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Attorneys for Defendant
FILO AMERICA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

FILO AMERICA; and DOES 1-150,
inclusive,

Defendants.

Case No. RG12660027

**[PROPOSED]
CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Peter Englander and Filo America**

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

11 **1.2 General Allegations**

12 Englander has alleged that Filo has sold adhesive bandages which contain the phthalate,
13 di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings. DEHP is listed
14 under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

15 **1.3 Covered Products**

16 The “Products” that are covered by this Consent Judgment are defined as adhesive
17 bandages containing DEHP including, but not limited to, *Royal Bandage Sensitive Skin, Lot #:*
18 *6637 (#7 93366 81121 1), Royal Single Size 40 Count Bandages, Item # 81133, Royal Single Size*
19 *Sensitive Skin Bandage 72 Count, Item # 81121, Royal Single Size Sheer Bandage 60 Count, Item #*
20 *81122, Royal Single Size Flexible Fabric Bandage 60 Count, Item # 81123, and Display of Asstd.*
21 *Royal Sheer, Plastic & Fabric Bandages, Item # 81125, Royal Advanced Healing Adhesive Pads,*
22 *Royal Advanced Healing Blister Care, Royal Antibacterial Bandages 40 All One Size, Royal*
23 *Bandages for Sensitive Skin Value Pack 100 Assorted, and Royal Bandages Happy Color*
24 *Bandages 40 All One Size* manufactured, imported, sold and/or distributed by Filo for sale in the
25 State of California.

26 **1.4 Notice of Violation**

27 On June 15, 2012, Englander served Filo and various public enforcement agencies with a
28 document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice

1 alleging that Filo was in violation of Proposition 65 for failing to warn consumers and customers
2 that the Products exposed users in the State of California to DEHP. No public enforcer has
3 diligently prosecuted the allegations set forth in the Notice.

4 **1.5 Complaint**

5 On or about December 17, 2012, Englander filed a complaint in the Superior Court in and
6 for the County of Alameda against Filo America and Does 1 through 150, *Englander v. Filo*
7 *America*, Case No. RG12660027, alleging violations of Proposition 65, based on the alleged
8 exposures to DEHP contained in certain adhesive bandages sold by Filo (“Complaint”).

9 **1.6 No Admission**

10 Filo denies the material, factual, and legal allegations contained in Englander’s Notice and
11 Complaint and maintains that all Products it has sold and distributed in the State of California have
12 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as
13 an admission by Filo of any fact, finding, issue of law, or violation of law, nor shall compliance
14 with this Consent Judgment constitute or be construed as an admission by Filo of any fact, finding,
15 conclusion of law, issue of law, or violation of law, such being specifically denied by Filo.
16 However, this Section shall not diminish or otherwise affect Filo’s obligations, responsibilities, and
17 duties under this Consent Judgment.

18 **1.7 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
20 this Consent Judgment is approved by the Court, including any non-contested Tentative Ruling.

21 **2. INJUNCTIVE RELIEF: REFORMULATION**

22 **2.1 Reformulation Standards**

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

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2.2 Reformulation Commitment

As of the Effective Date, all Products manufactured, imported, distributed or sold by Filo for sale in the State of California shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Filo shall pay a total of \$32,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

3.1 Initial Civil Penalty

On or before September 16, 2013, Filo shall pay an initial civil penalty in the amount of \$8,000. Filo shall issue two separate checks made payable as follows: (a) “OEHHA” in the amount of \$6,000; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$2,000. All penalty payments shall be delivered to the addresses listed in Section 3.3.

3.2 Final Civil Penalty

On or before April 30, 2014, Filo shall pay a final civil penalty of \$24,000. The final civil penalty shall be waived in its entirety, however, if, no later than April 15, 2014, an officer of Filo provides Englander with written certification that, as of the Effective Date and continuing into the future, Filo has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed and sold by Filo for sale in California are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Filo shall issue two separate checks for its final civil penalty payments made payable as follows: (a) “OEHHA” in the amount of \$18,000; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$6,000.

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1 **3.3 Payment Procedures**

2 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

3 (a) All payments owed to Englander, pursuant to Sections 3.1 through
4 3.2, shall be delivered to the following payment address:

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

10 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
11 Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”)
12 at the following addresses:

13 For United States Postal Service Delivery:

14 Mike Gyrics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyrics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth
26 above in 3.3.1(a), as proof of payment to OEHHA.

27 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Filo shall issue
28 separate 1099 forms for each payment to (a) Englander, whose address and tax identification
number shall be furnished upon request after this Settlement Agreement has been fully executed
by the Parties, and (b) OEHHA, who shall be identified as “California Office of Environmental
Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to
OEHHA, P.O. Box 4010, Sacramento, CA 95814.

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4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Englander then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Filo shall pay \$42,000 for fees and costs incurred as a result of investigating, bringing this matter to Filo’s attention, negotiating a settlement in the public interest and seeking entry of Judgment pursuant to its terms after Court approval, in two separate checks payable to “The Chanler Group.” The first check in the amount of \$17,000 is due on or before September 16, 2013. The second check in the amount of \$25,000 is due on or before October 15, 2013. Filo shall deliver payments to and issue a separate 1099 for fees and costs to “The Chanler Group” (EIN: 94-3171522) at the address set forth in Section 3.3.1(a) above.

5. RELEASE OF ALL CLAIM

5.1 Englander’s Release of Filo

Englander, acting on his own behalf, and on behalf of his agents, successors and assigns, and in the public interest, releases Filo, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Filo directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees who manufacture, use, maintain, distribute or sell the Products (“Releasees”), from all claims for violations of Proposition 65, up through the Effective Date, based on exposure to DEHP from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products prior to the Effective Date as set forth in the Notice.

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1 Englander, also, in his individual capacity, and on behalf of his agents, successors and
2 assigns, only, and *not* in his representative capacity, provides a release herein which shall be
3 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
4 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
5 Englander of any nature, character or kind, whether known or unknown, suspected or unsuspected,
6 related to the Products manufactured, distributed or sold by Filo prior to the Effective Date.

7 **5.2 Filo's Release of Englander**

8 Filo on behalf of itself, its past and current agents, representatives, attorneys, successors,
9 and/or assignees, hereby waives any and all claims against Englander, his attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Englander and his attorneys and other representatives, whether in the course of
12 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
13 respect to the Products.

14 **6. SEVERABILITY**

15 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
16 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
17 provisions remaining shall not be adversely affected.

18 **7. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
21 after it has been fully executed by all parties. In the event the Court does not approve this Consent
22 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
23 returned to Filo.

24 **8. SEVERABILITY**

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

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9. GOVERNING LAW

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

10. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class, (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party from the other party at the following addresses:

To Filo:

Fred Pourbaba, C.E.O.
Filo America
2825 South Santa Fe Avenue
Vernon, CA 90058

To Englander:

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

with a copy on behalf of Filo to:

Barbara R. Adams, Esq.
Adams | Nye | Becht LLP
222 Kearny St., 7th Floor
San Francisco, CA 94108

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

11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES

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

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

13. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Englander’s counsel shall prepare a motion for this Consent Judgment’s

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approval by the Court, and Englander and Filo, and their respective counsel, agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

14. ENTIRE AGREEMENT

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

15. AUTHORIZATION

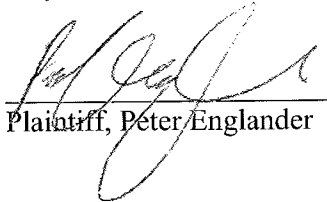
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: July 25, 2013

Date: _____

By: 
Plaintiff, Peter Englander

By: _____
Fred Pourbaba, C.E.O.
Defendant, Filo America

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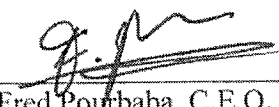
AGREED TO:

Date: _____

By: _____
Plaintiff, Peter Englander

AGREED TO:

Date: 7-31-2013

By: 
Fred Pourbaba, C.E.O.
Defendant, Filo America