

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Peter Englander and Jerry Leigh of California, Inc.

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Jerry Leigh of California, Inc. (“Jerry Leigh”), with Englander and Jerry Leigh collectively referred to as the “parties.” Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Jerry Leigh 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 & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that Jerry Leigh has manufactured, imported, distributed, sold and/or offered for sale in the State of California, earphones with vinyl/PVC covered wires containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as earphones with vinyl/PVC covered wires containing DEHP including, but not limited to, *HoodieBuddie with HB3 Technology, Style #JJ2445 (#7 32409 98209 9)* manufactured, imported, distributed, sold and/or offered for sale by Jerry Leigh in the State of California, hereinafter “Products.”

1.4 Notice of Violation

On August 31, 2012, Englander served Jerry Leigh and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Jerry Leigh was in violation of California Health & Safety Code

§ 25249.6 for failing to warn consumers that their Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Jerry Leigh denies the material, factual and legal allegations contained in Englander's 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 Jerry Leigh of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Jerry Leigh of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Jerry Leigh under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 15, 2012.

2. INJUNCTIVE RELIEF; REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date all Products manufactured, imported, distributed, sold or offered for sale in the State of California by Jerry Leigh shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

Jerry Leigh shall pay a total civil penalty of \$36,000 under this Section, as follows:

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, Jerry Leigh shall pay an initial civil penalty in the amount of \$12,000. The civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Peter Englander. Jerry Leigh shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$9,000 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Peter Englander" in the amount of \$3,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Peter Englander, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Englander's counsel on or before November 15 2012, at the following address:

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

3.2 Final Civil Penalty

Jerry Leigh shall pay a final civil penalty of \$24,000 on or before March 15, 2013. The final civil penalty shall be waived in its entirety, however, if an Officer of Jerry Leigh provides Englander with written certification that, as of the Effective Date and continuing into the future, Jerry Leigh has met the reformulation standard specified in Section 2 above such that all Products manufactured, imported, distributed, sold or offered for sale in California by Jerry

Leigh are Reformulated Products. Englander must receive any such certification on or before March 1, 2013, and time is of the essence. The final civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Englander, as provided by California Health & Safety Code § 25249.12(d).

4. REIMBURSEMENT OF 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 this fee issue to be resolved after the material terms of the agreement had been settled. Englander then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Jerry Leigh shall pay \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to Jerry Leigh's attention, and negotiating a settlement in the public interest. Jerry Leigh shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before November 15, 2012, to the following address:

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

5. RELEASES

5.1 Englander's Release of Jerry Leigh

This Settlement Agreement is a full, final and binding resolution between Englander and Jerry Leigh of any violation of Proposition 65 that was or could have been asserted by Englander on behalf of himself his past and current agents, representatives, attorneys, successors, and/or

assignees, against Jerry Leigh, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Jerry Leigh directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Jerry Leigh in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Englander on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Jerry Leigh before the Effective Date (collectively “claims”), against Jerry Leigh and Releasees.

5.2 Jerry Leigh’s Release of Englander

Jerry Leigh, on behalf of itself, 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 (or those that could have been taken or made) by Englander and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Jerry Leigh may ask Englander, in writing, to file a complaint in the public interest, incorporate the terms of this

Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Englander agrees to reasonably cooperate with Jerry Leigh and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Jerry Leigh will reimburse Englander and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$16,000, exclusive of fees and cost that may be incurred on appeal. Jerry Leigh will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Jerry Leigh within ten days after its receipt of monthly invoices from Englander for work performed under this paragraph.

7. SEVERABILITY

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

8. 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Jerry Leigh shall provide written notice to Englander of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Jerry Leigh from any obligation to comply with any pertinent state or federal toxics control law.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Jerry Leigh:

Andrew Leigh, President
Jerry Leigh of California, Inc.
7860 Nelson Road
Van Nuys, CA 91402

For Englander:

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

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.

10. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement 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.

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

Englander agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

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

13. **AUTHORIZATION**

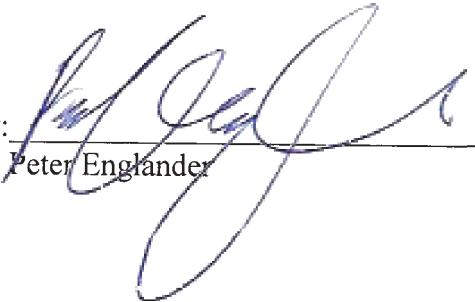
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

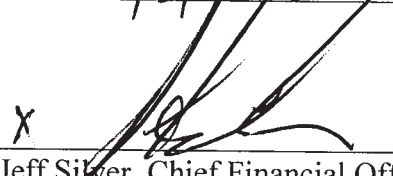
AGREED TO:

AGREED TO:

Date: Novmeber 15, 2012

Date: 11/8/2012

By: 
Peter Englander

By: 
Jeff Silver, Chief Financial Officer
Jerry Leigh of California, Inc.