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FILED

APR 29 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY J. Paula DEPUTY

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Attorneys for Plaintiff
PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

GF HEALTH PRODUCTS, INC.; *et al.*,

Defendants.

Case No.: 113CV243152

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: April 29, 2014
Time: 9:00 a.m.
Dept.: 5
Judge: Hon. Carol Overton

1 In the above-entitled action, plaintiff Peter Englander and defendant GF Health
2 Products, Inc., having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and
4 following this Court's issuance of an Order approving this Proposition 65 settlement and
5 Consent Judgment on April 29, 2014:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure
8 § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment
9 attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain
10 jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

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12 **IT IS SO ORDERED.**

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14 Dated: 4-29-14

 Carol Overton

JUDGE OF THE SUPERIOR COURT

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Exhibit 1
(To Judgment)

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PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

GF HEALTH PRODUCTS, INC.; and DOES
1-150, inclusive,

Defendants.

) Case No. 113CV243152

) **[PROPOSED] CONSENT JUDGMENT**

) Dept:
) Judge:
) Date: None set

) Action Filed: March 18, 2013

1 **1. INTRODUCTION**

2 **1.1 Peter Englander and GF Health Products, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander” or “Plaintiff”) and defendant GF Health Products, Inc. (“GF Health” or “Defendant”),
5 with Plaintiff and Defendant collectively referred to as the “parties.”

6 **1.2 Peter Englander**

7 Englander is an individual residing in the State of California who seeks to promote
8 awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 GF Health Products, Inc.**

11 Englander alleges that GF Health employs ten or more persons and is a person in the course
12 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that GF Health has manufactured, imported, distributed and/or sold in the
16 State of California blood pressure kits, vinyl/PVC bags, and stethoscopes containing di(2-
17 ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to
18 the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Settlement Agreement are defined as blood pressure
21 kits, vinyl/PVC bags, and stethoscopes containing DEHP including, but not limited to, the item
22 numbers set forth on Schedules 1, 2, and 3 attached hereto, and which are manufactured, imported,
23 distributed, sold and/or offered for sale by GF Health, or its customers, in the State of California,
24 hereinafter the “Products.”

25 **1.6 Notices of Violation**

26 On May 24, 2012, Englander served GF Health and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with
28

1 notice that GF Health was in violation of California Health & Safety Code § 25249.6 for failing to
2 warn consumers that its blood pressure kits exposed users in California to DEHP.

3 On April 19, 2013, Englander served GF Health and various public enforcement agencies
4 with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that
5 provided the recipients with notice that GF Health was in violation of California Health & Safety
6 Code § 25249.6 for failing to warn consumers that its vinyl/PVC bags exposed users in California to
7 DEHP.

8 On October 4, 2013, Englander served GF Health and various public enforcement agencies
9 with a document entitled “Second Supplemental 60-Day Notice of Violation” (“Second
10 Supplemental Notice”) that provided the recipients with notice that GF Health was in violation of
11 California Health & Safety Code § 25249.6 for failing to warn consumers that its blood pressure
12 kits, vinyl/PVC bags and stethoscopes exposed users in California to DEHP. The Notice,
13 Supplemental Notice, and Second Supplemental Notice shall collectively be referred to hereinafter
14 as the “Notices.”

15 **1.7 Complaint**

16 On March 18, 2013, Englander filed a complaint in the Superior Court in and for the County
17 of Santa Clara against GF Health and Does 1 through 150, *Englander v. GF Health Products, Inc.,*
18 *et al.*, Case No. 113CV243152 (the “Action”), alleging violations of California Health & Safety
19 Code § 25249.6, based on the alleged exposures to DEHP contained in certain blood pressure kits
20 sold by GF Health in the State of California. Provided that no public enforcer has commenced and
21 is diligently prosecuting the allegations contained in the Supplemental Notice and Second
22 Supplemental Notice, and upon entry of this Consent Judgment by the Court, the Complaint shall be
23 deemed amended to include the allegations contained in the Supplemental Notice and Second
24 Supplemental Notice.

25 **1.8 No Admission**

26 GF Health denies the material, factual and legal allegations contained in Englander’s
27 Notices and Complaint and maintains that all products that it has sold, manufactured, imported
28 and/or distributed in California, including the Products, have been and are in compliance with all

1 laws. Nothing in this Consent Judgment shall be construed as an admission by GF Health of any
2 fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment
3 constitute or be construed as an admission by GF Health of any fact, finding, conclusion, issue of
4 law or violation of law. However, this section shall not diminish or otherwise affect GF Health’s
5 obligations, responsibilities and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the parties stipulate that this Court has
8 jurisdiction over GF Health as to the allegations contained in the Complaint, that venue is proper in
9 the County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of
10 this Consent Judgment.

11 **1.10 Effective Date**

12 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
13 this Consent Judgment is approved by the Court.

14 **2. INJUNCTIVE RELIEF: REFORMULATION**

15 **2.1 Reformulation Standards**

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

21 **2.2 Reformulation Commitment**

22 As of the Effective Date all Products manufactured and/or purchased for sale in the State of
23 California by GF Health shall be Products that qualify as Reformulated Products as defined in
24 Section 2.1 above.

25 **3. MONETARY PAYMENTS**

26 In settlement of all the claims referred to in this Consent Judgment, GF Health shall pay a
27 total of \$70,000 in civil penalties in accordance with this Section. Each penalty payment will be
28 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of

1 the funds remitted to the California Office of Environmental Health Hazard Assessment
2 (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

3 **3.1 Initial Civil Penalty**

4 GF Health shall pay an initial civil penalty in the amount of \$20,000 on or before February
5 15, 2014. GF Health shall issue two separate checks to: (a) “OEHHA” in the amount of \$15,000;
6 and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$5,000. All penalty
7 payments shall be delivered to the addresses listed in Section 3.3, below.

8 **3.2 Final Civil Penalty**

9 GF Health shall pay a final civil penalty of \$50,000 on or before May 30, 2014. The final
10 civil penalty shall be waived in its entirety, however, if, no later than May 15, 2014, an officer of
11 GF Health provides Englander with written certification that, as of the date of such certification and
12 continuing into the future, GF Health has met the reformulation standard specified in Section 2,
13 above, such that all Products manufactured and/or purchased for sale in California by GF Health are
14 Reformulated Products and that as of the date of certification and continuing into the future, all
15 Products manufactured, imported, distributed, sold and offered for sale in California by GF Health
16 are Reformulated Products. Englander must receive any such certification on or before May 15,
17 2014. The certification in lieu of a final civil penalty payment provided by this Section is a material
18 term, and time is of the essence. GF Health shall issue two separate checks for its final civil penalty
19 payments to: (a) “OEHHA” in the amount of \$37,500; and (b) “The Chanler Group in Trust for
20 Peter Englander” in the amount of \$12,500.

21 **3.3 Payment Procedures**

22 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 23 (a) All payments owed to Englander, pursuant to Sections 3.1 through 3.2,
24 shall be delivered to the following payment address:

25 The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710

1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
2 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop
3 65 Penalties") at the following addresses:

4 For United States Postal Service Delivery:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 With a copy of the checks payable to OEHHA mailed to The Chanler
17 Group at the address set forth above in 3.3.1(a), as proof of payment to
18 OEHHA.

19 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, GF Health shall
20 issue separate 1099 forms for each payment to Englander, whose address and tax identification
21 number shall be furnished upon request after this Consent Judgment has been fully executed by the
22 Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

23 **4. REIMBURSEMENT OF FEES AND COSTS**

24 The parties acknowledge that Englander and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
26 this fee issue to be resolved after the material terms of the agreement had been settled. Englander
27 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
28 been finalized. The parties then attempted to (and did) reach an accord on the compensation due to
Englander and his counsel under general contract principles and the private attorney general
doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through
the mutual execution of this agreement. GF Health shall pay \$45,500 for fees and costs incurred as

1 a result of investigating, bringing this matter to GF Health’s attention, and negotiating a settlement
2 in the public interest. GF Health shall issue a separate 1099 for fees and costs (EIN: 94-3171522),
3 shall make the check payable to “The Chanler Group” and shall deliver payment on or before
4 February 15, 2014, to the address listed in Section 3.3.1(a) above.

5 **5. CLAIMS COVERED AND RELEASED**

6 **5.1 Englander’s Public Release of Proposition 65 Claims**

7 Englander, acting on his own behalf and in the public interest, releases GF Health and its
8 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
9 and attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
10 Products including, but not limited to, their downstream distributors, wholesalers, customers,
11 retailers, including but not limited to Amazon.com, Inc. and Walgreen Co. and its subsidiaries,
12 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
13 violations arising under Proposition 65 for unwarned exposures to DEHP from blood pressure kits
14 and vinyl/PVC bags including, but not limited to, the blood pressure kits and vinyl/PVC bags set
15 forth on Schedules 1, 2, and 3, attached hereto, sold by GF Health prior to the Effective Date, and as
16 set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
17 with Proposition 65 with respect to exposures to DEHP from blood pressure kits and vinyl/PVC
18 bags.

19 In the event that the Complaint is deemed amended pursuant to Section 1.7 above to include
20 the allegations found in the Supplemental Notice and Second Supplemental Notice, Englander,
21 acting on his own behalf and in the public interest, further releases GF Health, Releasees and
22 Downstream Releasees from all claims for violations of Proposition 65 up through the Effective
23 Date based on exposure to DEHP in the Products as set forth in the Supplemental Notice and
24 Second Supplemental Notice.

25 **5.2 Englander’s Individual Release of Claims**

26 Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides
27 a release to GF Health, Releasees and Downstream Releasees which shall be effective as a full and
28 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,

1 attorneys' fees, damages, losses, claims, liabilities and demands of plaintiff of any nature, character
2 or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged
3 or actual exposures to DEHP in the Products manufactured, distributed or sold by GF Health.

4 **5.3 GF Health's Release of Englander**

5 GF Health on behalf of itself, its past and current agents, representatives, attorneys,
6 successors and/or assignees, hereby waives any and all claims against Englander, his attorneys and
7 other representatives, for any and all actions taken or statements made (or those that could have
8 been taken or made) by Englander and his attorneys and other representatives, whether in the course
9 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
10 respect to the Products.

11 **6. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and
13 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
14 after it has been fully executed by all parties.

15 **7. SEVERABILITY**

16 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
17 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
18 remaining shall not be adversely affected.

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
22 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
23 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
24 preemption or rendered inapplicable by reason of law generally as to the Products, then GF Health
25 shall provide written notice to Englander of any asserted change in the law, and shall have no
26 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
27 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve GF
28 Health from any obligation to comply with any pertinent state or federal toxics control law.

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9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

- | | |
|--------------------------|----------------------------|
| To GF Health: | To Peter Englander: |
| Lori Kirschner | Proposition 65 Coordinator |
| Senior Vice President | The Chanler Group |
| GF Health Products, Inc. | 2560 Ninth Street |
| 2935 Northeast Parkway | Parker Plaza, Suite 214 |
| Atlanta, GA 30360 | Berkeley, CA 94710-2565 |

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

10. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

Englander and GF Health agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Englander shall draft and file, and GF Health shall join. If any third party objection to the noticed motion is filed, Englander and GF Health shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

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13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: February 18, 2014

Date: FEB. 6, 2014

By: 
Peter Englander

By: 
Kenneth Spett, President
GF Health Products, Inc.