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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 PETER ENGLANDER,
17 Plaintiff,
18 v.
19 G-III APPAREL GROUP, LTD., *et al.*,
20 Defendants.

21 Case No. 17CV317957
22 **[PROPOSED] CONSENT JUDGMENT**
23 (Health & Safety Code § 25249.6 *et seq.* and
24 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 G-III Apparel Group, Ltd. (“G-III Apparel”), with Englander and G-
5 III Apparel each 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 G-III Apparel employs ten or more persons and is a person in the course of doing business
12 for 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 G-III Apparel manufactures, imports, sells and/or distributes for sale
16 in 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 ponchos including, but not
20 limited to, *Official Team Poncho 49ers, Style LA400448, UPC #7 00291 84623 2* that are
21 manufactured, imported, distributed, sold and/or offered for sale in California by G-III Apparel
22 (“Products”).

23 **1.6 Notice of Violation**

24 On August 1, 2017, Englander served G-III Apparel and the requisite public enforcement
25 agencies with a 60-Day Notice of Violation (“Notice”), alleging that G-III Apparel 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 October 23, 2017, Englander commenced the instant action, naming G-III Apparel as
3 one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

5 G-III Apparel 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 G-III Apparel of any fact, finding, conclusion of
9 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
10 be construed as an admission by G-III Apparel of any fact, finding, conclusion of law, issue of law,
11 or violation of law. This Section shall not, however, diminish or otherwise affect G-III Apparel's
12 obligations, 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 G-III Apparel as to the allegations contained in the Complaint, that venue is proper
16 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions
17 of this 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.

21 **2. INJUNCTIVE SETTLEMENT TERMS**

22 **2.1 Commitment to Reformulate**

23 As of the Effective Date all Products manufactured, imported, distributed, sold and/or
24 offered for sale in the State of California by G-III Apparel shall be Products that qualify as
25 Reformulated Products as defined in Section 2.2

26 **2.2 Reformulation Standard**

27 "Reformulated Products" are defined as those Products containing DEHP in
28 concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.

1 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology
2 utilized by federal or state government agencies for the purpose of determining DEHP content in a
3 solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

6 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
7 claims referred to in this Consent Judgment, G-III Apparel shall pay \$5,000 in civil penalties in
8 accordance with this Section. The civil penalty payment will be allocated in accordance with
9 California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the
10 California Office of Environmental Health Hazard Assessment (“OEHHA”) by Englander. Within
11 5 (five) business days of the Effective Date, G-III Apparel shall issue two separate checks, the first
12 check payable to “Peter Englander, Client Trust Account” in the amount of \$1,250, and the second
13 check payable to “OEHHA” in the amount of \$3,750. Englander’s counsel shall be responsible for
14 remitting G-III Apparel’s penalty payment(s) under this Consent Judgment to OEHHA.

15 **3.2 Reimbursement of Attorneys’ Fees and Costs**

16 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
18 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
19 other settlement terms had been finalized, G-III Apparel expressed a desire to resolve Englander’s
20 fees and costs. G-III Apparel agrees to pay Englander and his counsel under general contract
21 principles, and the private attorney general doctrine codified at California Code of Civil Procedure
22 section 1021.5, for all work performed through the mutual execution of this agreement, including
23 fees on appeal, the fees and costs incurred as a result of investigating, bringing this matter to G-III
24 Apparel’s attention, negotiating a settlement in the public interest, and seeking court approval of the
25 same. Within five business days of the Effective Date, counsel shall issue a check to “The Chanler
26 Group” in the amount of the attorneys’ fees and costs in the amount of \$27,000 and shall deliver it
27 to the address listed in Section 3.3 below.
28

1 **3.3 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to the following
3 address:

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

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Englander’s Release of Proposition 65 Claims**

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

20 **4.2 Englander’s Individual Release of Claims**

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

1 **4.3 G-III Apparel’s Release of Englander**

2 G-III Apparel, on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors and/or assignees, hereby waive any and all claims against Englander and his
4 attorneys and other representatives, for any and all actions taken or statements made (or those that
5 could have been taken or made) by Englander and his attorneys and other representatives in the
6 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
7 respect to the Products.

8 **5. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
11 after it has been fully executed by all Parties. Englander and G-III Apparel agree to support the
12 entry of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a
13 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
14 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
15 which motion Englander shall draft and file and G-III Apparel shall support, appearing at the
16 hearing if so requested.

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
24 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then G-III
25 Apparel may provide Englander with written notice of any asserted change in the law, and shall
26 have no further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the
27 extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to
28

1 relieve G-III Apparel from its obligation to comply with any pertinent state or federal law or
2 regulation.

3 **8. NOTICE**

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

8 To G-III Apparel:
9 Wayne Miller
10 G-III Apparel Group, Ltd.
11 512 7th Avenue New York, NY 10018
12 wmillers@g-iii.com

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

12 With a copy to:
13 Jeffrey Margulies
14 Norton Rose Fulbright US LLP
15 555 South Flower Street, Forty-First Floor
16 Los Angeles, CA90071
17 jeff.margulies@nortonrosefulbright.com

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

20 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

24 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

27 **11. ENTIRE AGREEMENT**

28 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,

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
2 therein. There are no warranties, representations, or other agreements between the Parties except as
3 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
4 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
5 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed
6 to exist or to bind any of the Parties hereto.

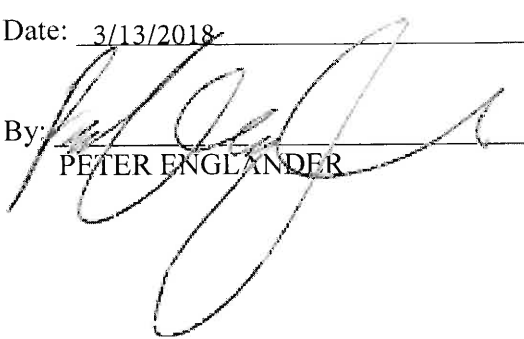
7 **12. MODIFICATION**

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

11 **13. AUTHORIZATION**

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

15 **AGREED TO:**

16 Date: 3/13/2018
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18 By: 
19 PETER ENGLANDER
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AGREED TO:

Date: 3/27/2018
By: 
WAYNE MILLER, COO
G-III APPAREL GROUP, LTD.