

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 Josh@chanler.com
Troy@chanler.com

6 Attorneys for Plaintiff
7 PETER ENGLANDER

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

13 PETER ENGLANDER,
14 Plaintiff,
15 v.
16 STUDIO RAY, LLC; and DOES 1-150,
inclusive,
17 Defendants.

Case No. RG17852006

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Peter Englander (“Englander”) and Defendant Studio Ray, LLC (“Studio Ray”), with Englander and Studio Ray each referred to individually as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

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

1.5 Product Description

The products covered by this Consent Judgment are gloves with vinyl/PVC components containing DEHP including, but not limited to, *Zero Xposur 4-Way Ski Gloves, Style J85470* that are manufactured, imported, distributed, sold and/or offered for sale in California by Studio Ray (“Covered Products”).

1.6 Notice of Violation

On October 28, 2016, Englander served Studio Ray and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Studio Ray violated

1 Proposition 65 when it failed to warn its customers and consumers in California that the Covered
2 Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has
3 commenced and is diligently prosecuting an action to enforce the allegations set forth in the
4 Notice.

5 **1.7 Complaint**

6 On March 8, 2017, Englander commenced the instant action, naming Studio Ray as a
7 defendant, for the alleged violations of Proposition 65 that are the subject of the Notice.

8 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Studio Ray as to the allegations contained in the Notice or Complaint filed in this
21 matter, that venue is proper in the County of Alameda, and that the Court has jurisdiction to enter
22 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California
23 Code of Civil Procedure section 664.6.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall be five (5) days
3 after Englander’s counsel provides written notice to Studio Ray’s counsel that the Motion to
4 Approve the Consent Judgment has been granted and entered by the Court.

5 **2. INJUNCTIVE SETTLEMENT TERMS**

6 As of the Effective Date and continuing thereafter, Covered Products which Studio Ray
7 sells, offers for sale, or distributes for sale in California shall either: (a) be Reformulated Products
8 pursuant to the definition in Section 2.1, below; or (b) have a clear and reasonable warning
9 pursuant to Section 2.3, below.

10 **2.1 Reformulation Standards**

11 “Reformulated Products” are defined as those Covered Products containing 0.1 percent
12 (1,000 parts per million) or less, of DEHP, when analyzed pursuant to U.S. Environmental
13 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
14 federal or state government agencies for the purpose of determining DEHP content in a solid
15 substance.

16 **2.2 Reformulation Commitment**

17 As of the Effective Date, all Covered Products distributed, sold and/or offered for sale in
18 the State of California by Studio Ray shall qualify as Reformulated Products as defined in Section
19 2.1, or shall have a warning pursuant to Section 2.3, below.

20 **2.3 Products Warnings**

21 **2.3.1 Warning Content.** Studio Ray’s compliance with the warning
22 requirements in Cal. Code Regs. tit. 27, section 25600 *et seq.*, operative before or after August 30,
23 2018, shall be deemed to be compliance with this Consent Judgment. Specifically, the warning
24 provided must be clear and reasonable, comply with the relevant method of transmission and shall
25 use any of the following content:

26
27
28

1 **WARNING:** This product contains di(2-ethylhexyl)phthalate (DEHP), a phthalate
2 chemical known to the State of California to cause cancer and birth defects or other
3 reproductive harm.

4 or,

5 **⚠WARNING:** This product can expose you to chemicals including di(2-
6 ethylhexyl)phthalate (DEHP), which is known to the State of California to cause
7 cancer and birth defects or other reproductive harm. For more information, go to
8 www.P65Warnings.ca.gov.

9 or,

10 if applied to the product or product packaging:

11 **⚠WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

12
13 **2.3.2 Mail Order Catalog and Internet Sales.** In the event Studio Ray directly
14 sells Covered Products via mail order catalog and/or the internet, to customers located in
15 California, after the Effective Date, Studio Ray shall provide appropriate warnings for such
16 Covered Products. Warnings given in the mail order catalog or on the internet shall identify the
17 specific Covered Product to which the warning applies.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

20 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
21 claims referred to in this Consent Judgment, Studio Ray shall pay civil penalties in the amount of
22 \$4,500. The penalty payments shall be allocated according to Health and Safety Code section
23 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of
24 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid
25 to Englander. On or before the Effective Date, Studio Ray shall issue two separate checks, the first
26 check payable to “Peter Englander, Client Trust Account” in the amount of \$1,125, and the second
27

1 check payable to “OEHHA” in the amount of \$3,375. Englander’s counsel shall be responsible for
2 remitting Studio Ray’s penalty payment under this Consent Judgment to OEHHA.

3 **3.2 Reimbursement of Attorneys’ Fees and Costs**

4 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
6 the issue to be resolved after the material terms of this Consent Judgment had been settled. After
7 said material terms had been agreed to by the Parties, the Parties discussed the civil penalty
8 component and, finally, the Parties negotiated a resolution of the compensation due to Englander
9 and his counsel under general contract principles and the private attorney general doctrine codified
10 at California Code of Civil Procedure § 1021.5. Studio Ray agrees to pay Englander’s counsel for
11 an award of attorney fees, inclusive of all expenses and costs incurred by Englander as a result of
12 investigating, bringing this matter to Studio Ray’s attention, litigating, negotiating and obtaining
13 judicial approval of a settlement in the public interest, pursuant to California Code of Civil
14 Procedure § 1021.5, in an amount of \$27,500. Other than the payment required hereunder, each
15 side is to bear its own attorneys’ fees and costs. On or before the Effective Date, Studio Ray shall
16 issue the payment by check made payable to “The Chanler Group.”

17 **3.3 Payment Address**

18 All payments required by this Consent Judgment shall be delivered to the following
19 address:

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

25 or,

26 by wire transfer, to the account provided to Studio Ray by The Chanler
27 Group.

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Englander’s Release of Proposition 65 Claims**

3 This Consent Judgment is a full, final, and binding resolution between Englander and
4 Studio Ray. Englander, acting on his own behalf and in the public interest, releases Studio Ray
5 and its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
6 employees, and attorneys (“Releasees”) and each entity to whom Studio Ray directly or indirectly
7 distributes or sells the Covered Products including, but not limited to, its downstream distributors,
8 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
9 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
10 to DEHP from the Covered Products manufactured, imported, distributed, sold or offered for sale
11 by Studio Ray prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
12 this Consent Judgment constitutes compliance with Proposition 65 by Studio Ray with respect to
13 exposures to DEHP from Covered Products after the Effective Date.

14 **4.2 Englander’s Individual Release of Claims**

15 In addition to the foregoing, Englander, in his individual capacity only, his past and current
16 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action against, and also provides a release to Studio Ray, Releasees, and Downstream
19 Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions,
20 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities
21 and demands of Englander of any nature, character or kind, whether known or unknown, suspected
22 or unsuspected, in law or equity, fixed or contingent, now or in the future, arising out of alleged or
23 actual exposures to DEHP in the Covered Products manufactured, imported, distributed, sold or
24 distributed for sale by Studio Ray before the Effective Date. With respect to the foregoing waivers
25 and releases in this paragraph, Englander hereby specifically waives any and all rights and benefits

26
27
28

1 which he now has, or in the future may have, conferred by virtue of the provisions of Section 1542
2 of the California Civil Code, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS
6 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
7 OR HER SETTLEMENT WITH THE DEBTOR.

8 **4.3 Studio Ray's Release of Englander**

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

15 **5. COURT APPROVAL**

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

1 **6. 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 Parties shall
4 give full meaning to the intent of the Parties to resolve and settle all this matter in its entirety, and
5 the validity of the remaining provisions shall not be adversely affected.

6 **7. GOVERNING LAW**

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

15 **8. NOTICE**

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

20 To Studio Ray:

21 Malcolm Weiss, Esq. (mweiss@hunton.com)
22 Vidya Venugopal, Esq. (vvenugopal@hunton.com)
23 Hunton & Williams LLP
24 550 South Hope Street
25 Suite 2000
26 Los Angeles, CA 90071

To Englander:

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

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

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

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

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

16 **13. INTEGRATION**

17 This Consent Judgment constitutes the entire agreement between the parties with respect to
18 the subject matter hereof and may not be amended or modified except in writing.

19

20 **AGREED TO:**

AGREED TO:

21 
22 _____
23 PETER ENGLANDER

STUDIO RAY, LLC

24 Dated: 3/13/2017

By: _____

Its: _____

25

Dated: _____

26

27

28

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

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

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

16 **13. INTEGRATION**

17 This Consent Judgment constitutes the entire agreement between the parties with respect to
18 the subject matter hereof and may not be amended or modified except in writing.

19
20 **AGREED TO:**

21 _____
22 PETER ENGLANDER

23
24 Dated: _____

AGREED TO:

21 _____
22 STUDIO RAY, LLC

23 By: HOWARD GUTTERMAN

24 Its: CEO

25
26 Dated: 3/16/17