

1 Clifford A. Chanler, State Bar No. 135534
Brian Johnson, State Bar No. 235965
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 brian@chanler.com
clifford@chanler.com

6
7 Attorneys for Plaintiff
PETER ENGLANDER

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 LYMAN PRODUCTS CORPORATION; *et*
17 *al.*,

18 Defendants.
19

Case No. CGC-17-556317

[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 Lyman Products Corporation (“Lyman”) with Englander and Lyman each individually
5 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 Englander alleges that Lyman employs ten or more individuals and is a “person in the course
12 of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Englander alleges that Lyman manufactures, sells, and distributes for sale in California, brass
16 hammer pins containing lead, and that it does so without first providing the health hazard warning
17 required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause
18 birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment, “Products” are defined as brass hammer pins and
21 other brass-containing components containing lead that are sold or distributed for sale in California
22 by Lyman including, but not limited to, the brass hammer pins offered with the *Lyman Brass Tapper*
23 *Hammer, Item #7031290, UPC No. 0 11516 81290 2* and those additional products listed in **Exhibit**
24 **A**, attached hereto.

25 **1.6 Notice of Violation**

26 On October 28, 2016, Englander served Lyman, the California Attorney General, and all other
27 requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that
28 Lyman violated Proposition 65 by failing to warn its customers and consumers in California of the

1 health risks associated with exposures to lead from the Products. No public enforcer has commenced
2 or is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On January 9, 2017, Englander filed the instant action (“Complaint”), naming Lyman as a
5 defendant for the alleged violations that are the subject of the Notice.

6 **1.8 No Admission**

7 Lyman 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, have been and are in compliance with all laws. Nothing in this Consent
10 Judgment shall be construed as an admission by Lyman of any fact, finding, conclusion of law, issue
11 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
12 construed as an admission by Lyman of any fact, finding, conclusion of law, issue of law, or violation
13 of law. This Section shall not, however, diminish or otherwise affect Lyman’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 Lyman as to the allegations in the Complaint, that venue is proper in the County of
18 San Francisco, 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: REFORMULATION AND WARNINGS**

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

26 Commencing on the Effective Date, and continuing thereafter, Lyman agrees to sell or
27 distribute for sale in California only either (a) “Reformulated Products,” as defined by Section 2.2, or
28 (b) 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 a maximum lead concentration of 90 parts per million (0.1%) when analyzed pursuant to
4 U.S. Environmental Protection Agency testing methodologies 3050B and 6010B, or equivalent
5 methodologies used by state or federal agencies for to determine lead 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, Lyman shall provide clear and reasonable
9 warnings in accordance with this Section 2.3. Lyman further agrees that any warning used will be
10 prominently placed in relation to the Product with such conspicuousness when compared with other
11 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
12 individual under customary conditions of purchase or use. For purposes of this Consent Judgment, a
13 clear and reasonable warning for the Products satisfying these criteria shall consist of a warning
14 affixed directly to a Product or its accompanying labeling or packaging sold in California containing
15 one of the following statements:



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

20 If Lyman sells Products via an internet website to customers located in California, the warning
21 requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same
22 web page on which a Product is displayed and/or described; (b) on the same page as the price for the
23 Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the
24 checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or
25 white equilateral triangle may appear adjacent to or immediately following the display, description,
26 price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web
27 page in a manner that clearly associates it with the product(s) to which the warning applies.

28 / / /

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, Lyman shall pay \$4,000 in civil penalties. Lyman’s civil penalty
5 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with
6 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
7 Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Englander.
8 Lyman shall provide its payment in two checks for the following amounts made payable to: (a)
9 “OEHHA” in the amount of \$3,000; and (b) “Peter Englander, Client Trust Account” in the amount
10 of \$1000. Englander’s counsel shall be responsible for delivering the penalty payment to OEHHA.

11 **3.2 Reimbursement of Attorney’s 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, thereby leaving the issue to
14 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
15 other settlement terms had been finalized, the Parties negotiated a reimbursement 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 section 1021.5 for all work
18 performed through the mutual execution of this Consent Judgment. Accordingly, Lyman agrees to
19 pay \$28,000 for all fees and costs incurred by Englander investigating, bringing this matter to
20 Lyman’s attention, litigating and negotiating a settlement in the public interest, and obtaining court
21 approval of the same.

22 **3.3 Payments Held in Trust**

23 All payments due under this Consent Judgment shall be delivered within fifteen (15) days of
24 the date that this Consent Judgment is fully executed by the Parties, and held in trust by Lyman’s
25 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by
26 Section 5. Lyman’s counsel shall provide Englander’s counsel with written notice following its
27 receipt of the settlement funds from Lyman. Thereafter, Lyman’s counsel shall hold the funds in
28 trust until, and disburse the payments to Englander’s counsel within two (2) business days after the

1 Effective Date.

2 **3.4 Payment Address**

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

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

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Englander’s Public Release of Proposition 65 Claims**

9 Englander, acting on his own behalf and in the public interest, releases Lyman and its
10 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
11 shareholders and attorneys (“Releasees”), and each entity to whom Lyman directly or indirectly
12 distributes or sells the Products including, but not limited to, its downstream distributors,
13 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
14 (“Downstream Releasees”) for any violation arising under Proposition 65 based on a failure to warn
15 about exposures to lead in Products manufactured, imported, sold, or distributed for sale by Lyman
16 prior to the Effective Date. Compliance with the terms of this Consent Judgment constitutes
17 compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures
18 to lead in Products manufactured, imported, sold, or distributed for sale by Lyman after the
19 Effective Date.

20 **4.2 Englander’s Individual Release of Claims**

21 Englander, in his individual capacity only and *not* in his representative capacity, also provides
22 a release to Lyman, Releasees, and Downstream Releasees which shall be effective as a full and final
23 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
24 attorneys’ fees, damages, losses, claims, liabilities, and demands of Englander of any nature,
25 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
26 actual exposures to lead in the Products manufactured, imported, sold, distributed and/or offered for
27 sale or use by Lyman before the Effective Date.
28

1 **4.3 Lyman’s Release of Englander**

2 Lyman, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Englander and his
4 attorneys and other representatives, for any and all actions taken or statements made by Englander
5 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

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

11 **6. ENFORCEMENT OF CONSENT JUDGMENT**

12 **6.1 Only a Party May Enforce the Consent Judgment**

13 Only the Parties may enforce this Consent Judgment. In any action to enforce the terms and
14 conditions of this Consent Judgment, the prevailing party shall be entitled to its reasonable attorneys’
15 fees and costs. Any Party seeking to enforce this Consent Judgment, however, must do so in
16 compliance with this Section 6.

17 **6.2 Notice of Breach and Meet and Confer Requirement**

18 No action to enforce this Consent Judgment may be commenced or maintained, and no Notice
19 of Violation related to the Products may be served or filed against Lyman by Englander, unless
20 Englander first provides Lyman with written notice, indicating the specific acts alleged to breach this
21 Consent Judgment (“Notice of Breach”). Any Notice of Breach must contain (a) the name of the
22 product, (b) the date(s) on which the Product was sold, purchased, or witnessed as being available for
23 sale or purchase, (c) the name and address for the seller of the Product Englander believes violates
24 the Consent Judgment, (d) images of the Products with all packaging and labeling, including any
25 model, SKU (stock keeping unit), item, or batch number visible on the Product labeling; (e) copies of
26 any test results tending to show that a Product sold without a warning is not a “Reformulated
27 Product” as defined by Section 2.2, and (f) any other evidence supporting or tending to support the
28 allegations in the Notice of Breach.

1 **6.3 Right to Cure Violations Alleged in Notice of Breach**

2 Within thirty (30) days of receiving a Notice of Breach from Englander, Lyman shall either
3 (1) send the store, or other seller location where the accused Product is offered for sale, a letter
4 directing that the Product be immediately removed from inventory and returned to Lyman for at
5 Lyman’s expense; (2) provide the seller with warning materials in compliance with Section 2.3 to be
6 applied to any Products remaining in the seller’s inventory, or (3) refute the information provided in
7 Englander’s Notice of Breach by meeting and conferring with Englander for not less than forty-five
8 (45) days in an effort to resolve the alleged breach informally to Englander’s reasonable satisfaction.

9 Englander shall agree a violation alleged in a Notice of Breach has been resolved to his
10 reasonable satisfaction, and take no subsequent action to enforce against Lyman, if Lyman (a) directs
11 the store to remove the offending product from its inventory as described above within forty-five (45)
12 days of receiving a Notice of Breach from Englander; or (b) provides the store or other seller with
13 warnings for the Products in compliance with Section 2.3, above, and, thereafter, verifies with the
14 store that such warnings have been, or are being, provided to consumers in California. If Lyman
15 cures the alleged breach by complying with either (a) or (b) above, then Englander shall not pursue
16 further enforcement of the alleged breach of the Consent Judgment.

17 **7. SEVERABILITY**

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

21 **8. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the state of California
23 and apply within the state of California. If Proposition 65 is repealed, preempted, or otherwise
24 rendered inapplicable by reason of law generally, or as to the Products, then Lyman may provide
25 written notice to Englander of any asserted change in the law, and shall have no further injunctive
26 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are
27 so affected.

1 **9. NOTICE**

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

5 For Lyman:

6 Richard Ranzinger, President
7 Lyman Products Corporation
8 475 Smith Street
9 Middletown, CT 064579

10 Stanley W. Landfair, Esq.
11 Rebecca L. Woodson, Esq.
12 Dentons, LLP
13 One Market Plaza, Spear Tower, 24th Floor
14 San Francisco, CA 94105

15 For Englander:

16 Proposition 65 Coordinator
17 The Chanler Group
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **10. POST-EXECUTION ACTIVITIES**

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

1 **11. MODIFICATION; DUTY TO MEET AND CONFER**

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

5 **12. AUTHORIZATION**

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


8 **AGREED TO:**

AGREED TO:

9
10 Date: 10/10/2017

Date: 10/6/2017

11 By: 
12 PETER ENGLANDER,

By: 
Richard Ranzinger, President
LYMAN PRODUCTS CORPORATION

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

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

Catalogue Item #	Item Description
7031298	Deluxe Hammer and Punch Set
7031272	Gunsmith Punch Set
7031271	Pistol Punch Set
7031277	Roll Pin Punch Set
03085	Ultimate Gunsmith Tool Kit