

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and NIBCO INC. (“NIBCO”), with Englander and NIBCO each individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. NIBCO 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 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

In his Notice (as defined in Section 1.4, below), Englander alleges that NIBCO manufactures, sells, and distributes for sale in California, vinyl/PVC ball valves with hand grips containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Englander alleges that NIBCO failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the products. NIBCO denies Englander’s claims and maintains that warnings are not required under Proposition 65 for the products.

1.3 Product Description

This Settlement Agreement covers plumbing products containing PVC/vinyl in their handles or other exterior components including, but not limited to, *NIBCO Brass Ball Valves- Female Thread*, and other similar plumbing products, that are manufactured, sold, or distributed for sale in California by NIBCO (collectively, the “Products”).

1.4 Notice of Violation

On October 14, 2016, Englander served NIBCO and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that NIBCO violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the noticed products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

NIBCO denies the material, factual, and legal allegations contained in the Notice and maintains that all products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by NIBCO of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by NIBCO of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by NIBCO. This Section shall not, however, diminish or otherwise affect NIBCO’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which it is fully executed by the Parties.

2. SETTLEMENT TERMS

Englander maintains that his investigation of the noticed products indicated, in part due to test results received from an appropriately-accredited laboratory, that the appropriate component of the exemplar product identified in the Notice contained a DEHP content level that was elevated and he had a reasonable basis for bringing his Proposition 65 claim. Englander discussed the substantive aspects of his investigation with NIBCO. NIBCO conducted an exposure assessment regarding the noticed products,

and NIBCO provided that exposure assessment to Englander's counsel. NIBCO maintains that its exposure assessment demonstrates that a Proposition 65 warning is not required for any DEHP in the noticed product. As a result of this exchange of information and their discussions, the Parties agreed to resolve the dispute per the terms below.

3. MONETARY TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, NIBCO agrees to pay \$1,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Englander's counsel and the remaining 25% of the penalty amount paid to Englander. Within five business days of the Effective Date, NIBCO shall pay the civil penalty in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$750 and (b) "Peter Englander, Client Trust Account" in the amount of \$250. All payments owed by NIBCO pursuant to this Settlement Agreement shall be delivered to the address provided in section 3.3 below.

3.2 Attorneys' Fees and Costs

The Parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, NIBCO expressed a desire to resolve Englander's fees and costs. The Parties reached an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five

business days of the Effective Date, NIBCO agrees to pay \$11,000 in the form of a check made payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to the attention of NIBCO's management, and negotiating a settlement that provides a significant public benefit.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to:

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

4. CLAIMS COVERED AND RELEASED

4.1 Englander's Release of NIBCO

This Settlement Agreement is a full, final, and binding resolution between Englander, in his individual capacity only and not on behalf of the general public, and NIBCO, of any violation of Proposition 65 that was or could have been asserted by Englander on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees (collectively, "Releasers"), and Releasers hereby release any such claims against NIBCO, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom NIBCO directly or indirectly distributes or sells Product, including downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, and their respective present and former agents, attorneys, representatives, predecessors, successors, parents, affiliates, and subsidiaries (collectively, the "Releasees"), arising out of or related to any exposures to DEHP from the Products.

In further consideration of the promises and agreements herein, Englander, on his own behalf and on behalf of the other Releasers, hereby waives any right to institute or

participate in, directly or indirectly, any form of legal action against Releasees and releases all claims against Releasees that he may have, including, without limitation, all actions and causes of action in law and in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees (collectively, the "Claims"), whether known or unknown, suspected or unsuspected, arising under Proposition 65 or any other statutory or common law with respect to any exposures to DEHP from the Products manufactured, distributed, sold and/or offered for sale by NIBCO. Englander acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Englander, on his own behalf and on behalf of the other Releasors, and not on behalf of the general public, expressly waives and relinquishes any and all rights and benefits which he may have, or which may be conferred on him, under the provisions of Civil Code § 1542 to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

The releases provided by Englander under this Settlement Agreement are provided solely by Englander, on his own behalf and on behalf of the other Releasors, and not on behalf of the public in California.

4.2 NIBCO's Release of Englander

NIBCO, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Englander and his attorneys and other representatives, for any and all actions taken or statements made by Englander and his attorneys and other representatives,

whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then NIBCO may provide written notice to Englander of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For NIBCO:

Sarah Esmaili, Esq.
Arnold & Porter Kaye Scholer
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024

For Englander:

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

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

8. COUNTERPARTS; FACSIMILE SIGNATURES

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

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

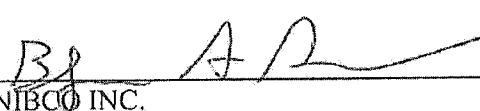
AGREED TO:

AGREED TO:

Date: March 21, 2017

Date: 3/24/17

By: 
PETER ENGLANDER

By: 
NIBCO INC.

Name (Print): Ben Anderson

Its (title): Assistant General Counsel