

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

11 Attorneys for Plaintiff
12 PETER ENGLANDER

FILED
Superior Court of California
County of San Francisco

JUL 18 2018

CLERK OF THE COURT
BY: X. [Signature]
Deputy Clerk

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

13 PETER ENGLANDER,
14 Plaintiff,
15 v.
16 KURT S. ADLER, INC., et al.,
17 Defendant.

Case No. CGC-18-56428~~4~~
**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**
Date: July 5, 2018
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Harold E. Kahn
Reservation No.: 05150705-02

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Plaintiff Peter Englander and defendant Kurt S. Adler, Inc. having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated judgment ("Consent judgment"), and following this Court's issuance of an order approving their Proposition 65 settlement and Consent Judgment, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: 7/19/18



* JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
ctuttle@chanler.com

Attorneys for Plaintiff
PETER ENGLANDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,
Plaintiff,
v.
KURT S. ADLER, INC., *et al.*,
Defendants.

Case No. CGC-18-564284
[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 Kurt S. Adler, Inc. ("Adler"), with Englander and Adler each individually
5 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 Adler 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 Adler imports, sells, or distributes for sale in California, Christmas
16 Stockings that contain lead without first providing the exposure warning required by Proposition 65.
17 lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other
18 reproductive harm.

19 **1.5 Product Description**

20 The term "Products," as used herein, shall refer to any Christmas Stockings containing lead,
21 that are distributed for sale in California by Adler, or an Authorized Retailer of Adler, including but
22 not limited to the *Elf Christmas Stocking, EF7141, UPC #0 86131 27503 6*. For purposes of this
23 Consent Judgment, "Authorized Retailer" is any customer of Adler's with retail stores, warehouses,
24 or distribution centers in California, or who Adler reasonably believes to conduct online sales via the
25 internet in or into California, and to whom Adler either (a) directly sells the Products, or (b) has
26 authorized as a reseller of its the Products.

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1 **1.6 Notice of Violation**

2 On August 1, 2017, Englander served Adler, and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation (“Notice”) alleging that Adler violated Proposition 65 by failing to
4 warn its customers and consumers in California of the health hazards associated with exposures to
5 lead from the Products. No public enforcer has commenced and is diligently prosecuting an action to
6 enforce the violations alleged in the Notice.

7 **1.7 Complaint**

8 On February 13, 2018, Englander filed the instant action (“Complaint”), naming Adler as a
9 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
10 the Notice.

11 **1.8 No Admission**

12 Adler 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. Nothing in this Consent
15 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
16 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
17 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
18 not, however, diminish or otherwise affect Adler’s obligations, responsibilities, and duties under this
19 Consent Judgment.

20 **1.9 Jurisdiction**

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

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
27 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
28 approval of this Consent Judgment.

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

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing on the Effective Date and continuing thereafter, Adler agrees to only
4 manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)
5 Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and
6 reasonable health hazard warning pursuant to Section 2.3 below.

7 **2.2 Reformulation Standard**

8 “Reformulated Products” are Products that: (a) contain no more than 100 parts per million
9 (“ppm”) lead when analyzed pursuant to U.S. Environmental Protection Agency testing
10 methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies
11 for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0
12 microgram (“ug”) of lead when a wipe is applied to all surfaces according to NIOSH Test Method
13 No. 9100.

14 **2.3 Clear and Reasonable Warnings**

15 Commencing on the Effective Date and continuing thereafter, for any Products sold or
16 distributed for sale in California by Adler that are not Reformulated Products, Adler agrees to only
17 sell or distribute such Products for sale in California with a clear and reasonable warning in
18 accordance with this Section or Title 27 California Code of Regulations section 25602 and 25603.
19 Adler further agrees that any warning used will be prominently placed in relation to the Products with
20 such conspicuousness when compared with other words, statements, designs, or devices as to render
21 it likely to be read and understood by an ordinary individual under customary conditions of purchase
22 or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Product
23 satisfying the above criteria shall consist of a warning affixed directly to a Product or its
24 accompanying labeling or packaging. A warning containing one of the following statements, which
25 may include the parenthetical text at Adler’s option, shall be deemed clear and reasonable:
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2 **⚠ WARNING:** This product can expose you to chemicals
3 including lead, which is known to the
4 State of California to cause [cancer and] birth defects
 or other reproductive harm. For more
 information go to www.P65Warnings.ca.gov.

5 **⚠ WARNING:** [Cancer and] Reproductive harm - www.P65Warnings.ca.gov.

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7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
10 referred to in the Notice, Complaint, and this Consent Judgment, Adler shall pay \$2,500 in civil
11 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
12 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
13 of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent
14 (25%) of the penalty retained by Englander. Englander's counsel shall be responsible for delivering
15 OEHHA's portion of any penalty payment(s) made under this Consent Judgment. Adler shall
16 provide its payment in a check made payable to "Peter Englander, Client Trust Account" in the
17 amount of \$625 and a check made payable to "OEHHA" in the amount of \$1,875 to be delivered to
18 the address provided in Section 3.3, below.

19 **3.2 Reimbursement of Attorney's Fees and Costs**

20 The parties acknowledge that Englander and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
22 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
23 the other settlement terms had been finalized, the Parties negotiated the compensation due to
24 Englander and his counsel under general contract principles and the private attorney general doctrine
25 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
26 mutual execution of this Consent Judgment, and court approval of the same, but exclusive of fees and
27 costs on appeal, if any. Under these legal principles, Adler shall pay \$25,000 for all fees and costs
28 incurred by Englander investigating, bringing this matter to Adler's attention, litigating and

1 negotiating a settlement in the public interest. Adler's payment shall be delivered to the address in
2 Section 3.4 in a check payable to "The Chanler Group."

3 **3.3 Payment Timing**

4 In the event that any payment required by this Consent Judgment is untimely, the Parties
5 agree and acknowledge that (a) Adler shall be liable to Englander for 10% simple interest per annum
6 on any unpaid amount(s); (b) Englander may seek to enforce Adler's' payment obligations under
7 general contract principles and Code of Civil Procedure section 664.6; and (c) Englander shall be
8 entitled to reasonable fees incurred recovering such settlement payments pursuant to general contract
9 principles and Code of Civil Procedure section 1021.5.

10 **3.4 Payment Address**

11 Within ten (10) days of the Effective Date, all payments required by this Consent Judgment
12 shall be delivered to:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Englander's Public Release of Proposition 65 Claims**

20 Englander, acting on his own behalf and in the public interest, releases Adler and its parents,
21 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
22 attorneys ("Releasees"), and each entity to whom Adler directly or indirectly distributes or sells the
23 Products including, without limitation, its downstream customers, distributors, wholesalers,
24 licensors, licensees, and retailers ("Downstream Releasees") for any violation arising under
25 Proposition 65 pertaining to the failure to warn about exposures to lead from Products sold or
26 distributed for sale by Adler prior to the Effective Date, as set forth in the Notice. Compliance with
27 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
28 exposures to lead from Products sold or distributed for sale by Adler after the Effective Date.

1 **4.2 Englander's Individual Release of Claims**

2 Englander, in his individual capacity only and *not* in any representative capacity, also
3 provides a release to Adler, Releasees, and Downstream Releasees, which shall be effective as a full
4 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any nature, character
6 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to lead in Products sold or distributed for sale by Adler before the Effective Date.

8 **4.3 Adler's Release of Englander**

9 Adler, on its own behalf, and on behalf of its past and current agents, representatives,
10 attorneys, successors, and assignees, hereby waives any and all claims against Englander, and his
11 attorneys and other representatives, for any and all actions taken or statements made by Englander,
12 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
13 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

14 **5. COURT APPROVAL**

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

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the state of California
24 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
25 rendered inapplicable by reason of law generally or as to the Products, then Adler may provide
26 written notice to Englander of any asserted change in the law, and shall have no further injunctive
27 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
28 so affected.

1 **8. NOTICE**

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

5 For Adler:

6 Cliff Adler
7 Kurt S. Adler, Inc.
8 122 East 42nd Street
9 New York, NY 10168

10 For Englander:

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

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

22 **10. POST EXECUTION ACTIVITIES**

23 Englander agrees to comply with the reporting form requirements referenced in Health and
24 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
25 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
26 which motion Englander shall draft and file. In furtherance of obtaining such approval, the Parties
27 agree to mutually employ their best efforts, and those of their counsel, to support the entry of this
28 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.

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11. MODIFICATION

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

12. AUTHORIZATION

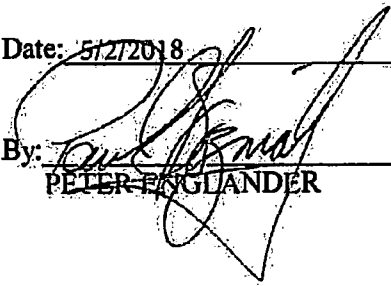
The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.


AGREED TO:

AGREED TO:

Date: 5/27/2018

Date: 5/3/18

By: 
PETER ENGLANDER

By: 
Cliff Adler, President
KURT S. ADLER, INC.