

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Accell North America, Inc. (“ANA”), with Englander and ANA 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. Englander alleges that ANA 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 ANA manufactures, sells, and/or distributes for sale in California, locks with vinyl/PVC coating 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 or other reproductive harm. Englander alleges that ANA failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from the vinyl/PVC coated locks.

1.3 Product Description

The products that are covered by this Settlement Agreement are locks with vinyl/PVC coating containing DEHP, including, but not limited to the *Diamondback U-Lock+Cable Combo, Part Number 80-32-856, UPC# 7 91964 41133 8*, manufactured, sold or distributed for sale in California by ANA (“Products”).

1.4 Notice of Violation

On or about September 24, 2015, Englander served ANA and certain requisite

public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that ANA violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose 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

ANA denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products subject to Englander’s Notice, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by ANA 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 ANA of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ANA. However, this Section shall not diminish or otherwise affect ANA’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 March 11, 2016.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, ANA agrees to only manufacture for sale or purchase for sale in or into California, “Reformulated Products”. For purposes of this Settlement Agreement, “Reformulated Products” are 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 other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.2 Warnings Commitment

Commencing on the Effective Date, ANA shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth below. 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. For Products containing DEHP, ANA shall use the following warning language:

WARNING: This product contains DEHP, a chemical known to the state of California to cause birth defects and other reproductive harm.

3. MONETARY SETTLEMENT 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, ANA agrees to pay \$15,000.00 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”) and the remaining 25% of the penalty amount paid to Englander, and delivered to the address in Section 3.3 herein. On or before the Effective Date, ANA shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$11,250.00 and (b) “Peter Englander, Client Trust Account” in the amount of \$3,750.00.

3.2 Attorneys’ 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, ANA agrees to pay \$25,000.00 to Englander and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of ANA's management, and negotiating a settlement that provides a significant public benefit. ANA's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

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 ANA

This Settlement Agreement is a full, final and binding resolution between Englander, as an individual and not on behalf of the public, and ANA, of any violation of Proposition 65 that was or could have been asserted by Englander, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims against ANA, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom ANA directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to DEHP contained in Products manufactured, distributed, sold or offered for sale by ANA in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Englander, as an individual and not on behalf of the public, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by ANA before the date that this Settlement Agreement is fully executed by the Parties. The releases provided by Englander under this Settlement Agreement are provided solely on Englander's behalf and are not releases on behalf of the public.

4.2 ANA's Release of Englander

ANA, 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, otherwise 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 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.

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 otherwise rendered inapplicable by reason of law generally, as to ANA specifically as a result of a statutory exemption, or as to the Products, then ANA may provide written notice to Englander of any asserted change in the law, or its applicability to ANA or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, ANA or the Products are 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:

ANA

Chris Speyer, Chief Executive Officer
Accell North America, Inc.
6004 South 190th Street
Kent, WA 98032

Douglas Fleming, Esq.
Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

Englander

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

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, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 3/3/2016

Date: _____

By:  _____
PETER ENGLANDER

By: _____
Chris Speyer, Chief Executive Officer
ACCELL NORTH AMERICA, INC.

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AGREED TO:

AGREED TO:

Date: _____

Date: Mar. 9 / 2016

By: _____
PETER ENGLANDER

By: 
Chris Speyer, Chief Executive Officer
ACCELL NORTH AMERICA, INC.