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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 ROLAND CORPORATION U.S.; and
DOES 1-150, inclusive,

17 Defendants.
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Case No. RG17853066

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 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 Roland Corporation U.S. (“Roland”), with Englander and Roland each
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Englander is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Roland employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Roland manufactures, imports, sells and/or distributes for sale in
16 California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without
17 providing the health hazard warning that Englander alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are products with vinyl/PVC handle straps
20 including, but not limited to, *Roland Battery Powered Stereo Amplifier Mobile Cube, MB-CUBE,*
21 *UPC #7 61294 40685 4* that are manufactured, imported, distributed, sold and/or offered for sale in
22 California by Roland (“Products”).

23 **1.6 Notice of Violation**

24 On January 4, 2017, Englander served Roland and the requisite public enforcement agencies
25 with a Supplemental 60-Day Notice of Violation (the “Notice”), alleging that Roland violated
26 Proposition 65 when it failed to warn its customers and consumers in California that the Products
27 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced
28 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On March 15, 2017, Englander commenced the instant action, naming Roland as one of the
3 defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

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

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
21 including any unopposed Tentative Ruling approving this Consent Judgment.

22 **2. INJUNCTIVE SETTLEMENT TERMS**

23 **2.1 Reformulation Standards**

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

1 **2.2 Reformulation Commitment**

2 As of the Effective Date all Products not already in Roland's inventory, that are
3 manufactured, imported, distributed, sold and/or offered for sale in the State of California by
4 Roland shall be Products that qualify as Reformulated Products as defined in Section 2.1, or shall
5 carry appropriate health hazard warnings per section 2.3, below.

6 **2.3 Product Warnings**

7 Commencing on or before the Effective Date, Roland shall provide clear and reasonable
8 warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that do not
9 qualify as Reformulated Products. Each warning shall be prominently placed with such
10 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
11 to be read and understood by an ordinary individual under customary conditions before purchase or
12 use. Each warning shall be provided in a manner such that the consumer or user understands to
13 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

14 **(a) Retail Store Sales.**

15 **(i) Product Labeling.** Roland shall affix a warning to the packaging,
16 labeling, or directly on each Product provided for sale in retail outlets in California that states:

17 WARNING: This product contains chemicals known to the State of California to
18 cause cancer, birth defects and other reproductive harm, including
19 DEHP, a phthalate chemical.

20 OR

21 WARNING: This product can expose you to chemicals, which are known to the
22 State of California to cause cancer, birth defects or other reproductive
23 harm including DEHP.
24 For more information go to www.P65Warnings.ca.gov.

25 **(ii) Point-of-Sale Warnings.** Alternatively, Roland may provide warning signs
26 in the form below to its customers in California with instructions to post the warnings in close
27 proximity to the point of display of the Products. Such instruction sent to Roland's customers shall
28 be sent by certified mail, return receipt requested.

 WARNING: This product contains chemicals known to the State of California
 to cause cancer, birth defects and other reproductive harm, including
 DEHP, a phthalate chemical.

1 OR

2 WARNING: This product can expose you to chemicals, including DEHP,
3 which are known to the State of California to cause cancer, birth
4 defects or other reproductive harm.
For more information go to www.P65Warnings.ca.gov.

5 Where more than one Product is sold in proximity to other like items or to those that do not
6 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
7 shall be used:¹

8 WARNING: The following products contain chemicals known to the State of
9 California to cause cancer, birth defects and other reproductive harm,
including DEHP, a phthalate chemical:

10 OR

11 WARNING: The following products can expose you to chemicals, including
12 DEHP, which are known to the State of California to cause cancer,
birth defects or other reproductive harm.
For more information go to www.P65Warnings.ca.gov.

13 [*list products for which warning is required*]

14
15 **(b) Mail Order Catalog and Internet Sales.** In the event that Roland sells Products
16 via mail order catalog and/or the internet, to customers located in California, after the Effective
17 Date, that are not Reformulated Products, Roland shall provide warnings for such Products sold via
18 mail order catalog or the internet to California residents. Warnings given in the mail order catalog
19 or on the internet shall identify the *specific* Product to which the warning applies as further
20 specified in Sections 2.3(b)(i) and (ii).

21 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
22 catalog shall be in the same type size or larger than the Product description text within the catalog.
23 The following warning shall be provided on the same page and in the same location as the display
24 and/or description of the Product:

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28 ¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar
product are offered for sale close enough to each other that the consumer, under customary conditions of purchase,
could not reasonably determine which of the two products is subject to the warning sign.

1 WARNING: This product contains chemicals known to the State of California
2 to cause cancer, birth defects and other reproductive harm, including
3 DEHP, a phthalate chemical.

4 OR

5 WARNING: This product can expose you to chemicals, including DEHP,
6 which are known to the State of California to cause cancer, birth
7 defects or other reproductive harm.
8 For more information go to www.P65Warnings.ca.gov.

9 Where it is impracticable to provide the warning on the same page and in the same location
10 as the display and/or description of the Product, Roland may utilize a designated symbol to cross
11 reference the applicable warning and shall define the term “designated symbol” with the following
12 language on the inside of the front cover of the catalog or on the same page as any order form for
13 the Product(s):

14 WARNING: Certain products identified with this symbol ▼
15 and offered for sale in this catalog contain chemicals known to the
16 State of California to cause cancer, birth defects and other
17 reproductive harm, including DEHP, a phthalate chemical.

18 OR

19 WARNING: Certain products identified with this symbol ▼
20 can expose you to chemicals, including DEHP, which are
21 known to the State of California to cause cancer, birth defects
22 or other reproductive harm.
23 For more information go to www.P65Warnings.ca.gov.

24 The designated symbol must appear on the same page and in close proximity to the display
25 and/or description of the Product. On each page where the designated symbol appears, Roland
26 must provide a header or footer directing the consumer to the warning language and definition of
27 the designated symbol.

28 (ii) **Internet Website Warning.** A warning shall be given in conjunction with
the sale of the Products via the internet, which warning shall appear either: (a) on the same web
page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
on the same page as the price for any Product; or (d) on one or more web pages displayed to a
purchaser during the checkout process. The following warning statement shall be used and shall
appear in any of the above instances adjacent to or immediately following the display, description,

1 or price of the Product for which it is given in the same type size or larger than the Product
2 description text:

3 WARNING: This product contains chemicals known to the State of California
4 to cause cancer, birth defects and other reproductive harm, including
5 DEHP, a phthalate chemical.

6 OR

7 WARNING: This product can expose you to chemicals, including DEHP,
8 which are known to the State of California to cause cancer, birth
9 defects or other reproductive harm.
10 For more information go to www.P65Warnings.ca.gov.

11 Alternatively, where it is impracticable to provide the warning on the same page and in the
12 same location as the display and/or description of the Product, Roland may utilize a designated
13 symbol to cross reference the applicable warning with a “designated symbol” which may appear
14 adjacent to or immediately following the display, description, or price of the Product for which a
15 warning is being given, provided that the following warning statement also appears elsewhere on
16 the same web page, as follows:

17 WARNING: This product contains chemicals known to the State of California
18 to cause cancer, birth defects and other reproductive harm, including
19 DEHP, a phthalate chemical.

20 OR

21 WARNING: This product can expose you to chemicals, including DEHP,
22 which are known to the State of California to cause cancer, birth
23 defects or other reproductive harm.
24 For more information go to www.P65Warnings.ca.gov.

25 **3. MONETARY SETTLEMENT TERMS**

26 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

27 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
28 claims referred to in this Consent Judgment, Roland shall pay \$8,500 in civil penalties in
accordance with this Section. The penalty payments will be allocated in accordance with California
Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
Office of Environmental Health Hazard Assessment (“OEHHA”) by Englander. Within five (5)
business days of the Effective Date, Roland shall provide its payment in a check made payable to

1 “Peter Englander, Client Trust Account” in the amount of \$2,125 and a check made payable to
2 “OEHHA” in the amount of \$6,375, remitted to the address provided in Section 3.3 below.
3 Englander’s counsel shall be responsible for remitting Roland’s penalty payment(s) under this
4 Consent Judgment to OEHHA.

5 **3.2 Reimbursement of Attorneys’ Fees and Costs**

6 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
9 other settlement terms had been finalized, Roland expressed a desire to resolve Englander’s fees
10 and costs. Roland agrees to pay Englander and his counsel under general contract principles, and
11 the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
12 for all work performed through the mutual execution of this agreement, including the fees and costs
13 incurred as a result of investigating, bringing this matter to Roland’s attention, negotiating a
14 settlement in the public interest, and seeking court approval of the same. Roland agrees to pay the
15 amount of fees and costs indicated in this Section 3. Within five business days of the Effective
16 Date, counsel shall issue a check to “The Chanler Group” in the amount of the attorneys’ fees and
17 costs in the amount of \$32,500, and shall deliver it to the address listed in Section 3.3 below.

18 **3.3 Payment Address**

19 All payments required by this Consent Judgment shall be delivered to the following
20 address:

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

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Englander’s Release of Proposition 65 Claims**

28 Englander, acting on his own behalf and in the public interest, releases Roland and its
parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
and attorneys (“Releasees”) and each entity to whom Roland directly or indirectly distributes or

1 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,
2 retailers, franchisers, cooperative members, licensors and licensees, including Guitar Center, Inc.
3 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
4 to DEHP from the Products manufactured, imported, distributed or sold by Roland prior to the
5 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
6 constitutes compliance with Proposition 65 by Roland with respect to the alleged or actual failure to
7 warn about exposures to DEHP from Products manufactured, sold or distributed for sale by Roland
8 after the Effective Date.

9 **4.2 Englander’s Individual Release of Claims**

10 Englander, in his individual capacity only and *not* in his representative capacity, also
11 provides a release to Roland, Releasees, and Downstream Releasees which shall be effective as a
12 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
13 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Englander of any
14 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
15 alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by
16 Roland before the Effective Date.

17 **4.3 Roland’s Release of Englander**

18 Roland, on its own behalf and on behalf of its past and current agents, representatives,
19 attorneys, successors and/or assignees, hereby waive any and all claims against Englander and his
20 attorneys and other representatives, for any and all actions taken or statements made (or those that
21 could have been taken or made) by Englander and his attorneys and other representatives in the
22 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
23 respect to the Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
27 after it has been fully executed by all Parties. Englander and Roland agree to support the entry of
28 this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely

1 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
2 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
3 motion Englander shall draft and file and Roland shall support, appearing at the hearing if so
4 requested. If any third-party objection to the motion is filed, Englander and Roland agree to work
5 together to file a reply and appear at any hearing. This provision is a material component of the
6 Consent Judgment and shall be treated as such in the event of a breach.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
14 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Roland
15 may provide Englander with written notice of any asserted change in the law, and shall have no
16 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
17 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Roland
18 from its obligation to comply with any pertinent state or federal law or regulation.

19 **8. NOTICE**

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

24 To Roland:

25 John J. Allen, Esq.
26 Allen Matkins
27 865 South Figueroa Street,
28 Suite 2800
Los Angeles, CA 90017-2543

To Englander:

Attn: 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 Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS, FACSIMILE AND PDF 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. COMPLIANCE WITH REPORTING REQUIREMENTS

Englander and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

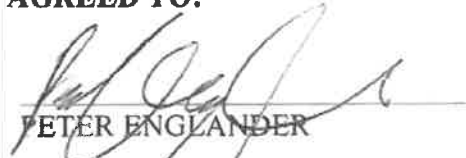
11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion 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 on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.

AGREED TO:


PETER ENGLANDER
Dated: 6/30/2017

AGREED TO:


ROLAND CORPORATION U.S.
By: Jay Wenamaker
(Print Name)
Its: President & CEO
(Title)
Dated: 6/29/17