

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between HDS Trading Corp. (“HDS”) and Peter Englander (“Englander”), with Englander and HDS collectively referred to as the “Parties.” Englander is an individual residing in the State of 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. HDS 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 HDS has manufactured, distributed and/or sold in the State of California stools with vinyl/PVC components containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined stools with vinyl/PVC components containing DEHP including, but not limited to, *HDS Stool, Item No. FS01747, UPC #8 86466 01747 5*, manufactured, imported and/or distributed for sale in the State of California by HDS.

1.4 Notice of Violation

On or about September 24, 2015, Englander served HDS and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on HDS’s failure to warn consumers that the Products exposed users in the State of California to DEHP. To the best of the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1.5 No Admission

HDS denies all factual and legal allegations contained in Englander's Notice, and maintains that all of the products that it has sold and/or offered for sale in the State of California, including the Products, have been and are in compliance with all federal, state, or local laws. Nothing in this Settlement Agreement shall be construed as an admission by HDS 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 HDS of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect HDS'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 this Settlement Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD

2.1 Reformulation Standard

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, NVLAP (National Volunteer Laboratory Accreditation Program), American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC) or similar nationally recognized accrediting organization, pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon HDS by laws

other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to HDS under laws other than Proposition 65.

2.2 Vendor Notification Requirement

To the extent is has not already done so, on the Effective Date, HDS shall provide the reformulation standard specified in Section 2.1 to each of its then-current Vendors of Products and vinyl/PVC component of the Products that will be sold or offered for sale to California citizens and shall instruct each Vendor to use reasonable efforts to provide Products and vinyl/PVC component of the Products that comply with the reformulation standard for Reformulated Products in Section 2.1 above. For purposes of this Settlement Agreement, the term "Vendor(s)" means a person or entity that manufactures, imports, distributes, sells, or otherwise supplies the Products or component parts of the Products to HDS, its parents, assignees, subsidiaries and/or affiliated entities under common ownership.

2.3 Warnings Required: Product Labeling

Commencing on the Effective Date, for all Products other than Reformulated Products, HDS shall provide clear and reasonable warnings that state:

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

or

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

HDS may affix this warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale to institutional or individual consumers within the State of California and institutional customers with nationwide distribution. 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(s) the warning applies, so as to minimize the risk of consumer confusion.

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

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

3.1 Initial Civil Penalty

HDS shall pay an initial civil penalty in the amount of \$2,500 within five (5) days of the Effective Date in one check made payable as follows: “Peter Englander, Client Trust Account”. All penalty payments shall be delivered to the address listed in Section 3.5.1 below.

3.2 Final Civil Penalty

HDS shall pay a final civil penalty of \$5,000 on or before March 15, 2016. The final civil penalty shall be waived in its entirety if an officer of HDS provides Englander with written certification that HDS has met and continues to meet the Reformulation Standard specified in Section 2.1 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in State of California as of the Effective Date and continuing into the future are Reformulated Products. Englander must receive any such certification on or before March 1, 2016; time is of the essence.

Unless waived in its entirety, HDS shall a check for any remaining portion of the final civil penalty made payable to “Peter Englander, Client Trust Account.” In accordance with California Health & Safety Code § 25249.12(c)(1) & (d), Englander will remit 75% of the funds remitted to OEHHA and retain 25% of the funds. HDS shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

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3.3 Representations

HDS represents that the sales data and other information concerning its Product sales information, knowledge of DEHP, prior reformulation and/or warning efforts, that it provided to Englander in negotiating this Settlement Agreement was truthful to its knowledge at the time of execution of this Settlement Agreement and a material factor upon which Englander relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within twelve months of the Effective Date, Englander discovers and presents to HDS, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then HDS shall have 30 days to meet and confer regarding Englander's contention. Should this 30 day period pass without any such resolution between Englander and HDS, Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

3.4 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 and reporting of this agreement. HDS shall pay \$21,000 for fees and costs incurred as a result of investigating, bringing this matter to HDS's attention, and negotiating a settlement in the public interest. HDS shall tender a check payable to "The Chanler Group," within five (5) days of the Effective Date. HDS shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

with respect to DEHP in the Products manufactured, distributed, shipped, sold and/or offered for sale by HDS before the Effective Date.

4.2 HDS' Release of Englander

HDS waives any and all claims against Englander, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

5. 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 Products and/or DEHP, then HDS 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.

6. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (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:

For HDS:

Fred Guindi, Vice President
HDS Trading Corp.
1305 Jersey Avenue
North Brunswick, NJ 08902

with a copy on behalf of HDS to:

Sophia Belloli
Downey Brand LLP
455 Market Street, Suite 1420
San Francisco, CA 94105

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.

7. COUNTERPARTS; FACSIMILE/PDF 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.

8. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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

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

10. MODIFICATION

This Settlement Agreement may be modified only by a 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: 1/29/2016

Date: 2/1/2016

By: 
Peter Englander

By: 
Fred Guindi, Vice President
HDS Trading Corp.