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

12 PETER ENGLANDER,

13 Plaintiff,

14 v.

15 STANDARD MOTOR PRODUCTS, INC.,
16 *et al.*,

17 Defendants.

Case No. CGC-18-563748

[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 Standard Motor Products, Inc. (“SMP”), with Englander and SMP
5 each 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 SMP 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 SMP manufactures, imports, sells and/or distributes for sale in
16 California wiring instruments with vinyl/PVC coated wires that contain di(2-ethylhexyl)phthalate
17 (“DEHP”), and that it does so without providing the health hazard warning required by Proposition
18 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to cause birth defects or
19 other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are wiring instruments used to test and/or
22 measure continuity, voltage, resistance, current, transistor, diode and/or other electrical elements
23 with vinyl/PVC components alleged to contain DEHP (collectively, “Products”).

24 **1.6 Notice of Violation**

25 On or about August 23, 2017, Englander served SMP and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”), alleging that SMP violated Proposition 65
27 when it failed to warn its customers and consumers in California that the Products expose users to
28

1 DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On April 6, 2018, Englander served SMP with a complaint, naming SMP as a defendant for
5 the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 SMP denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and maintains that all of the products that it has sold or 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 by SMP of any fact, finding, conclusion of law, issue
11 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
12 construed as an admission by SMP of any fact, finding, conclusion of law, issue of law, or violation
13 of law. This Section shall not, however, diminish or otherwise affect SMP's obligations,
14 responsibilities, and duties under this Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over SMP as to the allegations contained in the Complaint, that venue is proper in the
18 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
19 this Consent 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" shall mean the date that
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

23 **2. INJUNCTIVE SETTLEMENT TERMS**

24 **2.1 Reformulated Products**

25 Commencing on the Effective Date and continuing thereafter, SMP shall only sell or
26 distribute for sale in California: (a) Reformulated Products; or (b) Products that are sold with a clear
27 and reasonable warning in accordance with subsection 2.2, below. For purposes of this Consent
28 Judgment, "Reformulated Products" are defined as Products with a maximum DEHP concentration

1 0.1 percent (1,000 parts per million) each vinyl/PVC component when analyzed pursuant to U.S.
2 Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies
3 utilized by state or federal agencies for the purpose of determining DEHP content in a solid
4 substance.

5 **2.2 Clear and Reasonable Warnings**

6 For purposes of this Consent Judgment, a clear and reasonable warning shall be prominently
7 placed with such conspicuousness when compared to other words, statements, designs, or devices
8 as to render it likely to be read and understood by an ordinary individual under customary
9 conditions of purchase or use, and contain the following statement if provided on the product:

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

11 If the label for the Products is not printed using the color yellow, the symbol hereinabove consisting
12 of a black exclamation point in a yellow equilateral triangle with a bold black outline may be
13 printed in black and white. Where the label on or affixed to the Products used to provide a warning
14 includes consumer information in a language other than English, the warning must also be provided
15 in that language in addition to English.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

18 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
19 claims referred to in this Consent Judgment, SMP shall pay \$2,000 in civil penalties. The penalty
20 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &
21 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
22 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander. SMP shall
23 provide its payment in a single check made payable to “Peter Englander, Client Trust Account” to
24 be delivered to the address provided in Section 3.4, below. Englander’s counsel shall be
25 responsible for remitting SMP’s penalty payment(s) under this Consent Judgment to OEHHA.

26 **3.2 Reimbursement of Attorneys’ 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

1 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
2 finalizing the other settlement terms, as a separate and final component of their settlement, the
3 Parties negotiated a reimbursement of Englander’s fees and costs pursuant to general contract
4 principles and the private attorney general doctrine codified at California Code of Civil Procedure
5 section 1021.5. For all work performed through the mutual execution of this agreement and the
6 Court’s approval of the same, but exclusive of fees and costs on appeal, if any, SMP agrees to
7 reimburse Englander and his counsel \$21,000. SMP’s payment shall be delivered to the address in
8 Section 3.4 in the form of a check payable to “The Chanler Group.” The reimbursement shall
9 cover all fees and costs incurred by Englander investigating, bringing this matter to SMP’s
10 attention, litigating, and negotiating a settlement of the matter in the public interest.

11 **3.3 Payment Timing; Payments Held In Trust**

12 SMP shall confirm in writing to Englander’s counsel within one week of the date that this
13 Consent Judgment is fully executed by the parties that the funds to cover the initial civil penalty
14 and fee reimbursement payments required by this Consent Judgment are being held in trust by
15 SMP’s General Counsel and, if requested, shall provide the number of the account in which such
16 funds are being held. Within five days of the Effective Date, SMP shall deliver the initial civil
17 penalty and fee reimbursement payments to Englander’s counsel at the address provided in Section
18 3.4.

19 **3.4 Payment Address**

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

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 Solely for the purpose of this Section 4.1, the term “Products”, as such term is used in this
Section 4.1, shall mean wiring instruments used to test and/or measure continuity, voltage,
resistance, current, transistor, diode and/or other electrical elements with vinyl/PVC coated wires

1 alleged to contain DEHP. Englander, acting on his own behalf and on behalf of his heirs,
2 executors, successors and assigns (collectively, the “Releasors”), and in the public interest, releases
3 Defendants, SMP and its parents, subsidiaries, and affiliated entities, and their respective
4 stockholders, directors, officers, employees, agents, successors, assigns and attorneys (“Releasees”)
5 and each entity to whom it directly or indirectly distributes or sells the Products including, but not
6 limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative
7 members, licensors and licensees (“Downstream Releasees”) for any and all actions, causes of
8 action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, demands,
9 penalties and violations of any nature, arising under Proposition 65 for unwarned exposures to
10 DEHP from Products manufactured, imported, distributed or sold by SMP prior to the Effective
11 Date. Compliance with the terms of this Consent Judgment constitutes compliance with
12 Proposition 65 by SMP with respect to the alleged or actual failure to warn about exposures to
13 DEHP from Products manufactured, sold, or distributed for sale by SMP after the Effective Date.

14 **4.2 Englander’s Individual Release of Claims**

15 The Releasors, in their individual capacity only and *not* in any representative capacity, also
16 provide a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a
17 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
18 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of the Releasors of any
19 nature, character or kind, whether known or unknown, suspected or unsuspected, arising under
20 Proposition 65 and pertaining to Products manufactured, imported, distributed or sold by SMP
21 before the Effective Date.

22 **4.3 SMP’s Release of Englander**

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

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1 **4.4 Mutual Waiver of California Civil Code Section 1542**

2 The Parties each acknowledge he/it is familiar with Section 1542 of the Civil
3 Code, which provides as follows:

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

9 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
10 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and
11 all rights and benefits which they may have under, or which may be conferred upon them by
12 the provisions of Civil Code section 1542 as well as under any other state or federal statute or
13 common law principle of similar effect, to the fullest extent he/it may lawfully waive such
14 rights or benefits pertaining to the released matters, as defined by Sections 4.1 through 4.3,
15 above.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
17 after it has been fully executed by the Parties. Englander and SMP agree to support the entry of this
18 agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner.
19 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
20 noticed motion is required for judicial approval of this Consent Judgment, which motion Englander
21 shall draft and file and SMP shall support. If any third-party objection to the motion is filed,
22 Englander and SMP agree to work together to jointly reply, including by appearing at the approval
23 hearing if requested. This provision is a material component of the Consent Judgment and shall be
24 treated as such in the event of a breach.

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then SMP may
5 provide Englander with written notice of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
7 are so affected. If there is a future revision of Title 27, California Code of Regulations, Article 6,
8 section 25600, *et seq.* relating to the content of any warning required for exposures to DEHP from
9 the Products, then SMP may use the statutory warning language required by the regulations, as
10 revised, to warn of the risks of birth defects and reproductive harm caused by exposures to DEHP
11 from the Products. Nothing in this Consent Judgment shall be interpreted to relieve SMP from its
12 obligation to comply with any pertinent state or federal law or regulation.

13 **8. NOTICE**

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

18 To SMP:

19 Carmine J. Broccole
20 Senior Vice President General Counsel
21 Standard Motor Products, Inc.
37-18 Northern Boulevard
Long Island City, NY 11101

To Englander:

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

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

24 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

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1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective Parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

12 **AGREED TO:**

AGREED TO:

13 
14 _____
15 PETER ENGLANDER.

STANDARD MOTOR PRODUCTS, INC.

16 Dated: 12/12/2018

By: Carmine J. Broccole, Senior Vice
President General Counsel

Dated: _____

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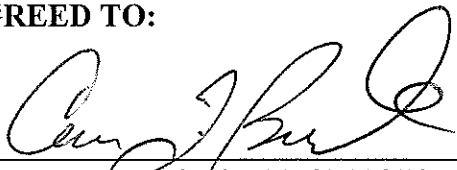
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13 _____
14 PETER ENGLANDER.

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16 Dated: _____

AGREED TO:



STANDARD MOTOR PRODUCTS, INC.

By: Carmine J. Broccole,
Senior Vice President General Counsel

Dated: December 5, 2018

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