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11 Attorneys for Plaintiff  
12 PETER ENGLANDER

**FILED**  
San Francisco County Superior Court

MAY 25 2018

CLERK OF THE COURT  
BY:  Deputy Clerk

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

16 PETER ENGLANDER,  
17 Plaintiff,  
18 v.  
19 WOOLRICH, INC., et al.,  
20 Defendant.

Case No. CGC-17-562367

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

Date: May 25, 2018  
Time: 9:30 a.m.  
Dept.: 302  
Judge: Hon. Harold E. Kahn

Reservation No.: 04030525-06

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

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

11 **IT IS SO ORDERED.**

12  
13 MAY 25 2018

14 Dated: \_\_\_\_\_

15 *Richard B. Ulmer*  
16 JUDGE OF THE SUPERIOR COURT  
17 RICHARD B. ULMER  
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**EXHIBIT 1**

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Attorneys for Plaintiff  
PETER ENGLANDER

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

PETER ENGLANDER,  
Plaintiff,  
v.  
WOOLRICH, INC., *et al.*,  
Defendants.

Case No. CGC-17-562367  
[PROPOSED] <sup>FDH</sup> CONSENT JUDGMENT  
(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

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**1. INTRODUCTION**

**1.1 Parties**

This Consent Judgment is entered into by and between plaintiff Peter Englander (“Englander”), and Woolrich Inc. (“Woolrich”), with Englander and Woolrich each individually referred to as a “Party” and collectively as the “Parties.”

**1.2 Plaintiff**

Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

**1.3 Defendant**

Woolrich employs ten or more individuals and is a “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

**1.4 General Allegations**

Englander alleges that Woolrich imports, sells, or distributes for sale in California, glasses with exterior designs that contain lead without first providing the exposure warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

**1.5 Product Description**

The products covered by this Consent Judgment are glasses with exterior designs containing lead, including, but not limited to, the *Dogfish Pint Glasses, A-22023-NC, UPC #7 28175 55541 4* that are manufactured, imported, distributed, sold and/or offered for sale in California by Woolrich (“Products”).

**1.6 Notice of Violation**

On August 1, 2017, Englander served Woolrich, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Woolrich violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with

1 exposures to lead from the Products. No public enforcer has commenced and is diligently  
2 prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On November 8, 2017, Englander filed the instant action ("Complaint"), naming Woolrich as  
5 a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject  
6 of the Notice.

7 **1.8 No Admission**

8 Woolrich denies the material, factual, and legal allegations contained in the Notice and  
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,  
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
14 not, however, diminish or otherwise affect Woolrich's obligations, responsibilities, and duties under  
15 this Consent Judgment.

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which  
23 the Court approves this Consent Judgment, including any unopposed tentative ruling granting  
24 approval of this Consent Judgment.

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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, Woolrich 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 On or before the Effective Date and continuing thereafter, Woolrich agrees to only  
9 manufacture, import, distribute, sell or offer for sale in or into California, "Reformulated Products".  
10 For the purposes of this Settlement Agreement, Reformulated Products are defined as Products that  
11 (a) contain lead in concentrations of no more than 90 parts per million ("ppm") in any exterior  
12 decorations analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing  
13 methodologies 3050B and 6010B; (b) yield a result of no more than 1.0 micrograms of lead on any  
14 surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and (c) yield a result of  
15 "Non-detect" (defined as no more than 25 ppm Lead content) in any decoration(s) located in the  
16 upper 20 centimeters of a Product, i.e., the "Lip-and-Rim" area of the vessel, or on any decoration(s)  
17 located on the interior surface of the Product (i.e., the beverage-containing portion) when analyzed  
18 pursuant to EPA testing methodologies 3050B and 6010B. In addition to the testing methodologies  
19 provided above, the Parties may use equivalent methodologies utilized by state or federal agencies for  
20 the purpose of determining lead content in a solid substance to analyze a Product for the purpose of  
21 determining whether it qualifies as a Reformulated Product under this Settlement Agreement.

22 **2.3 Clear and Reasonable Warnings**

23 Commencing on the Effective Date, Woolrich shall provide clear and reasonable health  
24 hazard warnings for all non-Reformulated Products it sells or distributes in California. Woolrich  
25 agrees to only offer such non-Reformulated Products for sale with a clear and reasonable warning in  
26 accordance with this Section, or Title 27 California Code of Regulations section 25602 and 25603.  
27 Woolrich agrees that the warning will be prominently placed with such conspicuousness when  
28 compared with other words, statements, designs, or devices as to render it likely to be read and

1 understood by an ordinary individual under customary conditions before purchase or use. For  
2 purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed  
3 to or printed on the packaging, label, tag, or directly to a Product sold in California and containing  
4 one of the following statements:

5                   **⚠WARNING:** This product contains lead, a chemical  
6   known to the State of California to cause  
7   birth defects or other reproductive harm.

8                   **⚠WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

9                   **3.     MONETARY SETTLEMENT TERMS**

10                   **3.1    Civil Penalty Payments**

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

21                   **3.2    Reimbursement of Attorney’s Fees and Costs**

22                   The parties acknowledge that Englander and his counsel offered to resolve this dispute  
23 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the  
24 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after  
25 the other settlement terms had been finalized, the Parties negotiated the compensation due to  
26 Englander and his counsel under general contract principles and the private attorney general doctrine  
27 codified at California Code of Civil Procedure section 1021.5 for all work performed through the  
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1 mutual execution of this Consent Judgment, and court approval of the same, but exclusive of fees and  
2 costs on appeal, if any. Under these legal principles, Woolrich shall pay \$25,000 for all fees and  
3 costs incurred by Englander investigating, bringing this matter to Woolrich's attention, litigating and  
4 negotiating a settlement in the public interest. Woolrich's payment shall be delivered to the address  
5 in Section 3.4 in a check payable to "The Chanler Group."

6 **3.3 Payment Timing; Payments Held in Trust**

7 All payments due under this Consent Judgment shall be held in trust until such time as the  
8 Court approves the Parties' settlement. Within five (5) days of the date that this Consent Judgment is  
9 fully executed by the Parties, all payments due under this agreement shall be delivered to Woolrich's  
10 counsel and held in trust until the Effective Date. Woolrich's counsel shall provide Englander's  
11 counsel with written confirmation upon its receipt of the settlement payments. Within five days of  
12 the Effective Date, Woolrich's counsel shall deliver the civil penalty and attorneys' fee  
13 reimbursement payments to Englander's counsel.

14 **3.4 Payment Address**

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

16 The Chanler Group  
17 Attn: Proposition 65 Controller  
18 2560 Ninth Street  
19 Parker Plaza, Suite 214  
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Englander's Public Release of Proposition 65 Claims**

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

1 Compliance with the terms of this Consent Judgment constitutes compliance with  
2 Proposition 65 with respect to exposures to lead from Products sold or distributed for sale by  
3 Woolrich after the Effective Date.

4 **4.2 Englander's Individual Release of Claims**

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

12 **4.3 Woolrich's Release of Englander**

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

18 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the state of California  
28 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise

1 rendered inapplicable by reason of law generally or as to the Products, then Woolrich may provide  
2 written notice to Englander of any asserted change in the law, and shall have no further injunctive  
3 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
4 so affected.

5 **8. NOTICE**

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

9 For Woolrich:

10 Nicholas Brayton, President  
11 Woolrich, Inc.  
12 2 Mill Street  
13 Woolrich, PA 17779

14 with a copy to:

15 Michael Weed, Esq.  
16 Orrick  
17 400 Capitol Mall  
18 Suite 3000  
19 Sacramento, CA 95814-4497

20 For Englander:

21 Proposition 65 Coordinator  
22 The Chanler Group  
23 2560 Ninth Street  
24 Parker Plaza, Suite 214  
25 Berkeley, CA 94710-2565

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

28 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **10. POST EXECUTION ACTIVITIES**

2 Englander agrees to comply with the reporting form requirements referenced in Health and  
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
4 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,  
5 which motion Englander shall draft and file. In furtherance of obtaining such approval, the Parties  
6 agree to mutually employ their best efforts, and those of their counsel, to support the entry of this  
7 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
8 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for  
9 approval, responding to any objection that any third-party may file or lodge, and appearing at the  
D hearing before the Court if so requested.

11 **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.

12 **12. AUTHORIZATION**

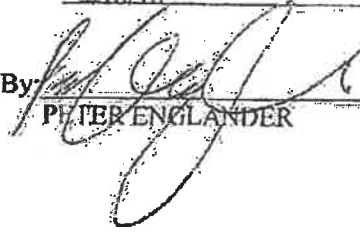
16 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
17 have read, understand, and agree to all of the terms and conditions contained herein.


18 **AGREED TO:**

**AGREED TO:**

19  
20 Date: 3/16/18

Date: March 13, 2018

21  
22 By:   
PETER ENGLANDER

By:   
Nicholas Brayton, President  
WOOLRICH, INC.