 law generally, or as to the Covered Products, then Hans Johnsen may provide written notice to
6 Englander of any asserted change in the law, and shall have no further obligations pursuant to
7 this Consent Judgment with respect to, and to the extent that, the Covered Products are so
8 affected.

9 **7.2** The Parties, including their counsel, have participated in the preparation of this
10 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
11 Consent Judgment was subject to revision and modification by the Parties and has been accepted
12 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
13 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
14 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
15 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
16 resolved against the drafting Party should not be employed in the interpretation of this Consent
17 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

18 **8. NOTICES**

19 **8.1** Unless specified herein, all correspondence and notices required to be provided
20 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
21 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
22 Party by the other Party at the following addresses:

23 To Hans Johnsen:

24 Jeffrey D. Polsky, Esq.
25 Fox Rothschild LLP
26 235 Pine Street, No. 1500
27 San Francisco, CA 94104

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

8.2 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. MODIFICATION

9.1 **Modification.** This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a modified Consent Judgment by the court.

9.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the DEHP content of Covered Products sold in California hereunder, any Party shall be entitled to request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment for good cause shown.

9.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10. ENTIRE AGREEMENT

10.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

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11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent To Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof, under C.C.P. §664.6.

12. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. AUTHORIZATION

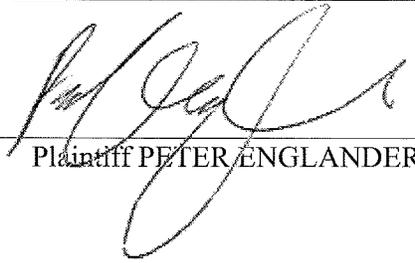
13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: March 18, 2014

Date: _____

By:  _____
Plaintiff PETER ENGLANDER

By: _____
Defendant HANS JOHNSEN COMPANY

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11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent To Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof, under C.C.P. §664.6.

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13. AUTHORIZATION

13.1 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:

AGREED TO:

Date: _____

Date: 3-20-14

By: _____
Plaintiff PETER ENGLANDER

By: Hans Johnsen President
Defendant HANS JOHNSEN COMPANY