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PETER ENGLANDER

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF MARIN  
11 UNLIMITED CIVIL JURISDICTION

12  
13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 WILMAR CORPORATION; and DOES 1-  
150, inclusive,

17 Defendants.

Case No. CIV1704447

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
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 Wilmar Corporation (“Wilmar”), with Englander and Wilmar each  
5 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 Wilmar employs ten or more persons and is a person in the course of doing business for  
12 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 Wilmar manufactures, imports, sells and/or distributes for sale in  
16 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 gloves with vinyl/PVC components  
20 containing DEHP including, but not limited to, *Performance Tool Tech Gloves, W88999, UPC #0*  
21 *39564 88999 8*, that are manufactured, imported, distributed, sold and/or offered for sale in  
22 California by Wilmar (“Products”).

23 **1.6 Notice of Violation**

24 On August 1, 2017, Englander served Wilmar and the requisite public enforcement agencies  
25 with a 60-Day Notice of Violation (the “Notice”), alleging that Wilmar violated Proposition 65  
26 when it failed to warn its customers and consumers in California that the Products expose users to  
27 DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently  
28 prosecuting an action to enforce the allegations set forth in the Notice.

1           **1.7 Complaint**

2           On December 1, 2017, Englander commenced the instant action, naming Wilmar a  
3 defendant in a complaint for the alleged violations of Proposition 65 that are the subject of the  
4 Notice (“Complaint”).

5           **1.8 No Admission**

6           Wilmar denies the material, factual, and legal allegations contained in the Notice and  
7 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,  
8 including the Products, have been, and are, in compliance with all laws. Wilmar maintains that it  
9 currently provides, and has been providing Proposition 65-compliant warnings on its Products that  
10 require them since March 2015. Nothing in this Consent Judgment shall be construed as an  
11 admission by Wilmar of any fact, finding, conclusion of law, issue of law, or violation of law, nor  
12 shall compliance with this Consent Judgment constitute or be construed as an admission by Wilmar  
13 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,  
14 however, diminish or otherwise affect Wilmar’s obligations, responsibilities, and duties under this  
15 Consent Judgment.

16           **1.9 Jurisdiction**

17           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Wilmar as to the allegations contained in the Complaint, that venue is proper in the  
19 County of Marin, 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” shall mean the date the  
23 motion for approval of this Consent Judgment has been granted and entered by the Court.

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25           **2.1 Reformulation Standards**

26           “Reformulated Products” are defined as those Products containing DEHP in concentrations  
27 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental  
28 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by

1 federal or state government agencies for the purpose of determining DEHP content in a solid  
2 substance.

### 3 **2.2 Reformulation Commitment**

4 As of the Effective Date, Wilmar shall not directly manufacture, import, distribute, sell or  
5 offer the Products for sale in the State of California unless they are Reformulated Products pursuant  
6 to Section 2.1 above or carry clear and reasonable health hazard warnings per section 2.3, below.

### 7 **2.3 Product Warnings**

8 Commencing on or before the Effective Date, Wilmar shall provide clear and reasonable  
9 warnings as set forth in subsections 2.3(a), (b) or (c) for all Products that do not qualify as  
10 Reformulated Products and are provided for sale to customers in California. There shall be no  
11 obligation for Wilmar to provide a warning for Products that enter the stream of commerce prior to  
12 the Effective Date.

13 Wilmar shall affix a warning to the packaging, labeling, or directly on each non-  
14 Reformulated Product provided for sale in retail outlets in California. The warning shall consist of  
15 either the Warning, Alternative Long-Form Warning or Alternative Short-Form Warning described  
16 in subsection 2.3(a), (b) or (c), respectively. Each warning shall be prominently placed with such  
17 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
18 to be read and understood by an ordinary individual under customary conditions before purchase or  
19 use. Each warning shall be provided in a manner such that it is clearly associated with the specific  
20 Product to which the warning applies, so as to minimize the risk of consumer confusion.

21 (a) **Warning.** The Warning shall consist of the following statement:

22 **⚠ WARNING:** This product can expose you to di(2-ethylhexyl) phthalate  
23 [or other chemical], which is known to the State of California to cause  
24 cancer and birth defects or other reproductive harm. For more information  
go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

25 (b) **Alternative Long-Form Warning.** For Products either in Wilmar's  
26 inventory or that enter the stream of commerce prior to the Effective Date, Wilmar may, but is not  
27 required to, use the alternative long-form warning as set forth in this subsection 2.3(b) ("Alternative  
28 Long-Form Warning"), as follows:

1           **▲WARNING:** This product and its packaging contain a chemical known  
2 to the state of California to cause cancer, birth defects or other  
reproductive harm.

3           (c)     **Alternative Short-Form Warning.** Wilmar may, but is not required to, use  
4 the alternative short-form warning as set forth in this subsection 2.3(c) (“Alternative Short-Form  
5 Warning”), as follows:

6                   **▲ WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

7           **2.4**     A warning provided pursuant to section 2.3(a) or (c) must print the word  
8 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
9 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
10 triangle with a bold black outline, except that if the packaging does not use the color yellow, then  
11 the symbol may be in black and white.

12           **2.5**     **Compliance with Warning Regulations.** Wilmar shall be deemed to be in  
13 compliance with this Consent Judgment by adhering to sections 2.2 through 2.5 of this Consent  
14 Judgment, or by employing the Proposition 65 safe harbor warning methods and content adopted by  
15 the California Office of Environmental Health Hazard Assessment (“OEHHA”), as may be  
16 amended, and as are applicable to the Products. If, after the Effective Date, Wilmar sells Products  
17 that are not Reformulated Products via mail order catalog and/or the internet to customers located in  
18 California, Wilmar shall provide warnings for such Products by identifying the specific Product to  
19 which the warning applies as further specified in Sections 2.5(a) and (b).

20           (a)     **Mail Order Catalog Warning.** Any warning provided in a mail order  
21 catalog shall be in the same type size or larger than other consumer information provided for the  
22 Product within the catalog. Except as stated below, a warning as shown in Section 2.3(a), (b) or (c)  
23 shall be provided on the same page and in the same location as the display and/or description of the  
24 Product. Where it is impracticable to provide the warning on the same page and in the same  
25 location as the display and/or description of the Product, Wilmar may utilize a designated symbol to  
26 cross reference the applicable warning and shall define the meaning of the designated symbol with  
27 the following language on the inside of the front cover of the catalog or on the same page as any  
28 order form for the Product(s):

1                    **⚠ WARNING:** Certain products identified with this symbol ▼ and offered for sale  
2 in this catalog can expose you to di(2-ethylhexyl) phthalate [or other chemical],  
3 which is known to the State of California to cause cancer and birth defects or other  
4 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

5                    The designated symbol must appear on the same page and in close proximity to the display  
6 and/or description of the Product. On each page where the designated symbol appears, Wilmar  
7 must provide a header or footer directing the consumer to the warning language and definition of  
8 the designated symbol. The warning provided in the catalog may use the short-form content  
9 described in Section 2.3(c) if a warning is provided on the Product label using the short-form  
10 warning content.

11                    **(b) Internet Website Warning.** A warning shall be given in conjunction with  
12 the sale of the Products via the internet, which warning shall appear either: (i) on the same web  
13 page on which a Product is displayed; (ii) on the same web page as the order form for a Product;  
14 (iii) on the same page as the price for any Product; or (iv) on one or more web pages displayed to a  
15 purchaser during the checkout process. A warning as shown in Section 2.3(a), (b) or (c) shall be  
16 used and shall appear in any of the above instances adjacent to or immediately following the  
17 display, description, or price of the Product for which it is given in the same type size or larger than  
18 other consumer information provided for the Product. The warning provided on the website may  
19 use the short-form content described in Section 2.3(c) if a warning is provided on the Product label  
20 using the short-form warning content.

21                    Where it is impracticable to provide the warning at one of the locations described in  
22 subsections 2.5(b)(i) through (iv) above, Wilmar may instead utilize a clearly marked hyperlink to  
23 the warning using the word “WARNING” on the Product display page, or by otherwise  
24 prominently displaying the warning to the purchaser prior to completing the purchase.

### 25                    **3.     MONETARY SETTLEMENT TERMS**

#### 26                    **3.1     Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

27                    Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
28 claims referred to in the Notice, the Complaint and this Consent Judgment, Wilmar shall pay a total  
of \$2,400 in civil penalties in accordance with this Section. The penalty payment will be allocated

1 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds  
2 to OEHHA and the remaining 25% of the penalty to Englander. Wilmar shall, within five (5)  
3 calendar days of the Effective Date, deliver two (2) checks to The Chanler Group payable as  
4 follows: (1) to “Peter Englander, Client Trust Account” totaling \$600.00; and (2) to the “Office of  
5 Environmental Health Hazard Assessment” totaling \$1,800.00. Upon receipt, Englander’s counsel  
6 will then ensure payment to OEHHA. All penalty payments shall be delivered to the address listed  
7 in Section 3.3 below. Englander agrees to provide completed IRS W-9 forms to Wilmar by the  
8 Effective Date for each of the payees and Wilmar shall subsequently issue three separate IRS 1099  
9 forms to OEHHA, Englander, and The Chanler Group for the respective amount paid to each under  
10 this agreement.

### 11 **3.2 Reimbursement of Attorneys’ Fees and Costs**

12 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
14 the issue to be resolved after the material terms of the agreement had been settled. Shortly after  
15 the other settlement terms had been finalized, the Parties negotiated a resolution of the  
16 compensation due to Englander and his counsel under general contract principles and the private  
17 attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work  
18 performed through the mutual execution of this agreement and the Court’s approval of the same,  
19 Wilmar shall reimburse Englander and his counsel \$32,600.00. Wilmar shall, within five (5)  
20 calendar days of the Effective Date, issue a check to “The Chanler Group” in the amount of  
21 \$32,600.00, and shall deliver it to the address listed in Section 3.3 below. The reimbursement  
22 shall cover all fees and costs incurred by Englander and his counsel investigating, bringing this  
23 matter to Wilmar’s attention, litigating, negotiating a settlement and resolving this matter in the  
24 public interest.

### 25 **3.3 Payment Address**

26 All payments required by this Consent Judgment shall be delivered to the following  
27 address:  
28

1 The Chanler Group  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Englander's Release of Proposition 65 Claims**

6 Englander, acting on his own behalf and in the public interest, releases Wilmar and its  
7 parents, subsidiaries, affiliated entities under common ownership, shareholders, directors, members,  
8 officers, employees, representatives, agents and attorneys, and their predecessors, successors and  
9 assignees ("Releasees") and each entity to whom Releasees directly or indirectly distribute or sell  
10 the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
11 retailers, franchisers, cooperative members, licensors, licensees and any downstream party that  
12 distributes or sells the Products ("Downstream Releasees") from any claims or allegations of  
13 violation arising under Proposition 65 for unwarned exposures to DEHP from the Products  
14 manufactured, imported, distributed or sold by Wilmar prior to the Effective Date, as set forth in the  
15 Notice or Complaint. Compliance with the terms of this Consent Judgment constitutes compliance  
16 with Proposition 65 with regard to the Products.

17 **4.2 Englander's Individual Release of Claims**

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

25 **4.3 Wilmar's Release of Englander**

26 Wilmar, on its own behalf and on behalf of its past and current agents, representatives,  
27 attorneys, successors and/or assignees, hereby waives any and all claims against Englander and his  
28 attorneys and other representatives, for any and all actions taken or statements made (or those that



1 could have been taken or made) by Englander and his attorneys and other representatives in the  
2 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with  
3 respect to the Products.

4 **4.4 Mutual Waiver of California Civil Code Section 1542**

5 The Parties each acknowledge that they are familiar with Section 1542 of the Civil Code,  
6 which provides as follows:

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

10 The Parties, each on their own behalf, and on behalf of their past and current agents,  
11 representatives, attorneys, successors, and/or assignees, (but not in Englander's representative  
12 capacity) expressly waive and relinquish any and all rights and benefits which they may have under,  
13 or which may be conferred upon them by the provisions of Civil Code section 1542 as well as under  
14 any other state or federal statute or common law principle of similar effect, to the fullest extent they  
15 may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined  
16 by Sections 4.1 through 4.3, above.

17 **5. COURT APPROVAL**

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

28

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 validity of the  
4 remaining provisions shall not be adversely affected.

5 **7. GOVERNING LAW**

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

13 **8. NOTICE**

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

18 To Wilmar:

19 Malcolm C. Weiss, Esq. and  
20 Shannon K. Oldenburg, Esq.  
21 Hunton Andrews Kurth LLP  
22 550 South Hope Street, Suite 2000  
Los Angeles, CA 90071

To Englander:

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

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

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

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

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
7 any Party and the entry of a modified Consent Judgment by the Court thereon.

8 **12. AUTHORIZATION**

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

12  
13 **AGREED TO:**

14  
15   
16 \_\_\_\_\_  
17 PETER ENGLANDER

18 Dated: 7/12/2018

**AGREED TO:**

19  
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21 \_\_\_\_\_  
22 WILMAR CORPORATION

23 By: Mark Steffen  
24 (Print Name)

25 Its: CFO  
26 (Title)

27 Dated: 7/9/18

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