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6  
7 Attorneys for Plaintiff  
PETER ENGLANDER

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
12

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 TAPE HOLDING COMPANY, INC.; and  
DOES 1-150, inclusive,

17 Defendants.  
18

Case No. RG17864662

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 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 defendant Tape Holding Company, Inc. (“Tape”), with Englander and Tape each  
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Englander is a resident of the State of California who seeks to promote awareness of  
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Tape employs ten or more persons and is a person in the course of doing business for  
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Tape manufactures, imports, sells and/or distributes for sale in  
16 California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without  
17 providing the health hazard warning that Englander alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC tapes containing DEHP  
20 including, but not limited to, *Identification Tape Green, #333C-1/2, CG01-AE01, #434343 M10,*  
21 *UPC #0 00194 34343 3* that are manufactured, imported, distributed, sold and/or offered for sale in  
22 California by Tape (“Products”).

23 **1.6 Notice of Violation**

24 On March 30, 2017, Englander served Tape and the requisite public enforcement agencies  
25 with a Supplemental 60-Day Notice of Violation (the “Notice”), alleging that Tape violated  
26 Proposition 65 when it failed to warn its customers and consumers in California that the Products  
27 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced  
28 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1           **1.7 Complaint**

2           On June 20, 2017, Englander commenced the instant action, naming Tape as one of the  
3 defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

4           **1.8 No Admission**

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

13           **1.9 Jurisdiction**

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

18           **1.10 Effective Date**

19           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,  
21 including any unopposed Tentative Ruling approving this Consent Judgment.

22 **2. INJUNCTIVE SETTLEMENT TERMS**

23           **2.1 Reformulation Standards**

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

1           **2.2 Reformulation Commitment**


2           As of three months from the Effective Date, all Products not already in Tape’s inventory,  
3 that are manufactured, imported, distributed, sold and/or offered for sale in the State of California  
4 by Tape shall be Products that qualify as Reformulated Products as defined in Section 2.1, or shall  
5 carry appropriate health hazard warnings per section 2.3, below.

6           **2.3 Product Warnings**

7           Commencing three months from the Effective Date, Tape shall provide clear and reasonable  
8 warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products that do not  
9 qualify as Reformulated Products. Each warning shall be prominently placed with such  
10 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
11 to be read and understood by an ordinary individual under customary conditions before purchase or  
12 use. Each warning shall be provided in a manner such that the consumer or user understands to  
13 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

14           **(a) Retail Store Sales.**

15           **(i) Product Labeling.** Tape shall affix a warning to the packaging, labeling,  
16 or directly on each Product provided for sale in retail outlets in California that states:


17            **WARNING:** This product can expose you to DEHP, which is known to  
18 the State of California to cause cancer and birth defects or  
19 other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

20           Or:

21            **WARNING:** Cancer and Reproductive Harm -  
22 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

23           **(b) Mail Order Catalog and Internet Sales.** In the event that Tape sells Products via  
24 mail order catalog and/or the internet, to customers located in California, after the Effective Date,  
25 that are not Reformulated Products, Tape shall provide warnings for such Products sold via mail  
26 order catalog or the internet to California residents. Warnings given in the mail order catalog or on  
27 the internet shall identify the *specific* Product to which the warning applies as further specified in  
28 Sections 2.3(b)(i) and (ii).


1 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order  
2 catalog shall be in the same type size or larger than the Product description text within the catalog.  
3 Either of the following warnings shall be provided on the same page and in the same location as the  
4 display and/or description of the Product:

5  **WARNING:** This product can expose you to DEHP, which is known to  
6 the State of California to cause cancer and birth defects or  
7 other reproductive harm. For more information go to  
8 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

8 Or:

9  **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).


10  
11 Where it is impracticable to provide the warning on the same page and in the same location  
12 as the display and/or description of the Product, Tape may utilize a designated symbol to cross  
13 reference the applicable warning and shall define the term “designated symbol” with the following  
14 language on the inside of the front cover of the catalog or on the same page as any order form for  
15 the Product(s):

16  **WARNING:** Certain products identified with this symbol ▼ and offered  
17 for sale in this catalog can expose you to DEHP, which is  
18 known to the State of California to cause cancer and birth  
19 defects or other reproductive harm. For more information  
20 go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

20 The designated symbol must appear on the same page and in close proximity to the display  
21 and/or description of the Product. On each page where the designated symbol appears, Tape must  
22 provide a header or footer directing the consumer to the warning language and definition of the  
23 designated symbol.

24 (ii) **Internet Website Warning.** A warning shall be given in conjunction with  
25 the sale of the Products via the internet, which warning shall appear either: (a) on the same web  
26 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)  
27 on the same page as the price for any Product; or (d) on one or more web pages displayed to a  
28 purchaser during the checkout process. Either of the following warning statements shall be used


1 and shall appear in any of the above instances adjacent to or immediately following the display,  
2 description, or price of the Product for which it is given in the same type size or larger than the  
3 Product description text:

4  **WARNING:** This product can expose you DEHP, which is known to the  
5 State of California to cause cancer and birth defects or  
6 other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

7 Or:

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

9  
10 Alternatively, where it is impracticable to provide the warning on the same page and in the  
11 same location as the display and/or description of the Product, Tape may utilize a designated  
12 symbol to cross reference the applicable warning with a “designated symbol” which may appear  
13 adjacent to or immediately following the display, description, or price of the Product for which a  
14 warning is being given, provided that the following warning statement also appears elsewhere on  
15 the same web page, as follows:

16  **WARNING:** Certain products identified with this symbol ▼ and offered  
17 for sale in this website can expose you to DEHP, which is  
18 known to the State of California to cause cancer and birth  
19 defects or other reproductive harm. For more information  
go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### 20 **3. ENFORCEMENT**

#### 21 **3.1 Notice of Breach**

22 Englander may seek to enforce the terms and conditions of this Consent Judgment and the  
23 requirements of Section 2 by issuing Tape a written Notice of Breach, prior to pursuing other  
24 remedies available at law. For each Product, the Notice of Breach shall include: (1) the date(s) of  
25 the alleged violation(s) or breach; (2) the location at which the Product was purchased; (3) a clear  
26 description of the Product, including images of the Product and any relevant packaging or labeling,  
27 together with the Product model number, UPC number or SKU; and (4) test data obtained by  
28 Englander regarding the Product allegedly in breach of this Consent Judgment, including, without

1 limitation, supporting documentation, laboratory reports, quality assurance and/or quality control  
2 reports associated with the testing of the Product. Any Product test data shall be based on the same,  
3 or comparable, testing methods specified in Section 2.

### 4 **3.2 Meet and Confer; Opportunity to Cure**

5 Englander and Tape agree to meet and confer for a period of not less than thirty (30) days  
6 from Tape's receipt of the Notice of Breach regarding Englander's allegations and potential  
7 informal resolutions of same, including the potential payment of reasonable additional civil  
8 penalties and or fees.

9 Tape will have an opportunity to cure the breach identified in the Notice of Breach within  
10 the meet and confer period, or within such a reasonable time as may be required to cure the breach,  
11 provided: (a) acts to cure the breach are commenced within 45 days; (b) Tape clearly communicates  
12 to Englander all actions taken to cure the breach; (c) Englander agrees with Tape's efforts to cure;  
13 and (d) the acts to cure the breach are thereafter diligently pursued to completion. If Tape fails to  
14 correct the breach, including the potential payment of reasonable additional civil penalties and or  
15 fees, to Englander's reasonable satisfaction and the Parties cannot resolve the dispute informally,  
16 Englander may pursue any remedies available to him under law to enforce the terms and conditions  
17 of this Consent Judgment.

## 18 **4. MONETARY SETTLEMENT TERMS**

### 19 **4.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

20 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all claims  
21 referred to in the Notice, Complaint, and this Consent Judgment, Tape agrees to pay a total of  
22 \$3,400.00 in civil penalties. Tape's civil penalty payments will be allocated according to Health  
23 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty  
24 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the  
25 remaining twenty-five percent (25%) of the penalty payment retained by Plaintiff. Tape shall,  
26 within five (5) business days of the execution of this Consent Judgment, issue a check payable to its  
27 counsel's law firm in the amount of \$3,400.00, to be held in trust by its counsel. Counsel for Tape  
28

1 shall provide The Chanler Group with written confirmation within three days of receipt that the  
2 funds have been deposited in a trust account. Within two business days of the Effective Date, Tape  
3 shall issue checks to “The Chanler Group” as follows: (1) to “Peter Englander, Client Trust  
4 Account” totaling \$850; and (2) to the “Office of Environmental Health Hazard Assessment”  
5 totaling \$2,550. Upon receipt, Englander and his counsel will then ensure payment to OEHHA.  
6 All penalty payments shall be delivered to the addresses listed in Section 4.3 below.

#### 7 **4.2 Reimbursement of Attorneys’ Fees and Costs**

8 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
9 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
10 the issue to be resolved after the material terms of the agreement had been settled. Shortly after  
11 the other settlement terms had been finalized, Tape expressed a desire to resolve Englander’s fees  
12 and costs. The Parties then negotiated a resolution of the compensation due to Englander and his  
13 counsel under general contract principles and the private attorney general doctrine codified at  
14 California Code of Civil Procedure § 1021.5. For all work performed through the mutual  
15 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs  
16 on appeal, if any, Tape shall reimburse Englander and his counsel \$28,000.00. Tape shall, within  
17 five (5) business days of the execution of this Consent Judgment, issue a check payable to its  
18 counsel’s law firm in the amount of \$28,000.00, to be held in trust by its counsel. Counsel for  
19 Tape shall provide The Chanler Group with written confirmation within three days of receipt  
20 that the funds have been deposited in a trust account. Within two business days of the  
21 Effective Date, counsel shall issue a check to “The Chanler Group” in the amount of  
22 \$28,000.00, and shall deliver it to the address listed in Section 4.3 below. The reimbursement  
23 shall cover all fees and costs incurred by Englander investigating, bringing this matter to Tape’  
24 attention, litigating, and negotiating a settlement of the matter in the public interest.

#### 25 **4.3 Payment Address**

26 All payments required by this Consent Judgment shall be delivered to the following  
27 address:  
28



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

6 **5. CLAIMS COVERED AND RELEASED**

7 **5.1 Englander’s Release of Proposition 65 Claims**

8 Englander, acting on his own behalf and in the public interest, releases Tape and its parents,  
9 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
10 attorneys (“Releasees”) and each entity to whom Tape directly or indirectly distributes or sells the  
11 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,  
12 franchisers, cooperative members, licensors and licensees, (“Downstream Releasees”) for any  
13 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products  
14 manufactured, imported, distributed or sold by Tape prior to three months after the Effective Date,  
15 as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes  
16 compliance with Proposition 65 by Tape with respect to the alleged or actual failure to warn about  
17 exposures to DEHP from Products manufactured, sold or distributed for sale by Tape after the  
18 Effective Date.

19 **5.2 Englander’s Individual Release of Claims**

20 Englander, in his individual capacity only and *not* in his representative capacity, also  
21 provides a release to Tape, Releasees, and Downstream Releasees which shall be effective as a full  
22 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
23 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Englander of any  
24 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of  
25 alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by  
26 Tape before three months after the Effective Date.

27 **5.3 Tape’s Release of Englander**

28 Tape, on its own behalf and on behalf of its past and current agents, representatives,  
attorneys, successors and/or assignees, hereby waive any and all claims against Englander and his

1 attorneys and other representatives, for any and all actions taken or statements made (or those that  
2 could have been taken or made) by Englander and his attorneys and other representatives in the  
3 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with  
4 respect to the Products.

5 **5.4 California Civil Code Section 1542**

6 It is possible that other claims not known to the Parties arising out of the facts alleged in the  
7 Notice and relating to the Products will develop or be discovered. Englander and Tape  
8 acknowledge that this Agreement is expressly intended to cover and include all such claims up  
9 through three months after the Effective Date, including all rights of action therefor. The Parties  
10 acknowledge that the claims released in Sections 5.1, 5.2 and 5.3 above may include unknown  
11 claims, and nevertheless waive California Civil Code §1542 as to any such unknown claims.  
12 California Civil Code §1542 reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
14 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME  
15 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE  
16 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

17 Englander and Tape each acknowledge and understand the significance and consequences of  
18 this specific waiver of California Civil Code §1542.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and  
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
22 after it has been fully executed by all Parties. Englander and Tape agree to support the entry of this  
23 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.  
24 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a  
25 noticed motion is required for judicial approval of this Consent Judgment, which motion Englander  
26 shall draft and file and Tape shall support, appearing at the hearing if so requested. If any third-  
27 party objection to the motion is filed, Englander and Tape agree to work together to file a reply and  
28 appear at any hearing. This provision is a material component of the Consent Judgment and shall  
be treated as such in the event of a breach.

1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California  
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Tape may  
9 provide Englander with written notice of any asserted change in the law, and shall have no further  
10 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products  
11 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Tape from its  
12 obligation to comply with any pertinent state or federal law or regulation.

13 **9. NOTICE**

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

18 To Tape:  
19 Julie E. Schwartz, Esq.  
20 Perkins Coie LLP  
21 3150 Porter Drive  
22 Palo Alto, CA 94304-1212

To Englander:  
Attn: Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

25 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

**11. COMPLIANCE WITH REPORTING REQUIREMENTS**

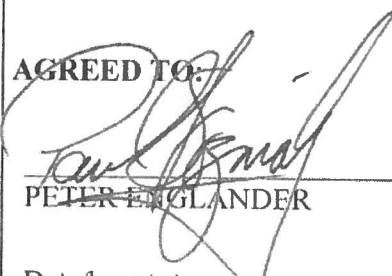
Englander and his counsel agree to comply with the reporting form requirements referenced  
in California Health and Safety Code section 25249.7(f).

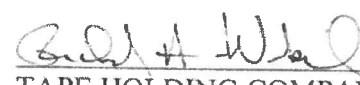
1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their  
7 respective Parties and have read, understood, and agreed to all of the terms and conditions of this  
8 Consent Judgment.

9  
10 **AGREED TO:**  
11   
12 \_\_\_\_\_  
13 PETER ENGLANDER  
14 Dated: 2/2/2018

**AGREED TO:**  
  
\_\_\_\_\_  
TAPE HOLDING COMPANY, INC.  
By: Richard H Winkel  
(Print Name)  
Its: President  
(Title)  
Dated: 2/1/2018

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