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PETER ENGLANDER  
7

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

12 PETER ENGLANDER,

13 Plaintiff,

14 v.

15 ALLEN COMPANY INC.; *et al.*,

16 Defendants.  
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Case No. CIV1704441

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.5 *et seq.*, and  
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered by and between plaintiff Peter Englander (“Englander”),  
4 and defendant Allen Company Inc. (“Allen Company”) with Englander and Allen Company each  
5 individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Allen Company employs ten or more individuals and is a “person in the course of doing  
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and  
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Allen Company sells and distributes for sale in California,  
16 shooting/range bags with vinyl/PVC components containing di(2-ethylhexyl) phthalate (“DEHP”),  
17 and that it does so without first providing a warning in violation of Proposition 65. DEHP is listed  
18 pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment, “Products” are defined as shooting/range bags with  
21 vinyl/PVC components containing DEHP that are sold or distributed for sale in California by Allen  
22 Company including, but not limited to, the *Allen Two Compartment Shotgun Shell Bag, BB2102,*  
23 *UPC #0 26509 02102 5* identified in Englander’s Notice.

24 **1.6 Notice of Violation**

25 On August 17, 2017, Englander served Allen Company, the California Attorney General, and  
26 all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges  
27 that Allen Company violated Proposition 65 by failing to warn its customers and consumers in  
28 California of the health risks associated with exposures to DEHP from the Products. No public

1 enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the  
2 Notice.

3 **1.7 Complaint**

4 On December 4, 2017, Englander filed the instant action (“Complaint”), naming Allen  
5 Company as a defendant for the alleged violations that are the subject of the Notice.

6 **1.8 No Admission**

7 Allen Company denies the material, factual, and legal allegations contained in the Notice and  
8 Complaint, and maintains that all the products that it has sold or distributed for sale in California,  
9 including the Products, comply with all laws. Nothing in this Consent Judgment shall be construed  
10 as an admission by Allen Company of any fact, finding, conclusion of law, issue of law, or violation  
11 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission  
12 by Allen Company of any fact, finding, conclusion of law, issue of law, or violation of law. This  
13 Section shall not, however, diminish or otherwise affect Allen Company’s obligations,  
14 responsibilities, and duties under this Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that the Court has  
17 jurisdiction over Allen Company as to the allegations in the Complaint, that venue is proper in Marin  
18 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent  
19 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
22 the Motion for Approval of the Consent Judgment is granted by the Court, including any unopposed  
23 tentative ruling granting approval.

24 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

25 **2.1 Commitment to Reformulate Products or Provide Warnings**


26 Commencing on the Effective Date, and continuing thereafter, Allen Company agrees to sell  
27 or distribute for sale in California (a) “Reformulated Products,” as defined by Section 2.2, or (b)  
28 Products sold with a clear and reasonable warning pursuant to Section 2.3.

1           **2.2     Reformulated Products Defined**

2           For purposes of this Consent Judgment, Reformulated Products are defined as Products  
3 containing no more than 1,000 parts per million DEHP (0.1%) in any component analyzed pursuant  
4 to U.S. Environmental Protection Agency testing methodology 8270C or equivalent methodologies  
5 used by state or federal agencies to determine DEHP content in a solid substance.

6           **2.3     Clear and Reasonable Warnings**

7           Commencing on the Effective Date, for all Products that do not meet the definition of  
8 Reformulated Products established by Section 2.1, Allen Company shall provide clear and reasonable  
9 warnings in accordance with this Section 2.3. Allen Company further agrees that any warning used  
10 will be prominently placed in relation to the Product with such conspicuousness when compared with  
11 other words, statements, designs, or devices as to render it likely to be read and understood by an  
12 ordinary individual under customary conditions of purchase or use. For purposes of this Consent  
13 Judgment, a warning for the Products displayed or transmitted according to the above criteria that is  
14 affixed directly to a Product or its accompanying labeling or packaging that contains one of the  
15 following statements, as applicable, shall be deemed clear and reasonable:

16                            **WARNING:** This product can expose you to chemicals,  
17 including DEHP, which is known to the  
18 State of California to cause birth defects or  
19 other reproductive harm. For more  
information go to  
www.P65Warnings.ca.gov.

20 The following short-form warning statement may be used when affixed directly to the Product(s):

21                            **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov<sup>1</sup>

22  
23 If Allen Company sells Products via an internet website to customers located in California, the  
24 warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on  
25

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26           <sup>1</sup> This short-form warning may be used only on a Product, Product label, or as part of an internet or catalog  
27 warning, provided it is also located directly on a Product and/or its immediate packaging/labeling. If used, the short-form  
28 warning must be in a type size no smaller than the largest type size used for consumer information on the product and, in  
no case, in any text less than a 6-point type size. The short-form warning may not be used on a warning sign, e.g., point-  
of-sale or shelf sign.

1 the same web page on which a Product is displayed and/or described; (b) on the same page as the  
2 price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase  
3 during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a  
4 yellow or white equilateral triangle may appear adjacent to or immediately following the display,  
5 description, price, or checkout listing of the Product, if the warning statement appears elsewhere on  
6 the same web page in a manner that clearly associates it with the product(s) to which the warning  
7 applies.

#### 8 **2.4 Existing Inventory**

9 The injunctive relief required by Section 2, shall not apply to Products manufactured or  
10 caused to be manufactured by Allen before the Effective Date (“Existing Inventory”), for which a  
11 civil penalty has been assessed pursuant to Section 3.1. Existing Inventory includes, but is not  
12 limited to Products bearing an inadequate warning.

### 13 **3. MONETARY SETTLEMENT TERMS**

#### 14 **3.1 Civil Penalty Payment**

15 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred  
16 to in this Consent Judgment, Allen Company shall pay \$2,000 in civil penalties. Allen Company’s  
17 civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)  
18 and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental  
19 Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to  
20 Englander. Allen Company shall provide its payment in two checks for the following amounts made  
21 payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Peter Englander, Client Trust Account”  
22 in the amount of \$500. Englander’s counsel shall be responsible for delivering OEHHA’s portion of  
23 the penalty payment. Allen Company shall issue three separate 1099 forms to OEHHA, Englander,  
24 and The Chanler Group for the respective amount paid to each under this agreement.

#### 25 **3.2 Reimbursement of Attorney’s Fees and Costs**

26 The parties acknowledge that Englander and his counsel offered to resolve this dispute  
27 without reaching terms on the fees and costs to be reimbursed, thereby leaving the issue to be  
28 resolved after the material terms of this Consent Judgment had been settled. After reaching an

1 agreement on all other settlement terms, the Parties negotiated a reimbursement of the compensation  
2 due Englander and his counsel under general contract principles and the private attorney general  
3 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed  
4 through the mutual execution of this Consent Judgment. Accordingly, Allen Company agrees to pay  
5 \$25,500 for all fees and costs incurred by Englander investigating, bringing this matter to Allen  
6 Company's attention, litigating and negotiating a settlement in the public interest, and obtaining court  
7 approval of the same.

### 8 **3.3 Payments Held in Trust**

9 All payments due under this Consent Judgment shall be delivered within fifteen (15) days of  
10 the date that this Consent Judgment is fully executed by the Parties, and held in trust by Allen  
11 Company's counsel until the Court grants the motion for approval of this Consent Judgment  
12 contemplated by Section 5. Allen Company's counsel shall provide Englander's counsel with  
13 written notice following its receipt of the settlement funds from Allen Company. Thereafter, Allen  
14 Company's counsel shall hold the funds in trust until, and disburse the payments to Englander's  
15 counsel within five (5) days after the Effective Date.

### 16 **3.4 Payment Address**

17 All payments under this Consent Judgment shall be delivered to:

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

## 23 **4. CLAIMS COVERED AND RELEASED**

### 24 **4.1 Englander's Public Release of Proposition 65 Claims**

25 Englander, acting on his own behalf and in the public interest, releases Allen Company and  
26 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
27 shareholders and attorneys ("Releasees"), and each entity to whom Allen Company directly or  
28 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,  
wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees  
("Downstream Releasees") for any violation arising under Proposition 65 based on a failure to warn

1 about exposures to DEHP in Products manufactured, imported, sold, or distributed for sale by Allen  
2 Company prior to the Effective Date. Compliance with the terms of this Consent Judgment  
3 constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn  
4 about exposures to DEHP in Products manufactured, imported, sold, or distributed for sale by Allen  
5 Company after the Effective Date.

#### 6 **4.2 Englander's Individual Release of Claims**

7 Englander, in his individual capacity only and *not* in his representative capacity, also provides  
8 a release to Allen Company, Releasees, and Downstream Releasees which shall be effective as a full  
9 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
10 attorneys' fees, damages, losses, claims, liabilities, and demands of Englander of any nature,  
11 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or  
12 actual exposures to DEHP in Products manufactured, imported, sold, distributed and/or offered for  
13 sale by Allen Company before the Effective Date.

#### 14 **4.3 Allen Company's Release of Englander**

15 Allen Company, on its own behalf, and on behalf of its past and current agents,  
16 representatives, attorneys, successors, and assignees, hereby waives all claims against Englander and  
17 his attorneys and other representatives, for any action taken or statement made, whether in the course  
18 of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with  
19 respect to the Products.

#### 20 **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
22 be null and void if it is not approved and entered by the Court within one year after it has been fully  
23 executed by the Parties, or by such additional time to which the Parties may agree in writing.

#### 24 **6. SEVERABILITY**

25 If, after the Court's approval and entry of this Consent Judgment as a judgment, any provision  
26 is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely  
27 affected.

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1     **7. GOVERNING LAW**

2             The terms of this Consent Judgment shall be governed by the laws of the state of California  
3 and apply within the state of California. If Proposition 65 is repealed, preempted, or otherwise  
4 rendered inapplicable by reason of law generally, or as to the Products, then Allen Company may  
5 provide written notice to Englander of any asserted change in the law, and shall have no further  
6 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
7 Products are so affected.

8     **8. NOTICE**

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

12     For Allen Company:

13             George Cavanaugh, President  
14             Allen Company Inc.  
15             525 Burbank Street  
16             Broomfield, CO 80020

17             Caitlin C. Blanche, Esq.  
18             K&L Gates LLP  
19             1 Park Plaza, Twelfth Floor  
20             Irvine, CA 92614

21     For Englander:

22             Proposition 65 Coordinator  
23             The Chanler Group  
24             2560 Ninth Street  
25             Parker Plaza, Suite 214  
26             Berkeley, CA 94710-2565

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

29     **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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



1 **10. POST-EXECUTION ACTIVITIES**

2 Englander agrees to comply with the reporting form requirements referenced in Health and  
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
4 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent  
5 Judgment, which Englander shall take the lead to draft and file and Allen Company shall support,  
6 including appearing at the hearing if so required.

7 **11. MODIFICATION**

8 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
9 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
10 Party, and the entry of a modified consent judgment by the Court.

11 **12. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent Judgment and have read, understand,  
13 and agree to all the terms and conditions contained herein.

14 **AGREED TO:**

**AGREED TO:**

15  
16 Date: 6/20/2018

Date: \_\_\_\_\_

17  
18 By:  \_\_\_\_\_  
19 PETER ENGLANDER

By: \_\_\_\_\_  
GEORGE CAVANAUGH, PRESIDENT  
ALLEN COMPANY INC.

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10 Party, and the entry of a modified consent judgment by the Court.

11 **12. AUTHORIZATION**

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13 and agree to all the terms and conditions contained herein.

14 **AGREED TO:**

**AGREED TO:**

15 Date: \_\_\_\_\_

15 Date: 6/22/18

16 By: \_\_\_\_\_  
17 PETER ENGLANDER

16 By:   
17 GEORGE CAVANAUGH, PRESIDENT  
18 ALLEN COMPANY INC.