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Attorneys for Defendants
STAEDTLER-MARS LIMITED

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

PETER ENGLANDER,

Plaintiff,

v.

STAEDTLER-MARS LIMITED,

Defendants.

Case No. CIV 1702264

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 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 Staedtler-Mars Limited ("Staedtler"), with Englander and Staedtler
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 Staedtler**

11 Staedtler employs ten or more individuals and is a "person in the course of doing business"
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Englander alleges that Staedtler manufactures, imports, sells, offers for sale, or distributes for
16 sale in California vinyl/PVC cutting mats that contain di(2-ethylhexyl)phthalate ("DEHP") and
17 diisononyl phthalate ("DINP") without first providing the exposure warning required by Proposition
18 65. DEHP and DINP are listed pursuant to Proposition 65 as a chemical known to the State of
19 California to cause cancer and birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The "Covered Products" referred to in this Consent Judgment are vinyl/PVC cutting mats
22 containing DEHP and/or DINP that are manufactured, imported, sold, offered for sale, or distributed
23 for sale in California by Staedtler including, but not limited to, *Staedtler Cutting Mat, #995T 00,*
24 *UPC #0 31901 92731 8.*

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1 **1.6 Notices of Violation**

2 On or about October 14, 2016, Englander served Staedtler and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Staedtler violated
4 Proposition 65 by failing to warn its customers and consumers in California that the Covered
5 Products expose users to DEHP.

6 On or about April 5, 2017, Englander served Staedtler and certain requisite public
7 enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”)
8 alleging that Staedtler violated Proposition 65 by failing to warn its customers and consumers in
9 California that the Covered Products expose users to DEHP and DINP.

10 The Notice and Supplemental Notice are collectively referred to herein as the “Notices.” To
11 the 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 or about June 21, 2017, Englander filed the instant action (“Complaint”) naming Staedtler
15 as a defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of
16 the Notices.

17 **1.8 No Admission**

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

26 **1.9 Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over Staedtler as to the allegations contained in the Complaint filed in this matter, that

venue is proper in the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall be five (5) days after Englander’s counsel provides written notice to Staedtler that the Motion to Approve the Consent Judgment has been granted and entered by the Court.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

As of the Effective Date and continuing thereafter, Covered Products which Staedtler manufactures, sells, offers for sale, or distributes for sale in California shall either: (a) be Reformulated Products pursuant to the definition in Section 2.1, below; or (b) have a clear and reasonable warning pursuant to Section 2.4, below. Staedtler further agrees to provide written notice to all its suppliers of the Reformulation Standard pursuant to Section 2.3, below.

2.1 Reformulation Standard

“Reformulated Products” are defined as those Covered Products containing 0.1 percent (1,000 parts per million) or less of DEHP and 0.1 percent (1,000 parts per million) or less of DINP, when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP and DINP content in a solid substance.

2.2 Reformulation

As of the Effective Date, all Covered Products distributed, sold and/or offered for sale in the State of California by Staedtler shall qualify as Reformulated Products as defined in Section 2.1, or shall have a warning pursuant to Section 2.4, below.

2.3 Supplier Notification Requirement

To the extent it has not already done so, no more than ten (10) days after the Effective Date, Staedtler shall provide written notice of the Reformulation Standard specified in Section 2.1 for Reformulated Products to all of its suppliers of the Covered Products, and shall instruct each supplier to use its best efforts to provide only Covered Products that meet the Reformulation Standard

specified in Section 2.1, above. In addressing the goal set forth in the preceding sentence, Staedtler shall not employ statements that will encourage a supplier to delay providing Covered Products that meets the Reformulation Standard specified in Section 2.1, above. The written notice provided to each supplier pursuant to this section shall be held by Staedtler for at least two years after its issuance and shall be made available to Englander upon written request.

2.4 Clear and Reasonable Covered Product Warnings

2.4.1 Warning Content. Staedtler's compliance with the warning requirements in Cal. Code Regs. tit. 27, section 25600 *et seq.*, operative before or after August 30, 2018, shall be deemed to be compliance with this Consent Judgement. Specifically, the warning provided must be clear and reasonable, comply with the relevant method of transmission and may use one of the following statements:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Or,

⚠️WARNING: This product can expose you to di(2-ethylhexyl)phthalate which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov.

Or, if applied to the product or product packaging,

⚠️WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

2.4.2 Mail Order Catalog and Internet Sales. In the event Staedtler directly sells Covered Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, Staedtler shall provide appropriate warnings for such Covered Products. Warnings given in the mail order catalog or on the internet shall identify the specific Covered Product to which the warning applies.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
4 this Consent Judgment, Staedtler shall pay a civil penalty of \$3,750. The civil penalty payment shall
5 be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
6 (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
7 ("OEHHA"), and twenty-five percent (25%) of the funds remitted to Englander. Staedtler shall
8 provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" (EIN:
9 68-0284486) in the amount of \$2,812.50; and (b) "Peter Englander, Client Trust Account" in the
10 amount of \$937.50; as set forth in Sections 3.3 and 3.4.

11 **3.2 Reimbursement of Attorney's Fees and Costs**

12 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
14 issue to be resolved after the material terms of this Consent Judgment had been settled. Staedtler
15 agrees to pay Englander's counsel for an award of attorney fees, inclusive of all expenses and costs
16 incurred by Englander as a result of investigating, bringing this matter to Staedtler's attention,
17 litigating, negotiating a settlement in the public interest, and moving the Court for entry of Judgment
18 pursuant to the terms of this settlement in the form of a Consent Judgment, pursuant to California
19 Code of Civil Procedure § 1021.5, in an amount of \$33,750. Other than the payment required
20 hereunder, each side is to bear its own attorneys' fees and costs. Staedtler shall issue the payment by
21 check made payable to "The Chanler Group" (EIN: 94-3171522).

22 **3.3 Payments**

23 Staedtler shall pay the civil penalty and attorney fees and costs set forth in Sections 3.1 and
24 3.2 of this Consent Judgment within seven days of the Effective Date. Englander will provide
25 Staedtler with W-9 forms for all individuals/entities who are receiving payment under this Consent
26 Judgment.

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1 **3.4 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to the following
3 address: The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Englander's Public Release of Proposition 65 Claims**

10 Englander, acting on his own behalf and in the public interest, releases Staedtler and its
11 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
12 and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
13 Covered Products including, but not limited to, its downstream distributors, wholesalers, customers,
14 retailers, franchisers, cooperative members, licensors and licensees, including Staedtler, Inc. and
15 Office Depot, Inc. ("Downstream Releasees") for any violations arising under Proposition 65, as set
16 forth in the Notices and Complaint, for unwarned exposures to DEHP and DINP from Covered
17 Products manufactured, imported, sold, offered for sale, or distributed by Staedtler prior to the
18 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with
19 Proposition 65 with respect to failures to warn about exposures to DEHP and DINP from Covered
20 Products.

21 **4.2 Englander's Individual Release of Claims**

22 In addition to the foregoing, Englander, in his individual capacity, on behalf of his past and
23 current agents, representatives, attorneys, and successors and/or assignees, and not in his
24 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
25 any form of legal action against, and also provides a release to Staedtler, Releasees, and
26 Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar
27 to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
28 claims, liabilities and demands of Englander of any nature, character or kind, whether known or
unknown, suspected or unsuspected, in law or equity, fixed or contingent, now or in the future,
arising out of alleged or actual exposures to DEHP and DINP in the Covered Products

1 manufactured, imported, sold, offered for sale or distributed by Staedtler before the Effective Date.
2 With respect to the foregoing waivers and releases in this paragraph, Englander hereby specifically
3 waives any and all rights and benefits which he now has, or in the future may have, conferred by
4 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

10 **4.3 Staedtler's Release of Englander**

11 Staedtler, on its own behalf, and on behalf of its past and current agents, representatives,
12 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
13 attorneys and other representatives, for any and all actions taken or statements made by Englander
14 and his attorneys and other representatives arising out of alleged or actual exposures to DEHP and
15 DINP in the Covered Products manufactured, imported, sold, offered for sale or distributed by
16 Staedtler before the Effective Date, whether in the course of investigating claims, otherwise seeking
17 to enforce Proposition 65 against it in this matter, or with respect to the Covered Products. With
18 respect to the foregoing waivers and releases in this paragraph, Staedtler hereby specifically waives
19 any and all rights and benefits which they now have, or in the future may have, conferred by virtue
20 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
23 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS
24 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
25 HER SETTLEMENT WITH THE DEBTOR.

26 **5. COURT APPROVAL**

27 This [Proposed] Consent Judgment is not effective until it is approved and entered by the
28 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. In such case, the Parties agree to meet and confer on how to proceed.

6. SEVERABILITY

If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any provision is determined by a court to be unenforceable, the Parties shall give full meaning to the intent of the Parties to resolve and settle all this matter in its entirety, and 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 Covered Products, then Staedtler 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 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Staedtler from any obligation to comply with any pertinent state or federal toxics control laws.

8. NOTICE

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

Englander:

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

Staedtler:

Malcolm Weiss (mweiss@hunton.com)
Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

Suedy Alfaro, (salfaro@hunton.com)
Hunton & Williams LLP
575 Market Street, Suite 3700
San Francisco, CA 94105

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.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Englander agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this [Proposed] Consent
8 Judgment. Staedtler agrees it shall not object to or oppose this Motion.

9 **11. MODIFICATION**

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

13 **12 INTEGRATION**

14 This Consent Judgment constitutes the entire agreement between the Parties with respect to
15 the subject matter hereof and may not be amended or modified except in writing.

16 **13. AUTHORIZATION**

17 The undersigned are authorized to execute this [Proposed] Consent Judgment and have read,
18 understood, and agree to all of the terms and conditions contained herein and certifies that he or she is
19 fully authorized by the Party he or she represents to execute the [Proposed] Consent Judgment on
20 behalf of the Party represented and legally bind that Party.

21
22 **AGREED TO:**

AGREED TO:

23 Date: 6/20/2017

Date: _____

24
25 By:  _____
26 Plaintiff, Peter Englander

By: _____
Doug Cash, Vice President, Finance/Logistics
Defendant Staedtler-Mars Limited

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19 fully authorized by the Party he or she represents to execute the [Proposed] Consent Judgment on
20 behalf of the Party represented and legally bind that Party.


21
22 **AGREED TO:**

23 Date: _____

24
25 By: _____
26 Plaintiff, Peter Englander

AGREED TO:

23 Date: JUNE 21, 2017

24
25 By:  _____
26 Doug Cash, Vice President, Finance/Logistics
27 Defendant Staedtler-Mars Limited
28