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

13 PETER ENGLANDER,
14 Plaintiff,
15 v.
16 WOOLRICH, INC., *et al.*,
17 Defendants.
18

Case No. CGC-17-562367

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

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

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

24 **1.6 Notice of Violation**

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

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
0 hearing before the Court if so requested.

1 **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.

5 **12. AUTHORIZATION**

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

8 **AGREED TO:**

9 **AGREED TO:**

10 Date: 3/16/18

11 Date: March 13, 2018

12 By: 
13 PETER ENGLANDER

14 By: 
15 Nicholas Brayton, President
16 WOOLRICH, INC.