

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Rolf C. Hagen (USA) Corp. (“Hagen”), with Englander and Hagen 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. Hagen 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that Hagen manufactures, distributes, sells, and/or offers for sale in California clamp lamps and nail trimmers with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to 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 clamp lamps with vinyl/PVC components that contain DEHP including, but not limited to: the *Exo Terra Porcelain Wire Clamp Lamp, Item #PT2060 (#0 15561 22060 6)*; the *Exo Terra Porcelain Wire Clamp Lamp Item, # PT2062 (#0 15561 22062 0)*; the *Exo Terra Light Dome 14 cm/5.5”*, #PT2055 (#0 15561 22055 2); and the *Exo Terra Light Dome 18 cm/7”*, #PT2057 (#0 15561 22057 6), which were manufactured, distributed, sold and/or offered for sale in California by Hagen, hereinafter referred to as the “Noticed Products.”

In addition to the above, this Settlement Agreement also covers nail trimmers with vinyl/PVC grips that contain DEHP including, but not limited to, the *Le Salon Essentials Nail Trimmer, Art. # 91255 (#0 22517 91255 3)*, which were manufactured, distributed, sold and/or offered for sale in California by Hagen, hereinafter referred to as the “Additional Products.” The Noticed Products and the Additional Products are collectively referred to as the “Products.”

As of the date this agreement is executed, Englander, through his counsel and to the best of their knowledge, are unaware of any Hagen products, other than products covered by this Settlement Agreement, that are manufactured, imported, distributed, sold and/or offered for sale in the State of California that violate Proposition 65.

1.4 Notice of Violation

On or about January 8, 2013, Englander served Hagen and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Hagen was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Noticed Products exposed users to DEHP. 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

Hagen denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 Hagen of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Hagen of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Hagen. This Section shall not, however, diminish or otherwise affect Hagen’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 November 1, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards and Commitment

Commencing on the Effective Date and continuing thereafter, Hagen shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Products that are “Reformulated Products,” or Products that comply with the warning requirements set forth below in Section 2.2. For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products that contain no more than 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance. For purposes of this agreement, “Accessible Components” shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

2.2 Product Warnings

Commencing on the Effective Date, Hagen shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

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

WARNING: Accessible components of this product contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands after handling.

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

WARNING: Accessible components of this product contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands after handling.

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

WARNING: Accessible components of the following products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands after handling.

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales.

In the event that Hagen sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products,

¹ 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.

Hagen shall provide warnings for such Products. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

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

WARNING: Accessible components of this product contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands after handling.

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

WARNING: Accessible components of certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands after handling.

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

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

WARNING: Accessible components of this product contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands after handling.

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

WARNING: Accessible components of products identified on this page with the following symbol ▼ contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands after handling.

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

In settlement of all the claims referred to in this Settlement Agreement, Hagen shall pay a total of \$7,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

3.1 Initial Civil Penalty

Hagen shall pay an initial civil penalty in the amount of \$2,500 on or before the Effective Date. Hagen shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,875; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$625. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Hagen shall pay a final civil penalty of \$5,000 on or before December 15, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than December 1, 2013, an officer of Hagen provides Englander with written certification that, as of the date of such certification and continuing into the future, Hagen has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Hagen are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Hagen shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$3,750; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$1,250.

3.3 Payment Procedures

3.3.1 Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Englander, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

3.3.2 Issuance of 1099 Forms. After each penalty payment, Hagen shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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 § 1021.5, for all work performed through the mutual execution of this agreement. Hagen shall pay \$27,000 for fees and costs incurred as a result of investigating, bringing this matter to Hagen's attention, and negotiating a settlement in the public interest. Hagen 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 the Effective Date, to the address listed in Section 3.3.1 above.

5. RELEASES

5.1 Englander’s Release of Hagen

This Settlement Agreement is a full, final and binding resolution between Englander and Hagen, 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 Hagen, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Hagen 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 Noticed Products that were manufactured, distributed, sold, and/or offered for sale by Hagen 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 Englander’s rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Englander 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 Hagen before the Effective Date, against Hagen and Releasees.

5.2 Hagen's Release of Englander

Hagen, 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, Hagen may send Englander a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Englander and Hagen agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

If so requested by Hagen in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then Hagen will reimburse Englander and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement, in an amount not to exceed \$16,000, exclusive of fees and costs incurred on appeal, if any. Hagen shall remit payment to The Chanler Group at the payment address provided in section 3.1 within five business days of receiving a monthly invoice from Englander's counsel for work performed under this Section.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held 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.

9. NOTICES

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

To Hagen:

Rolf Hagen, Jr., President
Rolf C. Hagen (USA) Corp.
305 Forbes Boulevard
Mansfield, MA 02048

To Englander:

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

With copy to:

Matthew P. Lewis
White & Case LLP
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071

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

10. 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.

11. POST-EXECUTION ACTIVITIES

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

12. MODIFICATION

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

13. AUTHORIZATION

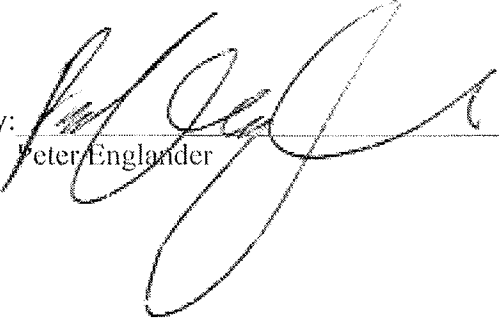
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Date: October 11, 2013

Date: October 17, 2013

By: 
Peter Englander

By: 
Rolf Hagen, Jr., President
Rolf C. Hagen (USA) Corp.