

1 Clifford A. Chanler, Bar No. 135534
2 Hudson T. Bair, State Bar No. 172593
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 UNLIMITED CIVIL JURISDICTION

15 PETER ENGLANDER,

16 Plaintiff,

17 v.

18 AMERICAN VALVE, INC., *et al.*,

19 Defendants.

20 Case No. CGC-16-549933

21 **[PROPOSED] CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Peter Englander and American Valve, Inc.**

3 This Consent Judgment is entered into by and between Peter Englander (“Englander” or
4 “Plaintiff”) and American Valve, Inc. (“AVI” or “Defendant”), with Plaintiff and Defendant
5 collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

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

10 **1.3 American Valve, Inc.**

11 Englander alleges that AVI employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that AVI has manufactured, imported, distributed and/or sold valve
16 handles with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite
17 Proposition 65 warnings. DEHP is listed under Proposition 65 a chemical known to cause birth
18 defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are valve handles with vinyl/PVC
21 grips, including, but not limited to the *Ball Valve ½ in., T200SW Part#369216, (UPC#6 11918*
22 *06905 0)* manufactured, imported, distributed and/or sold by AVI, hereinafter referred to as
23 “Covered Products.”

24 **1.6 Notice of Violation**

25 On September 24, 2015, Englander served AVI, and the requisite public enforcement
26 agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) alleging violations
27 of Proposition 65 based on AVI’s alleged failure to warn its customers and consumers in
28

1 California that the Covered Products it sold exposed users to DEHP. To the best of the Parties’
2 knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On January 15, 2016, Englander filed the instant action in the Superior Court in and for the
5 County of San Francisco against AVI and Does 1 through 150, *Englander v. American Valve, Inc.,*
6 *et al.*, Case No. CGC-16-549933 (“Complaint”), alleging violations of Proposition 65, based on
7 the alleged exposures to DEHP contained in the Covered Products sold by AVI.

8 **1.8 No Admission**

9 AVI denies the material, factual and legal allegations contained in Englander’s Notice and
10 Complaint and maintains that all products that it has sold, manufactured, imported and/or
11 distributed in California, including the Covered Products, have been and are in compliance with all
12 laws. Nothing in this Consent Judgment shall be construed as an admission by AVI of any fact,
13 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
14 constitute or be construed as an admission by AVI of any fact, finding, conclusion, issue of law, or
15 violation of law. However, this section shall not diminish or otherwise affect AVI’s obligations,
16 responsibilities, and duties under this Consent Judgment as to Covered Products.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over AVI as to the allegations contained in the Complaint, that venue is proper in the
20 County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of
21 this Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
24 which the motion for approval of this Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: WARNINGS & REFORMULATION COMMITMENT**

26 All Covered Products already shipped on or before the Effective Date, for which a penalty
27 has been paid, are deemed to be covered by the waiver and release provisions of this Consent
28

1 Judgment and shall not be subject to any enforcement action by Plaintiff other than that delineated
2 in Section 12 of this Consent Judgment.

3 **2.1 Warnings Commitment**

4 As of the Effective Date, AVI shall not ship or offer to be shipped for sale in California any
5 Products containing DEHP unless such Products are sold or shipped with clear and reasonable
6 warnings as set forth below, or meet either of the exceptions provided in Section 2.2 and 2.3. Each
7 warning shall be prominently placed with such conspicuousness as compared with other words,
8 statements, designs or devices as to render it likely to be read and understood by an ordinary
9 individual under customary conditions before purchase or use. Each warning shall be provided in
10 a manner such that the consumer or user understands to which *specific* Product the warning
11 applies, so as to minimize the risk of consumer confusion. For Covered Products containing
12 DEHP, AVI shall use the following warning language:

13 **WARNING:** This product contains DEHP, a
14 chemical known to the State of California to cause
cancer and birth defects and other reproductive harm.

15 **2.2 Exceptions To Warning Requirements**

16 The warning requirements set forth in Section 2.1 shall not apply to: (i) any Covered
17 Products shipped to a distributor in California before the Effective Date or; (ii) Reformulated
18 Products (as defined in Section 2.3 below).

19 **2.3 Reformulation Standard**

20 For purposes of this Consent Judgment, “Reformulated Products” are defined as Covered
21 Products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when
22 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
23 8270C, or any other methodology utilized by federal or state agencies for the purpose of
24 determining the DEHP content in a solid substance.

25 **2.4 Reformulation Commitment**

26 AVI’s reformulation commitment applies to any Covered Product it sells or ships in
27 California after November 15, 2016. AVI agrees that one hundred percent (100%) of the Covered
28 Products it sells or ships in or into California after November 15, 2016, shall qualify as

1 Reformulated Products and will not require a warning under Proposition 65, as any resulting
2 exposure will be negligible. AVI's reformulation commitment does not apply to any Covered
3 Products that AVI sold or shipped into California before November 15, 2016.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty**

6 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all claims referred
7 to in this Consent Judgment, AVI shall pay a five thousand dollar (\$5,000.00) civil penalty. The
8 civil penalty shall be allocated according to Health and Safety Code section 25249(c)(1) and (d),
9 with seventy-five percent (75%) of the funds paid to the California Office of Environmental
10 Health Hazard Assessment ("OEHHA"), twenty-five percent (25%) of the funds remitted to
11 Englander.

12 AVI shall make the civil penalty payment following the procedure set forth in section 3.3
13 and 3.4 below, in two checks for the following amounts made payable to: (a) "OEHHA" in the
14 amount of three thousand seven hundred and fifty dollars (\$3,750.00) and (b) "Peter Englander,
15 Client Trust Account" in the amount of one thousand two hundred and fifty dollars (\$1,250.00).
16 Plaintiff's counsel shall be responsible for delivering OEHHA's portion of the penalty under this
17 Consent Judgment to OEHHA.

18 **3.2 Reimbursement of Plaintiff's Fees and Costs**

19 The Parties reached an accord on the compensation due to Englander and his counsel
20 under general contract principles and the private attorney general doctrine codified at Code of
21 Civil Procedure section 1021.5 for all work performed in this matter. Under these legal
22 principles, AVI agrees to pay thirty-two thousand five hundred dollars (\$32,500.00) to Englander
23 and his counsel for all attorneys' fees and costs incurred investigating, bringing this matter to the
24 attention of AVI's management, serving the 60 Day Notice, filing the Complaint, negotiating and
25 obtaining approval of this settlement, that provides a significant public benefit. AVI shall make
26 the check payable to "The Chanler Group."

27 **3.3 Payment Procedures**

28 All payments due under this agreement shall be delivered within five (5) business days

1 after the Effective Date to the following address:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 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 AVI, its past present
10 and future parents, subsidiaries, affiliates, predecessors, successors, assigns, affiliated entities
11 under common ownership, directors, officers, stockholders, employees, attorneys, and each entity
12 to whom AVI directly or indirectly distributes or sells the Covered Products, including, but not
13 limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
14 members, and licensees (“Releasees”), from all claims arising from any alleged violations of
15 Proposition 65 based on their alleged failure to warn about alleged exposures to DEHP contained
16 in the Covered Products that were manufactured, distributed, or sold by AVI up through the
17 Effective Date, including all claims that were raised by Englander in the Notice and Complaint.
18 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
19 with respect to exposures to DEHP from the Covered Products as set forth in the Notice and
20 Complaint.

21 **4.2 Englander’s Individual Release of Claims**

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

28 **4.3 AVI’s Release of Englander**

AVI on behalf of itself, its past and current agents, representatives, attorneys, successors,
and/or assignees, hereby waives any and all claims against Englander, his attorneys and other

1 representatives, for any and all actions taken or statements made by Englander and his attorneys
2 and other representatives prior to the Effective Date, whether in the course of investigating claims
3 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to Covered
4 Products.

5 **5. COURT APPROVAL**

6 This Consent Judgment is not effective until it is approved and entered by the Court and
7 shall be null and void if, for any reason, it is not approved and entered by the Court within one
8 year after it has been fully executed by all Parties.

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California and apply within the State of California. In the event that Proposition 65 is repealed,
16 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the
17 provisions of this Consent Judgment are rendered inapplicable by preemption or reason of law
18 generally as to Covered Products, then AVI shall have no further obligations pursuant to this
19 Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

20 **8. NOTICES**

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

25 To AVI:
26 Seth Guterman, President
27 American Valve, Inc.
28 4321 Piedmont Parkway
Greensboro, NC 27410

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

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

With a copy to:

William W. Funderburk, Jr., Esq.
Anna L. LeMay, Esq.
CASTELLON & FUNDERBURK, LLP
811 Wilshire Blvd., #1025
Los Angeles, CA 90017

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.

9. COUNTERPARTS; FACSIMILE 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.

10. 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).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Englander and AVI 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. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Englander shall draft and file, and AVI shall join. If any third party objection to the noticed motion is filed, Englander and AVI shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. ENFORCEMENT OF CONSENT JUDGMENT

In the event any dispute between the Parties arises out of this Consent Judgment, the Parties shall meet and confer in an attempt to resolve the dispute informally. If after thirty (30) days such attempts at informal resolution fail, the disputing party may pursue enforcement of this

1 Consent Judgment through any legal means available including by motion or application for an
2 order to show cause before the Court.

3 **13. MODIFICATION**

4 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
5 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
6 of any Party and entry of a modified Consent Judgment by the Court.

7 **14. AUTHORIZATION**

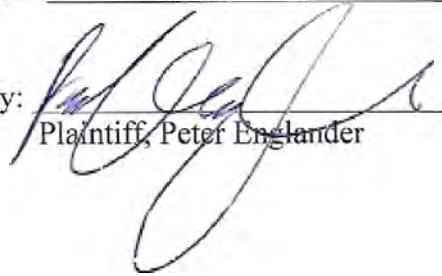
8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood, and agree to all of the terms and conditions of this
10 Consent Judgment.


11 **AGREED TO:**

AGREED TO:

12
13 Date: 6/29/2016

Date: 6/28/16

14
15 By: 
16 Plaintiff, Peter Englander

By: 
17 Seth Guterman, President
18 American Valve, Inc.

19
20
21
22
23
24
25
26
27
28