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5 Attorneys for Plaintiff
6 PETER ENGLANDER

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF ALAMEDA

9 UNLIMITED CIVIL JURISDICTION

10
11 PETER ENGLANDER

12 Plaintiff,

13 v.

14 BOSTON AMERICA CORP. and DOES 1-150,

15 Defendants.

Case No. RG12658015

**CONSENT TO JUDGMENT AS TO
DEFENDANT BOSTON AMERICA CORP.**

Action Filed: November 29, 2012
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Peter Englander,
4 (“Englander” or “Plaintiff”) and Defendant Boston America Corp. (“Boston America” or
5 “Defendant”) with Englander and Boston America collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 For purposes of this Consent To Judgment only, Boston America acknowledges that it
12 was a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Boston America manufactured, distributed and/or sold, in the
16 State of California, adhesive bandages containing DEHP, including, but not limited to, certain
17 types of child-oriented character bandages, including but not limited to Hello Kitty Bandages
18 (SIL-34067), that exposed users to DEHP, without first providing any “clear and reasonable
19 warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant
20 pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On June 15, 2012, Englander served Defendant and various public enforcement agencies
23 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
24 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers of the presence of DEHP, a toxic chemical found in and on
26 Defendant’s adhesive bandage products sold in California. To the best of the Parties’
27 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set
28 forth in the Notice.

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1.6 Complaint

On June 15, 2012, Englander, acting, in the interest of the general public in California, filed a Complaint in the Superior Court of the State of California for the County of Alameda, alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to DEHP contained in the referenced hand tool products (the “Action”).

1.7 No Admission

This Consent To Judgment resolves claims that are denied and disputed by Boston America. The Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not employ ten or more persons, did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent To Judgment constitute or be construed as an admission by the Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Boston America’s obligations, responsibilities, and duties under this Consent To Judgment.

1.8 Consent to Jurisdiction

For purposes of this Consent To Judgment only, the Parties stipulate that this Court has jurisdiction over Boston America as to the allegations contained in the Complaint, that venue is proper in the County in which the Complaint is filed, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

1 **2. DEFINITIONS**

2 2.1 The term "Complaint" shall mean the November 29, 2012, Complaint.

3 2.2 The term "Covered Products" means any adhesive bandages that are
4 manufactured, distributed, marketed or sold, or caused to be manufactured, distributed,
5 marketed or sold by Boston America.

6 2.3 The term "Effective Date" shall mean April 30, 2013.

7 2.4 The term "DEHP Free" Covered Products shall mean Covered Products
8 containing materials or other components that may be handled, touched or mouthed by a
9 consumer, and which components each contain less than or equal to 1,000 parts per million
10 ("ppm") of DEHP as determined by a minimum of duplicate quality controlled test results from
11 a NVLAP accredited laboratory using Environmental Protection Agency ("EPA") testing
12 methodologies 3580A and 8270C or any comparable methodology utilized or approved for use
13 by a United States federal government agency for the purpose of determining the DEHP content
14 in a solid substance.

15 **3. INJUNCTIVE RELIEF**

16 **3.1 Formulation Commitment**

17 As of the Effective Date, Defendant shall not order, cause to be ordered, manufacture or
18 cause to be manufactured any Covered Product that is not DEHP Free.

19 For every Covered Product ordered, caused to be ordered, manufactured or caused to be
20 manufactured after the Effective Date, Defendant shall maintain copies of any testing of such
21 products demonstrating compliance with this section.

22 **3.2 Previously Obtained Covered Products.**

23 **3.2.1 Product Warnings**

24 Boston America avers that it does not have any inventory of Covered Product that is not
25 DEHP Free. However, in such case as Boston America does have inventory obtained prior to the
26 Effective Date and not confirmed to be DEHP Free, Boston America shall not distribute or sell
27 into the United States, or distribute or sell to any retailer that Defendant reasonably understands
28

1 maintains retail outlets in the United States, any such Covered Products unless it is shipped with
2 one of the clear and reasonable warnings set forth hereafter.

3 Each such warning shall be prominently placed with such conspicuousness as compared
4 with other words, statements, designs, or devices as to render it likely to be read and understood
5 by an ordinary individual under customary conditions of purchase or use. Each warning shall
6 be affixed to or printed on the Covered Product itself or to the Covered Product's packaging,
7 labeling, or instruction booklet, if any.

8 (a) **Retail Store Product Labeling.** Boston America shall affix a warning to
9 the packaging, labeling, or directly on any Covered Products sold or distributed to a California
10 retailer or any retailer that Defendant reasonably understands maintains retail outlets in
11 California that states:

12 **WARNING:** This product contains DEHP, a chemical
13 known to the State of California to cause
14 cancer, birth defects and other reproductive
harm.

15 (b) **Mail Order Catalog and Internet Sales.** Boston America may satisfy its
16 Proposition 65 warning obligations for Covered Product sold by mail order catalogue or from
17 the internet by providing a warning: (1) in the mail order catalogue as specified in Section
18 3.2.1(b)(i); on the website as specified in Section 3.2.1(b)(ii); and/or by affixing the warning
19 specified in Section 3.2.1(a) to the packaging, labeling, or directly on any Covered Product.

20 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
21 order catalog must be in the same type size or larger than the Covered Product description text
22 within the catalog. The following warning shall be provided on the same page and in the same
23 location as the display and/or description of the Covered Product:

24 **WARNING:** This product contains DEHP, a chemical
25 known to the State of California to cause
26 cancer, birth defects and other reproductive
harm.

27 Where it is impracticable to provide the warning on the same page and in the same
28 location as the display and/or description of the Covered Product, Boston America may utilize a

1 designated symbol to cross-reference the applicable warning and shall define the term
2 “designated symbol” with the following language on the inside of the front or back cover of the
3 catalog or on the same page as any order form for the Covered Product:

4 **WARNING:** Certain products identified with this
5 symbol ▼ and offered for sale in this
6 catalog contain DEHP, a chemical known
7 to the State of California to cause cancer,
8 birth defects and other reproductive harm.

9 The designated symbol must appear on the same page and in close proximity to the
10 display and/or description of the Covered Product. On each page where the designated symbol
11 appears, Boston America must provide a header or footer directing the consumer to the warning
12 language and definition of the designated symbol.

13 If Boston America elects to provide warnings in any mail order catalog, then the
14 warnings must be included in all catalogs offering to sell one or more Covered Product printed
15 after the Effective Date.

16 (ii) **Internet Website Warning.** A warning may be given in
17 conjunction with the sale of any Covered Product via the Internet, provided it appears either: (a)
18 on the same web page on which a Covered Product is displayed; (b) on the same web page as the
19 order form for a Covered Product; (c) on the same page as the price for any Covered Product; or
20 (d) on one or more web pages displayed to a purchaser during the checkout process. The
21 following warning statement shall be used and shall appear in any of the above instances
22 adjacent to or immediately following the display, description, or price of the Covered Product
23 for which it is given in the same type size or larger than the Covered Product description text:

24 **WARNING:** This product contains DEHP, a chemical
25 known to the State of California to cause
26 cancer, birth defects and other reproductive
27 harm.

28 Alternatively, the designated symbol may appear adjacent to or immediately following
the display, description, or price of the Covered Product for which a warning is being given,

1 provided that the following warning statement also appears elsewhere on the same web page, as
2 follows:

3
4 **WARNING:** Products identified on this page with the
5 following symbol ▼ contain DEHP, a
6 chemical known to the State of California
7 to cause cancer, birth defects and other
8 reproductive harm.

9 **3.2.2** Boston America shall maintain any records it may have of compliance
10 correspondence, inventory reports or other communication confirming compliance with § 3.2.1
11 for two (2) years from the Effective Date and shall produce copies of such records upon written
12 request by Englander.

13 **4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(B)**

14 In settlement of all the claims referred to in this Consent To Judgment, Boston America
15 shall pay a total civil penalty of \$10,000.00 under this Section, as follows:

16 **4.1 Initial Civil Penalty**

17 Boston America shall pay an initial civil penalty in the amount of \$6,000.00 on or before
18 May 24, 2013. The civil penalty shall be apportioned in accordance with California Health &
19 Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's
20 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
21 penalty remitted to Englander. Boston America shall issue two separate checks for the penalty
22 payment: (a) one check made payable to "OEHHA" in the amount of \$4,500.00 representing 75%
23 of the total penalty; and (b) one check made payable to "The Chanler Group in Trust for Peter
24 Englander" in the amount of \$1,500.00, representing 25% of the total penalty. Two separate
25 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the
26 addresses listed in Section 4.3 below.

27 **4.2 Final Civil Penalty**

28 Boston America shall pay a final civil penalty of \$4,000.00 on or before June 7, 2013. The
final civil penalty shall be waived in its entirety, however, if an Officer of Boston America

1 provides Englander with written certification that, as of the Effective Date and continuing into
2 the future, Boston America has met the reformulation standard specified in Section 2.4 above,
3 such that all Covered Products distributed, caused to be distributed or sold in California, or
4 distributed, caused to be distributed or sold to any retailer or other entity that Boston America
5 reasonably understands maintains any retail outlet in California are DEHP Free. Englander
6 must receive any such certification on or before May 24, 2013, and time is of the essence. The
7 final civil penalty shall be apportioned in accordance with California Health & Safety Code §
8 25249.12 (c)(1) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the
9 penalty remitted to Englander, as provided by California Health & Safety Code § 25249.12(d).
10 Boston America shall issue two separate checks for the penalty payment: (a) one check made
11 payable to "OEHHA" in the amount of \$3,000.00, representing 75% of the total penalty; and (b)
12 one check made payable to "The Chanler Group in Trust for Peter Englander" in the amount of
13 \$1,000.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above
14 payments. The checks and 1099s shall be delivered to the addresses listed in Section 4.3 below.

15 **4.3 Payment Procedures**

16 **4.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 17 (a) All payments owed to Englander, pursuant to Sections 4.1 through
18 4.2, shall be delivered to the following payment address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

- 24 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
25 Sections 4.1 through 4.2, shall be delivered directly to OEHHA (Memo
26 line "Prop 65 Penalties") at the following addresses:

27 For United States Postal Service Delivery:

28 Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

4 Mike Gyrics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 1001 I Street
8 Sacramento, CA 95814

9 As proof of payment to OEHHA, Defendant must mail to The Chanler
10 Group, at the address set forth above in 4.3.1(a), a copy of all checks
11 paid by Defendant to OEHHA.

12 Any failure by defendant to deliver the above-referenced penalty payments to either
13 OEHHA or The Chanler Group within two days of the required date shall result in imposition
14 of a 10% per annum simple interest assessment on the undelivered payment(s) until delivery.

15 **4.3.2 Issuance of 1099 Forms.** After each payment, Boston America shall issue
16 separate 1099 forms for each payment, as follows:

- 17 (a) For each penalty payment owed in Sections 4.1 through 4.2, a 1099
18 shall be issued to the Office of Environmental Health Hazard
19 Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
20 0284486) in the amount of 75% of the total penalty payment;
21 (b) For each penalty payment owed in Sections 4.1 through 4.2, a 1099
22 shall be issued to Englander, whose address and tax identification
23 number shall be furnished upon request, in the amount of 25% of
24 the total penalty payment.

25 **5. REIMBURSEMENT OF FEES AND COSTS**

26 Defendant acknowledges that Englander refused to entertain any negotiation of
27 plaintiff's fee and cost reimbursement until after the other settlement terms had been finalized.
28 Once all other such terms had been fixed, including the amount of civil penalties, Defendant also
acknowledges that Englander and his counsel offered to resolve the Complaint without reaching

1 terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to
2 be resolved by separate application or other Court proceeding. Once all other terms had been
3 fixed, the parties agreed to attempt to negotiate the reimbursement of fees and costs due
4 Englander and his counsel and did ultimately reach an accord on the compensation due to
5 Englander and his counsel under general contract principles and the private attorney general
6 doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed
7 through the mutual execution of this agreement. Boston America shall pay \$36,000.00 for fees
8 and costs incurred as a result of investigating, bringing this matter to Boston America's attention,
9 negotiating a settlement in the public interest, and obtaining judicial approval of the settlement.
10 Boston America shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the
11 check payable to "The Chanler Group" and shall deliver payment on or before May 24, 2013, to
12 the following address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710-2565

18 Any failure by defendant to deliver the above-referenced payments to The Chanler
19 Group within two days of the required date shall result in imposition of a 10% per annum
20 simple interest assessment on the undelivered payment(s) until delivery.

21 **6. CLAIMS COVERED AND RELEASE**

22 **6.1 Englander's Releases of Boston America**

23 **6.1.1** This Consent To Judgment is a full, final, and binding resolution between
24 Englander, on behalf of himself, his past and current agents, representatives, attorneys,
25 successors, and/or assignees, and in the interest of the general public, and Boston America and
26 its attorneys, successors, licensors and assigns ("Defendant Releasees"), and all entities to whom
27 Boston America directly or indirectly distributes or sells Covered Products, including but not
28 limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
licensees ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been

1 or could have been asserted against Defendant Releasees and Downstream Defendant Releasees
2 regarding the failure to warn about exposure to the Listed Chemical arising in connection with
3 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
4 the Effective Date. Boston America 's compliance with this Consent To Judgment shall constitute
5 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products.

6 **6.1.2** Englander on behalf of himself, his past and current agents,
7 representatives, attorneys, successors, and/or assignees, and in the interest of the general public,
8 hereby waives with respect to Covered Products all rights to institute or participate in, directly
9 or indirectly, any form of legal action and releases all claims, including, without limitation, all
10 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
11 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
12 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
13 contingent (collectively "claims"), against Defendant Releasees and Downstream Defendant
14 Releasees that arise under Proposition 65 or any other statutory or common law claims that were
15 or could have been asserted in the public interest, as such claims relate to Defendant Releasees'
16 and Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
17 Chemical contained in the Covered Products.

18 **6.1.3** This Section 6.1 release is expressly limited to those claims that arise under
19 Proposition 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
20 identification of the Listed Chemical contained in the Covered Products and as such claims are
21 identified in the Proposition 65 60-Day Notice to Defendant.

22 This Section 6.1 release is expressly limited to any alleged violations that occur prior to
23 two months after the Effective Date and does not release any person, party or entity from any
24 liability for any violation of Proposition 65 regarding the Covered Products that occur more than
25 two months after the Effective Date.

26 The Parties further understand and agree that this Section 6.1 release shall not extend
27 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
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1 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
2 component parts thereof to Defendant.

3 **6.1.4** Upon court approval of the Consent To Judgment, the Parties waive their
4 respective rights to a hearing or trial on the allegations of the Complaint.

5 **6.2 Boston America's Release of Englander**

6 **6.2.1** Boston America waives any and all claims against Englander, his
7 attorneys, and other representatives for any and all actions taken or statements made (or those
8 that could have been taken or made) by Englander and his attorneys and other representatives,
9 whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65
10 against it in this matter, and/or with respect to the Covered Products.

11 **6.2.2** Boston America also provides a general release herein which shall be
12 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
13 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
14 Boston America of any nature, character or kind, known or unknown, suspected or
15 unsuspected, arising out of the subject matter of the Action. Boston America acknowledges that
16 it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

20 Boston America expressly waives and relinquishes any and all rights and benefits
21 that it may have under, or which may be conferred on it by the provisions of Section 1542
22 of the California Civil Code as well as under any other state or federal statute or common
23 law principle of similar effect, to the fullest extent that it may lawfully waive such rights
24 or benefits pertaining to the released matters. In furtherance of such intention, the release
25 hereby given shall be and remain in effect as a full and complete release notwithstanding
26 the discovery or existence of any such additional or different claims or facts arising out of
27 the released matters.

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1 **7. SEVERABILITY**

2 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
3 this Consent To Judgment are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected, unless the Court finds that any
5 unenforceable provision is not severable from the remainder of the Consent To Judgment.

6 **8. COURT APPROVAL**

7 This Consent To Judgment is effective upon execution but must also be approved by the
8 Court. The Consent to Judgment shall become null and void if, for any reason, it is not approved
9 and entered by the Court within nine months after it has been fully executed by all Parties. If the
10 Consent to Judgment becomes null and void after any payment of monies under this agreement
11 to The Chanler Group in trust, such monies shall be returned to Defendant by payment of such
12 monies to its counsel, in trust for Boston America.

13 **9. GOVERNING LAW**

14 The terms of this Consent To Judgment shall be governed by the laws of the State of
15 California.

16 **10. NOTICES**

17 When any Party is entitled to receive any notice under this Consent To Judgment, the
18 notice shall be sent by certified mail and electronic mail to the following:

19 For Boston America to:

20 Matthew Kavet, President
21 Boston America Corp.
22 325 New Boston Street, Unit 17
Woburn, MA 01801

23 For Boston America's Counsel to:

24 William D. Wick, Esq.
25 Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

26 For Englander to:

27 Proposition 65 Coordinator
28 The Chanler Group

1 2560 Ninth Street
2 Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565

4 Any Party may modify the person and address to whom the notice is to be sent by sending each
5 other Party notice by certified mail and/or other verifiable form of written communication.

6 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

7 Englander agrees to comply with the reporting form requirements referenced, in
8 California Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent
9 Judgment.

10 **12. MODIFICATION**

11 This Consent To Judgment may be modified only: (1) by written agreement of the
12 Parties; or (2) upon a successful motion of any party and entry of a modified Consent To
13 Judgment by the Court.

14 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

15 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
16 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
17 obtaining such approval, Englander and Boston America and their respective counsel agree to
18 mutually employ their best efforts to support the entry of this agreement as a Consent To
19 Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal
20 judgment approving this agreement - by the Court in a timely manner. Any effort by plaintiff or
21 Boston America to impede judicial approval of this Consent To Judgment shall subject such
22 impeding party to liability for attorney fees and costs incurred by plaintiff or his counsel in their
23 efforts to meet or oppose Boston America's impeding conduct.

24 **14. ENTIRE AGREEMENT**

25 This Consent To Judgment contains the sole and entire agreement and understanding of
26 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, and understandings related hereto. No representations, oral or
28 otherwise, express or implied, other than those contained herein have been made by any Party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the Parties.

3 **15. ATTORNEY'S FEES**

4 15.1 Should Englander prevail on any motion, application for order to show cause or
5 other proceeding to enforce a violation of this Agreement, Englander shall be entitled to his
6 reasonable attorney fees and costs incurred as a result of such motion, order or application,
7 consistent with C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to
8 show cause or other proceeding to enforce a violation of this Consent Judgment, Defendant may
9 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or
10 application upon a finding that Englander's prosecution of the motion or application lacked
11 substantial justification. For purposes of this Agreement, the term substantial justification shall
12 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
13 2016, et seq.

14 15.2 Except as specifically provided in the above paragraph and in Section 5, each
15 Party shall bear its own costs and attorney's fees in connection with this action.

16 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
17 sanctions pursuant to law.

18 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

22 **17. AUTHORIZATION**


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

26 **IT IS SO AGREED**

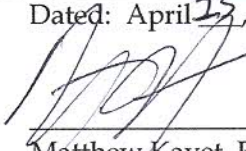
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<p>Dated: April <u>24</u>, 2013</p>  <p>Plaintiff Peter Englander</p>	<p>Dated: April __, 2013</p> <hr/> <p>Matthew Kavet, President Boston America Corp.</p>
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<p>Dated: April __, 2013</p> <p>_____ Plaintiff Peter Englander</p>	<p>Dated: April 23, 2013</p> <p> _____ Matthew Kavet, President Boston America Corp.</p>
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