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PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

WORLD AND MAIN (CRANBURY), LLC;
et al.,

Defendants.

Case No. CGC-18-566066

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.5 *et seq.*, and
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered by and between plaintiff Peter Englander (“Englander”),
4 and defendant World and Main (Cranbury), LLC (“World and Main”) with Englander and World and
5 Main 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 World and Main employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that World and Main sells and distributes for sale in California without a
16 Proposition 65 warning the following categories of products: (i) vinyl/PVC hoses containing di(2-
17 ethylhexyl) phthalate (“DEHP”); (ii) electrical components and accessories containing DEHP and
18 Lead; (iii) flashlights containing DEHP and Lead; (iv) hand tools containing DEHP, di-n-butyl
19 phthalate (“DBP”), and/or Lead; (v) household hardware accessories containing DEHP and Lead; (vi)
20 household plumbing accessories containing DEHP; and (vii) tape measures containing DEHP.
21 DEHP, DBP, and Lead are each listed pursuant to Proposition 65 as a chemical known to cause birth
22 defects or other reproductive harm. DEHP is also listed under Proposition 65 as a chemical that is
23 known to cause cancer.

24 **1.5 Covered Products**

25 For purposes of this Consent Judgment, “Covered Products” are defined as: (i) vinyl/PVC
26 hoses containing di(2-ethylhexyl) phthalate (“DEHP”); (ii) electrical components and accessories
27 containing DEHP and Lead; (iii) flashlights containing DEHP and Lead; (iv) hand tools containing
28 DEHP, DBP, and/or Lead; (v) household hardware accessories containing DEHP and Lead; (vi)

1 household plumbing accessories containing DEHP; and (vii) tape measures containing DEHP that are
2 sold and/or distributed for sale in California by World and Main. These products include, but are not
3 limited to, the (i) Helping Hand 3-Setting Hand-Held Shower, FQ01167, #156090-23314, UPC #0
4 70792 01167 6; (ii) Bright-Way 3 Outlet Grounded Wall Tap, 30HDCWT-32810, UPC #0 71555
5 10335 5; (iii) Flashlight with Nonslip Grip, #146863, UPC #0 75877 51016 7; (iv) Claw Hammers,
6 UPC #0 74972 96605 3, Ripping Hammer UPC #0 74972 96600 8, Steel Hammer UPC #0 74972
7 96709 8, and Forged Hammer UPC #0 74972 96617 6; (v) Ultra Door Stop Hinge Pin, UPC #7
8 49694 70058 1; (vi) Aqua Plumb Shower Sensations Massage Hand Shower, UPC #7 53274 02904 7;
9 and (vii) 16' Monster Tape, UPC #0 74972 90115 3, respectively, as identified in Englander's
10 Notices. Notwithstanding the preceding, "Covered Products" shall not include the following two
11 items: (1) 16 oz. #96600 KC Professional hammer, and (2) 7" #95505 KC Professional pliers—those
12 two specific products are subject to a certain October 10, 2017 Settlement Agreement between
13 APS&EE, LLC and World and Main (Cranbury), LLC.

14 **1.6 Notices of Violation**

15 On August 1, 2017, Englander served World and Main, the California Attorney General, and
16 all other requisite public enforcers with a 60-Day Notice of Violation ("August Notice"). The Notice
17 alleges that World and Main violated Proposition 65 by failing to warn its customers and consumers
18 in California of the health risks associated with exposures to DEHP from the vinyl/PVC hose
19 components of World and Main's hand-held shower products.

20 On February 14, 2018, Englander served World and Main, the California Attorney General,
21 and all other requisite public enforcers with a Supplemental 60-Day Notice of Violation (the
22 "February Notice"). The February Notice alleges that World and Main violated Proposition 65 by
23 failing to warn its customers and consumers in California of the health risks associated with
24 exposures to DEHP, DBP, and/or Lead from the Covered Products.

25 The August Notice and February Notice are referred to collectively herein as the "Notices."
26 No public enforcer has commenced and is diligently prosecuting an action to enforce the violations
27 alleged in either of the Notices.
28

1 **1.7 Complaint**

2 On April 25, 2018, Englander filed the instant action (“Complaint”), naming World and Main
3 as a defendant for the alleged violations that are the subject of the Notices.

4 **1.8 No Admission**

5 World and Main denies the material, factual, and legal allegations in the Notices, and
6 maintains that all the products that it has sold, distributed for sale, or offered for sale in California,
7 including the Covered Products, comply with all laws. Nothing in this Consent Judgment shall be
8 construed as an admission by World and Main of any fact, finding, conclusion, issue of law, or
9 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
10 admission by World and Main of any fact, finding, conclusion, issue of law, or violation of law, all of
11 which are specifically denied by World and Main. This Section shall not, however, diminish or
12 otherwise affect World and Main’s obligations, responsibilities, and duties under this Consent
13 Judgment.

14 **1.9 Jurisdiction**

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

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
21 the Motion for Approval of the Consent Judgment is granted by the Court, including any unopposed
22 tentative ruling granting approval.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 **2.1 Commitment to Reformulate or Provide Warnings**

25 **2.1.1** Commencing on the Effective Date and continuing thereafter, and subject to
26 Section 2.1.2 below, World and Main agrees to only manufacture for sale, purchase for sale, or
27 distribute for sale in California Covered Products that are either (a) “Reformulated Products” as
28

1 defined by Section 2.2, or (b) that are offered with a clear and reasonable warning pursuant to
2 Section 2.3.

3 **2.1.2** The requirements in this Section 2 shall not apply to any Covered Product that
4 as of the Effective Date is in the stream of commerce or is otherwise in World and Main's inventory
5 stock as of that date.

6 **2.2 Reformulated Products Defined**

7 For purposes of this Settlement Agreement, Reformulated Products are Covered Products
8 containing (a) no more than 1,000 parts per million (0.1%) of either DEHP or DBP in any
9 component analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing
10 methodologies 3580A and 8270C; (b) no more than 90 parts per million (0.009%) Lead content
11 when sampled and analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (c)
12 yield a result of no more than 1.0 micrograms of Lead when sampled according to NIOSH 9100
13 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies, the
14 Parties may use equivalent methodologies utilized by a state or federal agency to determine DEHP,
15 DBP, and/or Lead content in a solid substance.

16 **2.3 Clear and Reasonable Warnings**

17 Commencing on the Effective Date, subject to Section 2.1.2 above, for all Covered Products
18 that do not meet the definition of Reformulated Products established by Section 2.2, World and Main
19 shall provide clear and reasonable warnings in accordance with this Section, or title 27 California
20 Code of Regulations section 25600 et seq., as amended from time to time. World and Main further
21 agrees that any warning used will be prominently placed in relation to a Product with such
22 conspicuousness when compared with other words, statements, designs or devices, as to render it
23 likely to be read and understood by an ordinary individual under customary conditions of purchase or
24 use. For purposes of this Consent Judgment, a warning displayed or transmitted according to the
25 above criteria that is affixed directly to a Product or its accompanying labeling or packaging that
26 contains one of the following statements shall be deemed clear:

1 under this Consent Judgment (\$2,500 total) in two checks for the following amounts made payable
2 to: (a) "OEHHA" in the amount of \$1,875; and (b) "Peter Englander, Client Trust Account" in the
3 amount of \$625. Englander's counsel shall be responsible for delivering the penalty payment to
4 OEHHA, following the Court's approval and entry of the settlement and this Consent Judgment.

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 fees and costs to be reimbursed, thereby leaving the issue to be
8 resolved after the material terms of this Consent Judgment had been settled. Shortly after the other
9 settlement terms had been finalized, the Parties negotiated a reimbursement of the compensation due
10 to Englander and his counsel under general contract principles and the private attorney general
11 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
12 through the mutual execution of this Consent Judgment. Accordingly, World and Main agrees to pay
13 \$49,000 for all fees and costs incurred by Englander investigating, bringing this matter to World and
14 Main's attention, litigating and negotiating a settlement in the public interest, and obtaining court
15 approval of the same. Englander acknowledges that World and Main has already tendered \$34,000 of
16 the negotiated fee reimbursement to Englander's counsel to hold in trust until the Court approves the
17 Parties' settlement. World and Main agrees that the remaining portion of the fee reimbursement
18 (\$15,000 total) will be paid to Englander's counsel in a check payable to "The Chanler Group."

19 **3.3 Payments Timing; Remaining Payments Held in Trust**

20 All of the remaining settlement payments due under this Consent Judgment (\$2,500 for civil
21 penalties and \$15,000 for attorneys' fees) shall be delivered to World and Main's counsel within
22 fifteen (15) days of the date that this Consent Judgment is fully executed by the Parties, and held in
23 trust by World and Main's counsel until the Court grants the motion for approval of this Consent
24 Judgment contemplated by Section 5. World and Main's counsel shall provide Englander's counsel
25 with written confirmation of its receipt of the settlement funds from World and Main. Thereafter,
26 World and Main's counsel shall hold the funds in trust until, and disburse the payments to
27 Englander's counsel within ten (10) business days after the Effective Date.
28

1 **3.4 Payment Address**

2 All payments under this Consent Judgment shall be delivered to:

3 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 World and Main and
11 its parents (including, without limitation, HBC Holdings, LLC and World and Main, LLC),
12 subsidiaries, affiliated entities under common ownership, directors, officers, employees,
13 shareholders and attorneys ("Releasees"), and each entity to whom World and Main directly or
14 indirectly distributes or sells the Covered Products including, but not limited to, its downstream
15 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
16 licensees ("Downstream Releasees") for any violation arising under Proposition 65 based on a
17 failure to warn about exposures to DEHP, DBP and/or Lead in Covered Products manufactured,
18 sold, or distributed for sale by World and Main before the Effective Date, as alleged in the Notice.
19 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
20 with respect to the alleged or actual failure to warn about exposures to DEHP, DBP and/or Lead in
21 Covered Products manufactured, sold, or distributed for sale by World and Main after the Effective
22 Date.

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

24 Englander, in his individual capacity only and *not* in his representative capacity, also provides
25 a release to World and Main, Releasees, and Downstream Releasees which shall be effective as a full
26 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
27 attorneys' fees, damages, losses, claims, liabilities, and demands of Englander of any nature,
28 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
 actual exposures to DEHP, DBP and/or Lead in Covered Products manufactured, sold, or distributed
 for sale by World and Main before the Effective Date.

1 **4.3 World and Main's Release of Englander**

2 World and Main, on its own behalf, and on behalf of its past and current agents,
3 representatives, attorneys, successors, and assignees, hereby waives all claims against Englander and
4 his attorneys and other representatives, for any action taken or statement made by Englander and his
5 attorneys and other representatives, whether while investigating claims, seeking to enforce
6 Proposition 65 against it in this matter, or with respect to the Covered Products.

7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW; INTEGRATION AND CONSTRUCTION**

16 **7.1 Governing Law**

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

23 **7.2 Entire Agreement**

24 This Consent Judgment contains the sole and entire agreement and understanding of the
25 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all
26 prior discussions, negotiations, commitments, or understandings related thereto, are deemed merged,
27 including, but not exclusively, the "Settlement Agreement" executed by the Parties on or about
28 February 26, 2018. No representations, written, oral or otherwise, express or implied, other than

1 those specifically referred to in this Consent Judgment have been made by any Party. No other
2 agreement not specifically contained or referenced in this Consent Judgment, oral or otherwise, shall
3 be deemed to exist or to bind either Party.

4 **7.3 Construction**

5 The Parties, including their counsel, have participated in the preparation of this Consent
6 Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This Consent
7 Judgment was subject to revision and modification of the Parties and has been accepted and approved
8 as to its final form by the Parties and their counsel. Accordingly, any uncertainty or ambiguity
9 existing in this Consent Judgment shall not be interpreted against either Party as a result of the
10 manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees
11 that any statute or rule of construction providing that ambiguities are to be resolved against the
12 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
13 regard, the Parties hereby waive California Civil Code section 1654.

14 **8. NOTICE**

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

18 For World and Main:

19 Diane Garrity, Vice President of Administration and Legal Affairs
20 World and Main (Cranbury), LLC
21 324A Half Acre Road
Cranbury, NJ 08512

22 Joshua A. Bloom, Esq.
23 Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, CA 94607

24 For Englander:

25 Proposition 65 Coordinator
26 The Chanler Group
27 2560 Ninth Street
Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

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.

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.

10. POST-EXECUTION ACTIVITIES

Englander agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent Judgment, which Englander shall draft and file, and World and Main shall support, including by appearing at the hearing if so requested.

11. MODIFICATION

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

12. AUTHORIZATION

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

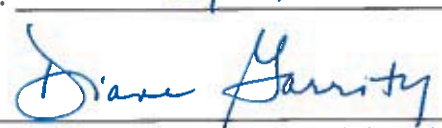
AGREED TO:

Date: 5/1/2018

By: 
PETER ENGLANDER

AGREED TO:

Date: May 1, 2018

By: 
Diane Garrity, VP of Administration and
Legal Affairs
WORLD AND MAIN (CRANBURY), LLC