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6 PETER ENGLANDER

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 PETER ENGLANDER,

13 Plaintiff,

14 v.

15 DOVER CORPORATION; OPW FUELING
16 COMPONENTS INC.; and DOES 1-150,
inclusive,

17 Defendants.
18

Case No. 16CV293539

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*, and
Cal. Code Civ. Proc. § 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 OPW Fueling Components Inc. (“OPW”), with Englander and OPW
5 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 to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 OPW employs ten or more individuals 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 OPW manufactures, imports, sells, and distributes for sale in
16 California, vinyl/PVC fuel pump nozzle grips that contain Di(2-ethylhexyl)phthalate (“DEHP”), and
17 that it does so without first providing the exposure warning required by Proposition 65. DEHP is
18 listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC fuel pump nozzle grips
21 containing DEHP that are manufactured, imported, sold, or distributed for sale in California by OPW
22 (“Products”) including, but not limited to, the *OPW Dispensing Nozzle, H10537M, #11BP-0400,*
23 *#200635601.*

24 **1.6 Notice of Violation**

25 On December 29, 2015, Englander served OPW, the California Attorney General, and all
26 other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging
27 that OPW violated Proposition 65 when it failed to warn its customers and consumers in California of
28

1 the health hazards associated with exposures to DEHP from the Products. No public enforcer has
2 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On April 5, 2016, Englander filed the instant action (“Complaint”), for the violations of
5 Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 OPW denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and maintains that all of the products it has sold and distributed for sale 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 OPW’s obligations, responsibilities, and duties under this
14 Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over OPW as to the allegations in the Complaint, that venue is proper in Santa Clara
18 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
19 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

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

23 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

24 Commencing on December 1, 2016, and continuing thereafter, OPW agrees to only
25 manufacture for sale in California, “Reformulated Products.” For purposes of this Consent
26 Judgment, “Reformulated Products” are defined as Products with a maximum DEHP concentration of
27 1,000 parts per million (0.1 %) in any component analyzed pursuant to U.S. Environmental
28

1 Protection Agency 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 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
6 to in this Consent Judgment, OPW shall pay \$23,200 in civil penalties. The civil penalty payment
7 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-
8 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
9 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Englander.
10 Englander’s counsel shall be responsible for delivering any penalty paid under this Consent Judgment
11 to OEHHA.

12 **3.1.1 Initial Civil Penalty**

13 Within five days of the Effective Date, OPW shall make an initial civil penalty payment of
14 \$7,200. OPW shall provide its payment in a single check made payable to “Peter Englander, Client
15 Trust Account.”

16 **3.1.2 Final Civil Penalty**

17 On November 1, 2016, OPW shall make a final civil penalty payment of \$16,000.
18 Pursuant to title 11 California Code of Regulations section 3203(c), Englander agrees that the final
19 civil penalty payment shall be waived in its entirety if, no later than October 15, 2016, an officer of
20 OPW provides Englander with a signed declaration certifying that as of October 1, 2016, all of the
21 Products OPW is manufacturing for sale in California as of the date of its declaration are
22 Reformulated Products, and that OPW will continue to only manufacture Reformulated Products for
23 sale in California in the future. The option to provide a declaration certifying completed
24 reformulation in lieu of making the final civil penalty payment otherwise required by this Consent
25 Judgment is a material term, and time is of the essence

26 **3.2 Reimbursement of Attorney’s Fees and Costs**

27 The parties acknowledge that Englander and his counsel offered to resolve this dispute
28 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the

1 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
2 the other settlement terms had been finalized, OPW expressed a desire to resolve Englander’s fees
3 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
4 Englander and his counsel under general contract principles and the private attorney general doctrine
5 codified at Code of Civil Procedure section 1021.5 for all work performed through the mutual
6 execution of this Consent Judgment. OPW shall pay \$32,800 for the fees and costs incurred by
7 Englander investigating, bringing this matter to the attention of OPW’s management, litigating, and
8 negotiating a settlement in the public interest.

9 **3.3 Payments Required Under Consent Judgment**

10 With the exception of the final civil penalty payment required by Section 3.1.2, all payments
11 due under this Consent Judgment shall be delivered within ten (10) business days of the date this
12 Consent Judgment is approved by the Court.

13 **3.4 Payment Address**

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

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Englander’s Public Release of Proposition 65 Claims**

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

1 OPW after the Effective Date, including the sale of products manufactured before the October 1,
2 2016, reformulation deadline, for which a reasonable civil fine has been assessed in Section 3.1.

3 **4.2 Englander’s Individual Release of Claims**

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

11 **4.3 OPW’s Release of Englander**

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

17 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the state of California
28 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is

1 otherwise rendered inapplicable by reason of law generally, or as to the Products, then OPW may
2 provide written notice to Englander of any asserted change in the law, and shall have no further
3 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
4 Products are so affected.

5 **8. NOTICE**

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

9 For OPW:

10 David Crouse, President
11 OPW Fueling Components Inc.
12 9393 Princeton Glendale Road
13 West Chester, OH 45011

14 with a copy to:

15 Patrick Cafferty, Esq.
16 Munger, Tolles & Olson
17 560 Mission Street
18 27th Floor
19 San Francisco, CA 94105

20 For Englander:

21 Proposition 65 Coordinator
22 The Chanler Group
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

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

28 **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.

1 **10. POST EXECUTION ACTIVITIES**

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

10 **11. MODIFICATION**

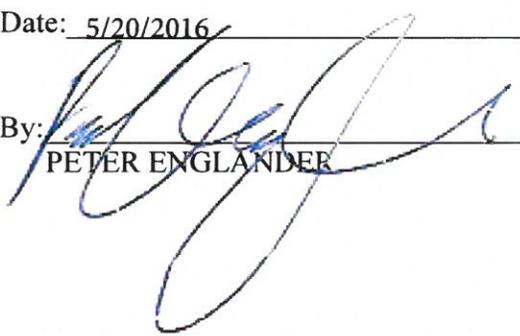
11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
12 entry of a modified consent judgment by the Court thereon; or (ii) a successful motion or application
13 of any Party, and the entry of a modified consent judgment by the Court thereon.

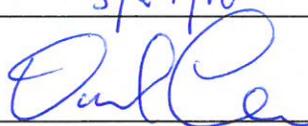
14 **12. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment and have read, understood,
16 and agree to all of the terms and conditions contained herein.

17 **AGREED TO:**

AGREED TO:

18
19 Date: 5/20/2016
20 By: 
21 PETER ENGLANDER
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Date: 5/24/16
By: 
David Crouse, President
OPW FUELING COMPONENTS INC.

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