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CARLISLE FOOD SERVICE PRODUCTS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER, Plaintiff, v. CARLISLE FOOD SERVICE PRODUCTS, INC.; and DOES 1-150, inclusive, Defendants.	Case No. CGC-16-553451 **[PROPOSED] CONSENT JUDGMENT** (Health & Safety Code § 25249.6 *et seq.*, & Cal. Code Civ. Proc. § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Peter Englander ("**Englander**"), and defendant Carlisle Food Service Products, Inc. ("**CFSP**"), with Englander and CFSP each individually referred to as a "Party" and collectively as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

CFSP employs ten or more individuals and is alleged to be a "person in the course of doing business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("**Proposition 65**").

1.4 General Allegations

Englander alleges that CFSP manufactures, distributes, sells, and offers for sale in California, products with vinyl/PVC grips containing concentrations of di(2-ethylhexyl)phthalate ("**DEHP**"), above the allowable state limits without first providing the requisite Proposition 65 exposure warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.5 Product Description

The products (hereinafter "**Products**") covered by this Consent Judgment are the following products with vinyl/PVC parts or components containing one or more phthalates that are manufactured, imported, distributed, sold and/or offered for sale in California by CFSP: vinyl/PVC dustpan grips containing DEHP including, but not limited to, *Lobby Pan Metal, #4066300, UPC #0 85404 14907 4*; tongs with vinyl/PVC handles/grips containing DEHP including, but not limited to, *Dura-Kool Tong 16", Item # 60756603*; vinyl covers containing DEHP including, but not limited to, *Clear Vinyl Transport Cover, Item # DXDHOR20UCOVR2*; vinyl flatware carriers containing DEHP including, but not limited to, *Carrier 6 Compartment, Item #CW6C38*; squeegees with vinyl/PVC

blades containing DEHP including, but not limited to, *24" Push/Pull Vinyl Squeegee, Item #36602400*; vinyl/PVC washer bases (suction cups used in sink) containing di-isodecyl phthalate ("DIDP") including, but not limited to, *8" Triple Glass Washer White, Item #4046102*; vinyl/PVC tethers containing DIDP and diisononyl phthalate ("DINP") including, but not limited to, *Hand & Nail Brush Kit - with 36" coiled security line, Item #2454002100*; and vehicle brushes with vinyl/PVC bumpers containing DEHP, DIDP and DINP including, but not limited to, *Vehicle Wash Brush With Polystyrene Bristles 9", Item #36120902.*

1.6 Notices of Violation

On or about September 24, 2015, Englander served CFSP, the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation ("**Notice**"), alleging that CFSP violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from vinyl/PVC dustpan grips.

On or about August 8, 2016, Englander served CFSP, the California Attorney General, and all other requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation ("**Supplemental Notice**"), alleging that CFSP violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from tongs with vinyl/PVC handles/grips, vinyl transport covers, vinyl flatware carriers, and squeegees with vinyl/PVC blades, exposures to DIDP from vinyl/PVC washer bases (suction cups used in sink), exposures to DIDP and/or DINP from vinyl/PVC tethers, and exposures to DEHP, DIDP and/or DINP from vehicle brushes with vinyl/PVC bumpers.

The Notice and Supplemental Notice are collectively referred to herein as the "**Notices**." No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notices.

1.7 Complaint

On July 11, 2016, Englander filed the instant action ("**Complaint**"), for the violations of Proposition 65 that are the subject of the Notice. As of the Effective Date, the Complaint shall be deemed amended to incorporate Englander's allegations in the Supplemental Notice, the definition of the term Products in the Complaint shall be deemed amended to include all Products as defined in

this Consent Judgment that are manufactured, imported, distributed and/or offered by CFSP for sale in the State of California as set forth in the Notices, so long as no public enforcer has commenced prosecuting the allegations set forth in the Supplemental Notice.

1.8 No Admission

CFSP denies the material, factual, and legal allegations contained in the Notices and Complaint, and maintains that all of the products it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect CFSP's obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over CFSP as to the allegations in the Complaint, that venue is proper in San Francisco County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" means the date on which the motion for approval of the Consent Judgment contemplated by Section 5 is granted by the Court.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on October 1, 2016, and continuing thereafter, CFSP agrees to only manufacture for sale or distribute for sale in California, "Reformulated Products." For purposes of this Consent Judgment, "Reformulated Products" are defined as Products with a maximum DEHP, DIDP and/or DINP concentration of 1,000 parts per million (0.1 %) in any vinyl/PVC part or component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP, DIDP and DINP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, CFSP shall pay $5,000 in civil penalties. CFSP shall provide its payment in a single check made payable to "Peter Englander, Client Trust Account." The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and twenty-five percent (25%) of the funds remitted to Englander. Englander's counsel shall be responsible for delivering any penalty paid under this Consent Judgment to OEHHA.

3.2 Representations

CFSP represents that the sales data, product reformulation and/or knowledge of DEHP that it provided to Englander in negotiating this Settlement Agreement was truthful and a material factor upon which Englander relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date, Englander discovers and presents to CFSP evidence demonstrating that the preceding representation was materially inaccurate, then CFSP shall have 30 days to meet and confer regarding Englander's contention. In the event the 30-day meet and confer period passes without any such resolution between Englander and CFSP, then Englander shall be entitled to make an appropriate motion to the Court to cure any breach of this Section 3.2 of the Settlement Agreement pursuant to Code of Civil Procedure § 664.6. The prevailing Party on the motion shall be entitled to its reasonable attorneys' fees as approved by the Court. The parties hereby stipulate and request for the Court to retain jurisdiction over the parties to enforce the settlement until the expiration of the nine (9) months following the Effective Date pursuant to Code of Civil Procedure § 664.6.

3.3 Reimbursement of Attorney's 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 this Consent Judgment had been settled. Shortly after

the other settlement terms had been finalized, CFSP expressed a desire to resolve Englander's fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to 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 through the mutual execution of this Consent Judgment. CFSP shall pay $45,000 for the fees and costs incurred by Englander investigating, bringing this matter to the attention of CFSP's management, litigating, and negotiating a settlement in the public interest.

3.4 Payments Englander in Trust

All payments due under this Consent Judgment shall be delivered within five (5) business days from the date of receipt of the Court Order granting the motion for approval of this Consent Judgment.

3.5 Payment Address

All payments required by this Consent Judgment shall be delivered to:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Englander's Public Release of Proposition 65 Claims

Englander, acting on his own behalf and in the public interest, releases CFSP and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the Products including, but not limited to, it's downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for the failure to warn about exposures to DEHP, DIDP and/or DINP from Products manufactured for sale or distributed for sale by CFSP prior to the Effective Date, as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the failure to warn about exposures to DEHP, DIDP and/or DINP in Products sold by CFSP after the Effective Date.

4.2 Englander's Individual Release of Claims

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

4.3 CFSP's Release of Englander

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

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then CFSP may provide written notice to Englander of any asserted change in the law, and shall have no further

injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8. NOTICE

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

For CFSP:

Trent Freiberg, President
Carlisle Food Service Products, Inc.
4711 East Hefner Road
Oklahoma City, OK 73131

with a copy to:

Jay W. Connolly
Seyfarth Shaw LLP
560 Mission Street, 31st Floor
San Francisco, CA 94105-2930

For Englander:

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

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

9. COUNTERPARTS; FACSIMILE 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. POST EXECUTION ACTIVITIES

Englander agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and appearing at the hearing before the Court.

11. MODIFICATION

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

12. 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:

Date: 8/5/2016

By: _____
PETER ENGLANDER

AGREED TO:

Date: 8/9/16

By: _____
Trent Freiberg, President
CARLISLE FOOD SERVICE PRODUCTS, INC.