

1 Josh Voorhees, State Bar No.241436
Christopher Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 josh@chanler.com
ctuttle@chanler.com

6 Attorneys for Plaintiff
7 PETER ENGLANDER

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12
13

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 PULL'R HOLDING COMPANY, LLC, *et al.*,

18 Defendants.

Case No. CGC-17-562822

~~PROPOSED~~ CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
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, Pull’R Holding Company, LLC, (“Pull’R”), with Englander and
5 Pull’R 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 Pull’R 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 Pull’R manufactures, imports, distributes, sells or offers for sale in
16 California, vinyl/PVC coated steel cables that contain di(2-ethylhexyl)phthalate (“DEHP”), without
17 first providing a clear and reasonable warning required by Proposition 65. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are defined as vinyl/PVC coated steel cables
21 of various lengths containing DEHP including, but not limited to, the *Maasdam Pow’R Pull Pow’R-
22 Reach Extension Cable, #8106, UPC # 0 45408 08106 0*, which are manufactured, imported,
23 distributed, sold and/or offered for sale in California by Pull’R (“Products”).
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1 **1.6 Notice of Violation**

2 On August 17, 2017, Englander served Pull’R, and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation (“Notice”) alleging that Pull’R violated Proposition 65 by failing
4 to warn its customers and consumers in California that the Products expose users to DEHP. No
5 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
6 alleged in the Notice.

7 **1.7 Complaint**

8 On December 4, 2017, Englander filed the instant action (“Complaint”), followed by a First
9 Amended Complaint filed on December 15, 2017, naming Pull’R as a defendant for the alleged
10 violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

11 **1.8 No Admission**

12 Pull’R denies the material factual, and legal allegations contained in the Notice and
13 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
14 including the Products, have been, and are, in compliance with all laws, including Proposition 65.
15 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
16 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
17 or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
18 law. This Section shall not, however, diminish or otherwise affect Pull’R’s obligations,
19 responsibilities, and duties under this Consent Judgment. Except as expressly set forth herein,
20 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument or
21 defense Pull’R may have in any other or future legal proceeding unrelated to these Products.

22 **1.9 Jurisdiction**

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

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
3 Englander’s counsel provides written notice to Pull’R’s counsel that the Court has approved and
4 entered this Consent Judgment.

5 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

6 **2.1 Commitment to Reformulate or Warn**

7 Commencing on the Effective Date and continuing thereafter, Pull’R agrees to only
8 manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)
9 Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and
10 reasonable warning pursuant to Section 2.3, below.

11 **2.2 Reformulation Standard**

12 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products
13 that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed
14 pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C
15 or equivalent methodologies utilized by state or federal agencies for the purpose of determining
16 DEHP content in a solid substance.

17 **2.3 Clear and Reasonable Warnings**

18 **2.3.1 Product Warnings**

19 Commencing on the Effective Date and continuing thereafter, for any Products sold or
20 distributed for sale in California by Pull’R or its authorized retailers and distributors in which Pull’R
21 knows to have retail stores in California or to conduct online sales via the internet , that are not
22 Reformulated Products, Pull’R agrees to only sell or distribute such Products for sale in California
23 with a clear and reasonable warning in accordance with this Section or Title 27 California Code of
24 Regulations (“CCR”) section 25600 et seq. Pull’R further agrees that any warning used will be
25 prominently placed in relation to the Products with such conspicuousness when compared with other
26 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
27 individual under customary conditions of purchase or use. For purposes of this Consent Judgment, a
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1 warning satisfying the above criteria that is affixed directly to a Product or its accompanying labeling
2 or packaging containing one of the following statements shall be deemed clear and reasonable:

3
4 **⚠ WARNING:** This product can expose you to di(2-ethylhexyl)phthalate
5 (DEHP), which is known to the State of California to cause
6 cancer and birth defects or other reproductive harm.
7 For more information go to www.P65Warnings.ca.gov.

8 **or**

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

14 Use of the parenthetical “(DEHP)” is optional.

15 **or**

16 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

17 **2.3.2 Catalog Warnings**

18 For Products that Pull’R advertises as offered for sale by catalog, Pull’R shall provide a
19 warning that complies with either the content requirements of Title 27 CCR section 25603(a) or
20 Section 2.3.1, above. Pursuant to Title 27 CCR section 25602(c), warnings for catalog sales must
21 also be provided in a manner that clearly associates it with the item being purchased. If an on-
22 product warning is provided using the short form warning pursuant to Title 27 CCR section
23 25602(a)(4) or Section 2.3.1 above, the warning provided in Pull’R’s catalog may use the same
24 content as the on-product warning.

25 **2.3.3 Internet Warnings**

26 For Products that Pull’R advertises as offered for sale via the internet, Pull’R shall provide a warning
27 that complies with either the content requirements of Title 27 CCR section 25603(a) or Section 2.3.1,
28 above. Pursuant to Title 27 CCR section 25602(b), warnings for internet sales must also be provided
by including either the warning or a clearly marked hyperlink using the word “**WARNING:**” on the
Product display page or otherwise prominently displaying the warning to the purchaser prior to
completing the purchase. If an on-product warning is provided using the short form warning

1 pursuant to Title 27 CCR section 25602(b), section 25602(a)(4), or Section 2.3.1 above, the warning
2 provided on Pull'R's website may use the same content as the on-product warning.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
6 referred to in the Notice, Complaint, and this Consent Judgment, Pull'R shall pay \$2,500.00 in civil
7 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
8 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
9 of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent
10 (25%) of the penalty retained by Englander. Englander's counsel shall be responsible for delivering
11 OEHHA's portion of any penalty payment(s) made under this Consent Judgment to OEHHA. Pull'R
12 shall provide its payment in a check made payable to "Peter Englander, Client Trust Account" in the
13 amount of \$625.00 and a check made payable to "OEHHA" in the amount of \$1,875.00 to be
14 delivered to the address provided in Section 3.4, below.

15 **3.2 Reimbursement of Attorney's Fees and Costs**

16 The parties acknowledge that Englander and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
18 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
19 the other settlement terms had been finalized, the Parties negotiated the compensation due to
20 Englander and his counsel under general contract principles and the private attorney general doctrine
21 codified at California Code of Civil Procedure section 1021.5 for all work performed related to this
22 matter. Under these legal principles, Pull'R shall pay \$27,500.00 for all fees and costs incurred by
23 Englander in this matter. Pull'R's payment shall be delivered to the address in Section 3.4 in a check
24 payable to "The Chanler Group."

25 **3.3 Payment Timing**

26 All payments due under this Consent Judgment shall be mailed to Englander's counsel
27 within five days of the Effective Date.

28 In the event that any payment required by this Consent Judgment is more than two weeks

1 late, the Parties agree and acknowledge that (a) Pull'R shall be liable to Englander for 10% simple
2 interest per annum on any unpaid amount(s); (b) Englander may seek to enforce Pull'R's payment
3 obligations under general contract principles and Code of Civil Procedure section 664.6; and (c)
4 Englander shall be entitled to reasonable fees incurred recovering such settlement payments pursuant
5 to general contract principles and Code of Civil Procedure section 1021.5.

6 **3.4 Payment Address**

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

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Englander's Public Release of Proposition 65 Claims**

13 Englander, acting on his own behalf and in the public interest, releases Pull'R and its
14 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
15 attorneys, successors and assigns ("Releasees"), and each entity to whom Pull'R directly or
16 indirectly distributed or distributes or sells the Products including, without limitation, its
17 downstream customers, distributors, wholesalers, and retailers ("Downstream Releasees") for any
18 violation arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP
19 from Products manufactured, imported, sold, or distributed for sale by Pull'R prior to the Effective
20 Date, as set forth in the Notice or Complaint. Compliance with the terms of this Consent Judgment
21 constitutes compliance with Proposition 65 with respect to exposures to DEHP from Products
22 manufactured, imported, sold, or distributed for sale by Pull'R after the Effective Date.

23 **4.2 Englander's Individual Release of Claims**

24 Englander, in his individual capacity only and *not* in any representative capacity, also
25 provides a release to Pull'R, Releasees, and Downstream Releasees, 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 Englander of any
28 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of

1 alleged or actual exposures to DEHP in Products manufactured, imported, sold, or distributed for
2 sale by Pull'R before the Effective Date.

3 **4.3 Pull'R's Release of Englander**

4 Pull'R, on its own behalf, and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Englander, and his
6 attorneys and other representatives, for any and all actions taken or statements made by Englander,
7 and his attorneys and other representatives arising out of, or related to the allegations in the
8 Complaint or the Notice, or the Products themselves.

9 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of California
19 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
20 rendered inapplicable by reason of law generally or as to the Products, then Pull'R may provide
21 written notice to Englander of any asserted change in the law, and shall have no further obligations
22 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

23 **8. NOTICE**

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

2 Vincent Lin, Chairman
3 Pull'R Holding Company, LLC
4 415 East State Parkway
5 Schaumburg, IL 60173

6 with a copy to:

7 Malcolm Weiss, Esq.
8 Hunton & Williams LLP
9 550 South Hope Street, Suite 2000
10 Los Angeles, CA 90071-2627

11 For Englander:

12 Proposition 65 Coordinator
13 The Chanler Group
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
22 same document.

23 **10. POST EXECUTION ACTIVITIES**

24 Englander agrees to comply with the reporting requirements referenced in Health and Safety
25 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
26 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
27 motion Englander shall draft and file. In furtherance of obtaining such approval, the Parties agree to
28 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, supporting the motion for approval,
responding to any objection that any third-party may file or lodge, and appearing at the hearing
before the Court, if so requested.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

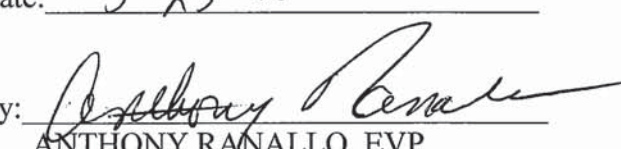
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9 **AGREED TO:**

AGREED TO:

10
11 Date: 6/13/2018

Date: 5-25-18

12
13 By: 
PETER ENGLANDER

14 By: 
ANTHONY RANALLO, EVP
PULL'R HOLDING COMPANY, LLC