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PETER ENGLANDER
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10

11 PETER ENGLANDER,

12 Plaintiff,

13 v.
14

15 ACCOUTREMENTS LLC; and Does 1-150,
inclusive,

16 Defendants.
17
18

Case No. 112-CV-230462

**[PROPOSED] CONSENT
JUDGMENT**

1 **I. INTRODUCTION**

2 **A. Peter Englander and Accoutrements LLC**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendant Accoutrements LLC (“Accoutrements”), with Englander and
5 Accoutrements collectively referred to as “Parties.” Englander is an individual residing in the
6 State of California who seeks to promote awareness of exposure to toxic chemicals and improve
7 human health by reducing or eliminating hazardous substances contained in consumer and
8 commercial products. Accoutrements employs ten or more persons and is a person in the course
9 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
10 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

11 **B. General Allegations**

12 Englander has alleged that Accoutrements has sold placemats, toiletry cases/bags, shower
13 curtains, and bandages which contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”),
14 without the requisite Proposition 65 warnings. DEHP and other phthalates such as butyl benzyl
15 phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as chemicals
16 known to cause birth defects and other reproductive harm. Englander has also alleged that
17 Accoutrements has sold glassware with exterior decorations which contains lead (“Lead”) without
18 the requisite Proposition 65 warnings.

19 **C. Covered Products**

20 The products that are addressed by this Consent Judgment are: (a) placemats, toiletry
21 cases/bags, shower curtains, and bandages containing DEHP, and glassware with exterior
22 decorations containing Lead, referred to collectively hereinafter as the “Products,” and (b) other
23 products containing DEHP, BBP, and/or DBP which are sold in California (the “Additional
24 Products”). Additional Products shall be further be defined as products in the following
25 categories: (1) bags and purses/wallets; (2) automobile accessories, including dashboard-related
26 items; (3) bathroom accessories; (4) bath/kitchen floor and door/welcome mats; (5) ear plugs,
27 buds, and related accessories; (6) plastic figures, small novelties, and stationary-related
28 items/sundries and (7) jewelry, temporary tattoos, charms, watches, and clocks.

1 **D. Notices of Violation and Complaint**

2 On or about January 19, 2012, Englander served Accoutrements and various public
3 enforcement agencies with a document entitled “60-Day Notice of Violation,” along with the
4 requisite Certificate of Merit, (the “Notice”) that provided Accoutrements and public enforcers
5 with notice of alleged violations of Proposition 65 for failing to warn consumers that placemats,
6 toiletry cases/bags, and shower curtains that Accoutrements sold in California exposed users to
7 DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice. On
8 August 1, 2012, Englander served Accoutrements and various public enforcement agencies with a
9 document entitled “Supplemental 60-Day Notice of Violation,” along with the requisite
10 Certificate of Merit, that provided Accoutrements and public enforcers with notice of alleged
11 violations of Proposition 65 for failing to warn consumers that bandages that Accoutrements sold
12 in California exposed users to DEHP. Also, on August 1, 2012, Englander and another citizen
13 served Accoutrements and various public enforcement agencies with a document entitled “60-
14 Day Notice of Violation,” along with the requisite Certificate of Merit, that provided
15 Accoutrements and public enforcers with notice of alleged violations of Proposition 65 for failing
16 to warn consumers that glassware with exterior decorations that Accoutrements sold in California
17 exposed users to Lead.

18 On August 15, 2012, Englander filed a complaint in the Superior Court of California for
19 the County of Santa Clara, naming Accoutrements and alleging Proposition 65 violations as to
20 DEHP in the placemats, toiletry cases/bags, and shower curtains Accoutrements sold or offers for
21 sale in California. Provided that no authorized public prosecutor names Accoutrements in a
22 Proposition 65 enforcement action concerning the Products before October 11, 2012, the
23 Complaint shall be deemed amended to include additional Proposition 65 claims by Englander
24 with respect to DEHP in the bandages and Lead in exterior decorations of glassware that
25 Accoutrements has sold or offers for sale in California.

26 **E. No Admission**

27 Accoutrements denies the material, factual, and legal allegations contained in Englander’s
28 Notice and maintains that all Products and Additional Products it has sold and distributed in

1 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall
2 be construed as an admission by Accoutrements of any fact, finding, issue of law, or violation of
3 law, nor shall compliance with this Settlement Agreement constitute or be construed as an
4 admission by Accoutrements of any fact, finding, conclusion, issue of law, or violation of law,
5 such being specifically denied by Accoutrements. However, this section shall not diminish or
6 otherwise affect Accoutrements' obligations, responsibilities, and duties under this Consent
7 Judgment.

8 **F. Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
10 this Consent Judgment is approved by the Court, including any non-contested Tentative Ruling.

11 **II. INJUNCTIVE RELIEF: REFORMULATION**

12 **A. Reformulation Commitment in Lieu of Warnings**

13 As of February 28, 2013, Accoutrements shall only acquire for potential distribution to or
14 sale in California, Products and Additional Products that are "Phthalate Free." For purposes of
15 this Settlement Agreement, "Phthalate Free" products shall mean products containing less than or
16 equal to 1,000 parts per million ("ppm") of each of DEHP, BBP and DBP, when analyzed
17 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C. In
18 addition, as of the date on which it executes this Consent Judgment, Accoutrements shall only
19 sell, and offer for distribute to and sale, in California, glassware with exterior decorations that are
20 "Lead Free." For purposes of this Settlement Agreement, "Lead Free" products shall mean
21 glassware with exterior decoration material containing less than or equal to 100 parts per million
22 ("ppm") of Lead, when analyzed pursuant to U.S. Environmental Protection Agency testing
23 methodology 3050B. If such exterior decoration appears in the lip-and-rim area of the glassware
24 (the top 20 millimeters), then such exterior decoration shall contain no detectable amount of
25 Lead.
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1 **III. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

2 Accountrements shall pay \$125,000 under this section, as follows:

3 **A. Initial Civil Penalty**

4 Accountrements shall pay an initial civil penalty in the amount of \$25,000 and be
5 apportioned in accordance with California Health & Safety Code § 25249.12, subdivisions (c)(1)
6 and (d), with 75% of these funds remitted to the State of California's Office of Environmental
7 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to
8 Englander.

9 **B. Final Civil Penalty**

10 Accountrements shall pay a final civil penalty of \$75,000 on or before July 15, 2013, to be
11 apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and
12 (d), with 75% of these funds earmarked for OEHHA and the remaining 25% of these penalty
13 monies earmarked for Englander. As incentive to reformulate the Products, however, the final
14 civil penalty identified in this section shall be waived in its entirety if an Officer of
15 Accountrements or its designee certifies in writing that as of December 31, 2012, Accountrements
16 has only acquired for potential distribution to or sale in California, Products and Additional
17 Products that are both Lead Free and Phthalate Free. Such certification must be received by The
18 Chanler Group on or before July 1, 2013.

19 **C. Payment in Lieu of Civil Penalty**

20 Accountrements shall pay the sum of \$25,000 to Silent Spring Institute ("Silent Spring"), a
21 not-for-profit institution, in lieu of further civil fines pursuant to Health & Safety Code §
22 25249.7(b), and California Code of Regulations, Title 11, § 3202(b). Silent Spring will use such
23 funds to continue its work identifying the links between exposure to environmental chemicals
24 including DEHP, DBP, BBP and Lead and reproductive and developmental harm, as well as
25 educating the public about such potential exposures. Silent Spring will conduct exposure- and
26 risk-based prioritization of chemicals listed under Proposition 65, or chemicals OEHHA has
27 identified as candidates for listing, in order to identify exposures of potential public health
28 significance. Silent Spring may also use a portion of such funds to monitor compliance with the

1 reformulation requirements of this and other similar consent judgments addressing Proposition
2 65-listed chemical exposures, as well as to conduct additional exposure measurements that
3 evaluate the levels of chemical exposures to users of products that contain DEHP, DBP, BBP and
4 Lead.

5 **D. Payment Procedures**

6 Accountments shall put the initial civil penalty payment amount and the payment in lieu
7 amount into escrow in Morrison & Foerster LLP's client trust account on or before August 31,
8 2012, and written notice shall timely be provided by Morrison & Foerster to counsel for Plaintiff
9 that the funds have been received and have cleared. Upon approval of this Consent Judgment by
10 the Court, three separate checks shall be issued from the escrow within five days of the Effective
11 Date: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the amount of
12 \$18,750, representing 75% of the total initial penalty; (b) one check to "The Chanler Group in
13 Trust for Peter Englander" in the amount of \$6,250, representing 25% of the total initial penalty;
14 and (c) one check in the amount of \$25,000, made payable to "The Chanler Group in Trust for
15 Silent Spring Institute." Three separate 1099s shall be issued for the above payments as follows:
16 (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); (b) Peter Englander,
17 whose information shall be provided by email or other means within five (5) calendar days of
18 Accountments' execution and delivery of this Consent Judgment document to Englander's
19 counsel; and (c) Silent Spring Institute, 29 Crafts Street, Newton, Massachusetts 02458, whose
20 information shall be provided by email or other means within five (5) calendar days of final
21 execution of this agreement.

22 By no later than July 15, 2013, Accountments, if required, shall also directly issue two
23 separate checks for the final civil penalty payment: (a) one check made payable to "The Chanler
24 Group in Trust for OEHHA" in the amount of \$56,250, representing 75% of the total final
25 penalty; and (b) one check to "The Chanler Group in Trust for Peter Englander" in the amount of
26 \$18,750, representing 25% of the total final penalty. Two corresponding separate 1099s shall
27 also be issued by Accountments for the above payments.
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1 All payments due under this Consent Judgment shall be delivered to Englander's counsel
2 at the following address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **IV. REIMBURSEMENT OF FEES AND COSTS**

9 The Parties reached an accord on the compensation due to Englander and his counsel
10 under the private attorney general doctrine and principles of contract law. Under these legal
11 principles, Accoutrements shall reimburse Englander's counsel for fees and costs incurred as a
12 result of investigating, bringing this matter to their attention, and negotiating a settlement and
13 obtaining approval and entry of this Consent Judgment. Accoutrements shall pay Englander and
14 his counsel \$75,000 for all attorneys' fees, expert and investigation fees, and related costs,
15 including the fees and costs associated with negotiating, drafting, and implementing the
16 provisions of this Consent Judgment addressing both Products and Additional Products.
17 Accoutrements shall put the payment required by this paragraph into escrow in Morrison &
18 Foerster LLP's client trust account on or before August 31, 2012, and Morrison & Foerster shall
19 provide timely written notice s to counsel for Plaintiff that the funds have been received and have
20 cleared. Upon approval by the Court of the Consent Judgment, the payment required by this
21 paragraph shall be provided from escrow to "The Chanler Group" and a separate 1099 shall be
22 issued for The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California
23 94710 (EIN: 94-3171522). This payment shall be delivered to Englander's counsel on or before
24 five days following the Effective Date at the address shown for payments above.

25 **V. RELEASE OF ALL CLAIMS**

26 **A. Englander's Release of Accoutrements**

27 In consideration of the promises and agreements herein contained, Englander on behalf of
28 himself and his past and current agents, representatives, attorneys, successors, and/or assignees,
and in the public interest, hereby releases Accoutrements and each of its downstream distributors,

1 dealers, customers, purchasers and its parent companies, corporate affiliates, subsidiaries, and
2 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees
3 (collectively “Releasees”) from all claims for violations of Proposition 65 up through the
4 Effective Date based on exposure to DEHP from the Products and to Lead from exterior
5 decorations on glassware that Accoutrements has sold or offered for sale in California. The
6 Parties understand and agree that this release shall not extend upstream to any entities that
7 manufactured the Products or any component parts thereof, or any distributors or suppliers who
8 sold the Products or any component parts thereof to Accoutrements. Compliance with the terms
9 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
10 DEHP in Products within the categories set forth in the Notices and with respect to Lead in the
11 exterior decorations on glassware sold or offered for sale by Accoutrements in California.

12 Englander, on behalf of himself and his past and current agents, representatives, attorneys,
13 successors, and/or assignees and *not* in his representative capacity, also agrees to release
14 Accoutrements as to Proposition 65 claims relating to BBP or DBP in the Products and as to
15 Proposition 65 claims relating to DEHP, BBP or DBP in the Additional Products. The Parties
16 understand and agree that these further releases are not being given on behalf of the public
17 interest. Nevertheless, compliance with the Phthalate Free requirement in Section II.A of this
18 Consent Judgment by Accoutrements shall be deemed to achieve compliance with the Court’s
19 injunction with respect to the application of Proposition 65 to DEHP, BBP, and DBP in the
20 Products and Additional Products.

21 **B. Accoutrements’ Release of Englander**

22 Accoutrements waives any and all claims against Englander, his attorneys, and other
23 representatives for any and all actions taken by Englander and his attorneys and other
24 representatives, whether in the course of investigating claims or otherwise seeking enforcement of
25 Proposition 65 against it in this matter.
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1 **VI. SEVERABILITY**

2 If, subsequent to the approval of this Consent Judgment, any of the provisions of it are
3 held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not
4 be adversely affected. If not approved by the Court, this Consent Judgment shall be of no force
5 and effect.

6 **VII. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California.

9 **VIII. NOTICES**

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

14 To Accoutrements:

15 Mark Pahlow
16 Accoutrements LLC
17 10915 47th Ave., W.
Mukilteo, WA 98275

18 To Peter Englander:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

24 **IX. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **X. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

4 **XI. ADDITIONAL POST-EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
6 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
7 obtaining such approval, Englander’s counsel shall prepare a motion for this Consent Judgment’s
8 approval by the Court, and Englander and Accoutrements, and their respective counsel, agree to
9 mutually employ their best efforts to support the entry of this agreement as a Consent Judgment
10 and obtain approval of the Consent Judgment by the Court in a timely manner.

11 **XII. ENTIRE AGREEMENT**

12 This Consent Judgment contains the sole and entire agreement and understanding of the
13 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments, and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any Party
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
17 deemed to exist or to bind any of the Parties.

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XIII. AUTHORIZATION

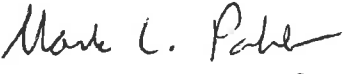
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

IT IS HEREBY SO STIPULATED:

AGREED TO:
Dated: 8/31/12

By: 
PETER ENGLANDER

AGREED TO:
Dated: 8-28-2012

ACCOUTREMENTS LLC
By: 
Name: MARK L. PAWLOW
Title: MANAGING MEMBER