

OCT - 1 2014

1 Josh Voorhees, State Bar No. 241436
2 Harris A. Weinstein, State Bar No. 282166
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

FILED
ALAMEDA COUNTY

DEC - 4 2014

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

12 PETER ENGLANDER,
13 Plaintiff,
14 v.
15 BLOUNT INTERNATIONAL, INC.; SPEECO
16 INC.; *et al.*,
17 Defendants.

Case No.: RG13675162
~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT
Date: December 4, 2014
Time: 3:00 p.m.
Dept.: 22
Judge: Hon. Robert McGuiness
Reservation No.: R-1554157

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In the above-entitled action, plaintiff Peter Englander and defendants Blount International, Inc. and Speeco Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on December 4, 2014:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 12/4/14



JUDGE OF THE SUPERIOR COURT

Robert D. McGuinness

1 Josh Voorhees, State Bar No. 241436
2 Harris A. Weinstein, State Bar No. 282166
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 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 BLOUNT INTERNATIONAL, INC.;
18 SPEECO INC.; *et al.*,

19 Defendants.

Case No. RG13675162

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Peter Englander
4 ("Englander"), and defendants, Blount International, Inc. and SpeeCo Inc. ("Blount"), with Englander
5 and Blount each 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 improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Blount 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, Health and Safety Code
13 section 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Englander alleges that Blount sold hand tool grips and bells with vinyl/PVC handles
16 containing di(2-ethylhexyl)phthalate ("DEHP") and lead without first providing the exposure
17 warning required by Proposition 65. DEHP and lead are listed pursuant to Proposition 65 as
18 chemicals known to the state of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are hand tool grips including, but not
21 limited to the *Speeco 7/8 x 6.5 GR5 Hitchpin, P700542 (#0 87196 70542 1)* and bells with vinyl/PVC
22 handles including, but not limited to, the *Speeco Red Handle Cow Bell, S90072300, UPC #0 87196*
23 *90723 8* that are manufactured, imported, distributed, sold, and/or offered for sale by Blount in
24 California including (collectively "Products").

25 **1.6 Notices of Violation**

26 On or about November 21, 2012, Englander served Blount and various public enforcement
27 agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice that
28

1 Blount was in violation of California Health and Safety Code § 25249.6 for failing to warn its
2 customers and consumers that its hand tool grips exposed users to DEHP and lead in California.

3
4 On or about November 15, 2013, Englander served Blount and various public enforcement
5 agencies with a "Supplemental 60-Day Notice of Violation" ("Supplemental Notice") that provided
6 the recipients with notice that Blount was in violation of California Health and Safety Code §
7 25249.6 for failing to warn its customers and consumers that its hand tool grips and bells with
8 vinyl/PVC handles exposed users to DEHP and lead in California. The Notice and Supplemental
9 Notice shall collectively be referred to hereinafter as the "Notices."

10 **1.7 Complaint**

11 On April 11, 2013, Englander filed a complaint in the Superior Court in and for the County of
12 Alameda against Blount and Does 1 through 150, *Englander v. Blount International, Inc., Speeco,*
13 *Inc., et al.*, Case No. RG13675162 (the "Action" or "Complaint") alleging violations of Health and
14 Safety Code § 25249.6, based on the alleged exposures to DEHP and lead contained in certain hand
15 tool grips sold by Blount in the State of California. Provided that no public enforcer has commenced
16 and is diligently prosecuting the allegations contained in the Supplemental Notice, and upon entry of
17 this Consent Judgment by the Court, the Complaint shall be deemed amended *nunc pro tunc* to
18 include the allegations contained in the Supplemental Notice.

19 **1.8 No Admission**

20 Blount denies the material, factual, and legal allegations contained in the Notices and
21 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
22 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
23 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
24 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
25 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
26 Section shall not, however, diminish or otherwise affect Blount's obligations, responsibilities, and
27 duties under this Consent Judgment.
28

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Blount as to the allegations in the Complaint, that venue is proper in Alameda
4 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
5 Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that this
8 Consent Judgment is approved by the Court.

9 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

10 **2.1 Reformulation Standards**

11 "Reformulated Products" are defined as:

- 12 (a) those Products that contain a total lead content of less than or equal to 90 parts per
13 million ("ppm") when analyzed pursuant to Environmental Protection Agency
14 testing methodologies 3050B and/or 6010B in each accessible component; and
15 (b) those Products containing DEHP in concentrations less than 0.1 percent (1,000
16 ppm) when analyzed pursuant to U.S. Environmental Protection Agency testing
17 methodologies 3580A and 8270C.

18 Blount may utilize any other testing methodology utilized by state or federal government
19 agencies for the purpose of determining phthalate chemical content or lead content in a solid
20 substance to determine compliance with this Section.

21 **2.2 Reformulation Commitment**

22 As of the Effective Date all Products manufactured or distributed for sale in the State of
23 California by Blount shall be Products that qualify as Reformulated Products as defined in Section
24 2.1 above or shall carry appropriate Proposition 65 Health Hazard warnings as provided for in
25 Section 2.3 below.

26 **2.3 Product Warnings**

27 Commencing on the Effective Date, for all Products manufactured or distributed for sale in
28 the State of California by Blount other than Reformulated Products, Blount shall provide clear and

1 reasonable warnings as set forth in subsections 2.3(a) and (b). Each warning shall be prominently
2 placed with such conspicuousness as compared with other words, statements, designs, or devices as
3 to render it likely to be read and understood by an ordinary individual under customary conditions
4 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
5 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
6 confusion.

7 (a) **Retail Store Sales.**

8 (i) **Product Labeling.** Blount shall affix a warning to the packaging,
9 labeling, or directly on each Product sold in retail outlets in California by Blount or any person
10 selling the Products, that states:

11 **WARNING:** This product contains DEHP and lead, chemicals
12 known to the State of California to cause birth
13 defects and other reproductive harm.

14 (ii) **Point-of-Sale Warnings.** Alternatively, Blount may provide
15 warning signs in the form below to its customers in California with instructions to post the
16 warnings in close proximity to the point of display of the Products. Such instruction sent to
17 Blount's customers shall be sent by certified mail, return receipt requested.

18 **WARNING:** This product contains DEHP and lead, chemicals
19 known to the State of California to cause birth
20 defects and other reproductive harm.

21 Where more than one Product is sold in proximity to other like items or to those that do not
22 require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement
23 shall be used:¹

24 **WARNING:** The following products contain DEHP and lead,
25 chemicals known to the State of California to
26 cause birth defects and other reproductive harm:
27 [list products for which warning is required]

28 ² For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 (b) **Mail Order Catalog and Internet Sales.** In the event that Blount sells
2 Products via mail order catalog and/or the internet, to customers located in California, after the
3 Effective Date, that are not Reformulated Products, Blount shall provide warnings for such Products
4 sold via mail order catalog or the internet to California residents. Warnings given in the mail order
5 catalog or on the internet shall identify the *specific* Product to which the warning applies as further
6 specified in Sections 2.3(b)(i) and (ii).

7 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
8 catalog shall be in the same type size or larger than the Product description text within the catalog.
9 The following warning shall be provided on the same page and in the same location as the display
10 and/or description of the Product:

11 **WARNING:** This product contains DEHP and lead, chemicals
12 known to the State of California to cause birth
13 defects and other reproductive harm.

14 Where it is impracticable to provide the warning on the same page and in the same location as
15 the display and/or description of the Product, Blount may utilize a designated symbol to cross
16 reference the applicable warning and shall define the term "designated symbol" with the following
17 language on the inside of the front cover of the catalog or on the same page as any order form for the
18 Product(s):

19 **WARNING:** Certain products identified with this symbol
20 ▼ and offered for sale in this catalog contain
21 DEHP and lead, chemicals known to the State
22 of California to cause birth defects and other
23 reproductive harm.

24 The designated symbol must appear on the same page and in close proximity to the display
25 and/or description of the Product. On each page where the designated symbol appears, Blount must
26 provide a header or footer directing the consumer to the warning language and definition of the
27 designated symbol.

28 (ii) **Internet Website Warning.** A warning shall be given in conjunction
with the sale of the Products via the internet, which warning shall appear either: (a) on the same web
page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
on the same page as the price for any Product; or (d) on one or more web pages displayed to a

1 purchaser during the checkout process. The following warning statement shall be used and shall
2 appear in any of the above instances adjacent to or immediately following the display, description, or
3 price of the Product for which it is given in the same type size or larger than the Product description
4 text:

5
6 **WARNING:** This product contains DEHP and lead, chemicals
7 known to the State of California to cause birth
8 defects and other reproductive harm.

9 Alternatively, the designated symbol may appear adjacent to or immediately following the
10 display, description, or price of the Product for which a warning is being given, provided that the
11 following warning statement also appears elsewhere on the same web page, as follows:

12 **WARNING:** Products identified on this page with the
13 following symbol ▼ contain DEHP and lead,
14 chemicals known to the State of California to
15 cause birth defects and other reproductive
16 harm.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Payments pursuant to Health and Safety Code § 25249.7(b)**

19 In settlement of all the claims referred to in this Consent Judgment, Blount shall pay \$9,500 in
20 civil penalties. Each civil penalty payment shall be allocated according to Health and Safety Code
21 section 25249.7(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California
22 Office of Environmental Health Hazard Assessment and twenty-five percent (25%) of the funds
23 remitted to Englander. All civil penalty payments shall be made within five business days of the date
24 it is due and be delivered to the payment addresses provided in section 3.3.1. Blount shall be liable
25 for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under Section
26 3 that are not received within five business days of the due date.

27 **3.1.1 Initial Civil Penalty**

28 Within five business days of the mutual execution of this Consent Judgment, Blount
shall issue a check for its initial civil penalty payment in the amount of \$4,000 to "Schiff Hardin
LLP". Schiff Hardin LLP shall provide The Chanler Group with written confirmation within five
days of receipt that the funds have been deposited in a trust account. Within five business days of the
date that this Consent Judgment is approved by the Court, Schiff Hardin LLP shall issue two separate

1 checks for the initial civil penalty payment to: (a) "OEHHA" in the amount of \$3,000; and (b) "Peter
2 Englander, Client Trust Account" in the amount of \$1,000.

3 **3.1.2 Final Civil Penalty**

4 On or before October 30, 2014, Blount shall make a final civil penalty payment of
5 \$5,500. Pursuant to title 11 California Code of Regulations, section 3203(c), the final civil penalty
6 payment shall be waived in its entirety if, no later than October 15, 2014, an officer of Blount
7 provides Englander with written certification that as of the date of certification and continuing into
8 the future, all of the Products manufactured, imported, distributed, sold and offered for sale in
9 California by Blount are Reformulated Products. The written certification of reformulation in lieu of
10 the final civil penalty payment required by this section is a material term, and time is of the essence.
11 Unless waived, Blount shall issue two checks for the following amounts payable to: (a) "OEHHA" in
12 the amount of \$4,125; and (b) "Peter Englander, Client Trust Account" in the amount of \$1,375.

13 **3.2 Reimbursement of Fees and Costs**

14 The parties acknowledge that Englander and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
16 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
17 the other settlement terms had been finalized, Blount expressed a desire to resolve the fee and cost
18 issue. The Parties then attempted to (and did) reach an accord on the compensation due to Englander
19 and his counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
21 execution of this Consent Judgment. Blount shall, within five business days of the mutual execution
22 of this Consent Judgment by the Parties, issue a check payable to "Schiff Hardin LLP" in the amount
23 of \$30,500 to be held in trust by Schiff Hardin LLP for The Chanler Group. Schiff Hardin LLP shall
24 provide The Chanler Group with written confirmation within five business days of receipt that the
25 funds have been deposited in a trust account. Within five business days of the date this Consent
26 Judgment is approved by the Court, Schiff Hardin LLP shall issue a check payable to "The Chanler
27 Group" in the amount of \$30,500 to the address provided in section 3.3.1(a).

1. **3.3 Payment Procedures**

2. **3.3.1. Issuance of Payments.** Payments shall be delivered as follows;

3. (a) All payments owed to Englander, pursuant to Sections 3.1.1 through 3.1.2,
4. shall be delivered to the following payment address:

5. The Chanler Group
6. Attn: Proposition 65 Controller
7. 2560 Ninth Street
8. Parker Plaza, Suite 214
9. Berkeley, CA 94710

10. (b) All payments owed to OEHHA, pursuant to Sections 3.1.1 through 3.1.2,
11. shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at
12. the following addresses:

13. For United States Postal Service Delivery:

14. Mike Gyurics
15. Fiscal Operations Branch Chief
16. Office of Environmental Health Hazard Assessment
17. P.O. Box 4010
18. Sacramento, CA 95812-4010

19. For Non-United States Postal Service Delivery:

20. Mike Gyurics
21. Fiscal Operations Branch Chief
22. Office of Environmental Health Hazard Assessment
23. 1001 I Street
24. Sacramento, CA 95814

25. With a copy of the checks payable to OEHHA mailed to The Chanler
26. Group at the address set forth above in 3.3.1(a), as proof of payment to
27. OEHHA.

28. **4. CLAIMS COVERED AND RELEASED**

4.1 Englander's Public Release of Proposition 65 Claims

Englander, acting on his own behalf and in the public interest, releases Blount and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, shareholders, divisions, assigns, and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the Products, including but not limited to its downstream distributors,

1 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
2 ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures
3 to DEHP and lead from hand tool grips sold by Blount prior to the Effective Date, as set forth in
4 the Notice.

5 Upon entry of this Consent Judgment, Englander, acting on his own behalf and in the public
6 interest, further releases Releasees and Downstream Releasees for any violations arising under
7 Proposition 65 for unwarned exposures to DEHP and lead from the Products sold by Blount prior to
8 the Effective Date, as set forth in the Notices.

9 **4.2 Englander's Individual Release of Claims**

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

17 **4.3 Blount's Release of Englander**

18 Blount, on its own behalf, and on behalf of its past and current agents, representatives,
19 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
20 attorneys and other representatives, for any and all actions taken or statements made (or those that
21 could have been taken or made) by Englander and his attorneys and other representatives, whether
22 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
23 matter, or with respect to the Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall
26 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
27 has been fully executed by the Parties.
28

1 **6. SEVERABILITY**

2 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
3 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
4 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 is
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Blount may
9 provide written notice to Englander of any asserted change in the law, and shall have no further
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
11 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Blount from any
12 obligation to comply with any pertinent state or federal toxics control laws.

13 **8. NOTICES**

14 Unless specified herein, all correspondence and notices 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 the following addresses:

17 For Blount:

18 Chad Paulson, Vice President, General
19 Counsel & Secretary
20 Blount International, Inc.
21 4909 SE International Way
22 Portland, OR 97222

23 with a copy to:

24 Mark Mahoney
25 Schiff Hardin LLP
26 One Market
27 Spear Street Tower, Suite 3200
28 San Francisco, CA 94105

1 For Englander:

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

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Englander agrees to comply with the reporting form requirements referenced in Health and
15 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
16 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
17 furtherance of obtaining such approval, Englander and Blount agree to mutually employ their best
18 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
19 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
20 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
21 and supporting the motion for judicial approval.

22 **11. MODIFICATION**

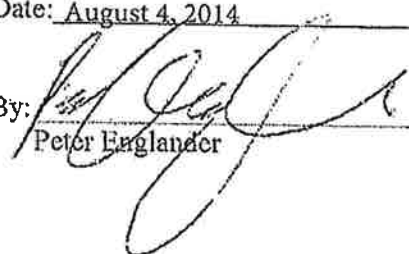
23 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
24 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
25 application of any Party and the entry of a modified consent judgment by the Court.
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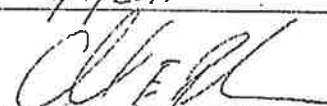
12. AUTHORIZATION

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

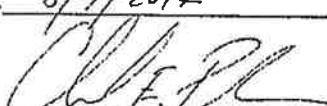
AGREED TO:

Date: August 4, 2014
By: 
Peter Englandor

AGREED TO:

Date: 8/7/2014
By: 
Chad E. Paulson, Vice President, General
Counsel & Secretary
Blount International, Inc.

AGREED TO:

Date: 8/7/2014
By: 
Chad E. Paulson, Vice President, General
Counsel & Secretary
SpeeCo, Incorporated.