

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Innovative Products of America, Incorporated (“Innovative”), with Englander and Innovative 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. Innovative 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Englander alleges that Innovative manufactures, sells, and distributes for sale in California, vinyl/PVC fuel pump nozzle grips (“Nozzle Grips”) containing the phthalate chemical Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Englander alleges that Innovative failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Nozzle Grips.

### 1.3 Product Description

The products covered by this Settlement Agreement are Nozzle Grips containing DEHP that are manufactured, sold or distributed for sale in California by Innovative, including, but not limited to, the Nozzle Grips offered in connection with the *IPA High-Flow Fuel Nozzle With Digital Fuel Meter, #9048, UPC #8 93509 00138 4* (“Products”).

### 1.4 Notice of Violation

On December 29, 2015, Englander served Innovative and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that

Innovative violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Nozzle Grips. 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**

Innovative 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, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Innovative 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 Innovative of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Innovative. This Section shall not, however, diminish or otherwise affect Innovative'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 May 5, 2016.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD**

### **2.1 Reformulation Standard**

Commencing on May 5, 2016, and continuing thereafter, Innovative agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to 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.

## 2.2 Warnings Required: Product Labeling

Commencing on the Effective Date, for all Products other than Reformulated Products, Innovative 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.

Innovative 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. 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, Innovative agrees to pay \$2,500 in civil penalties. Within five days of the Effective Date, Innovative shall pay the civil penalty in the amount of \$2,500. 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. Innovative will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,875 and (b) "Peter Englander, Client Trust Account" in the amount of \$625.

### **3.2 Attorneys' 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Innovative expressed a desire to resolve Englander's 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, within five days of the Effective Date, Innovative agrees to pay \$8,000 in the form of a check made payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to the attention of Innovative's management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments under 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 Innovative**

This Settlement Agreement is a full, final and binding resolution between Englander and Innovative, of any violation of Proposition 65 that was or could have been

asserted by Englander on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Innovative, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Innovative directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers (including Wal-Mart Stores, Inc.), franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Innovative in California before the Effective Date.

In further consideration of the promises and agreements herein, Englander, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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 exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Innovative before the Effective Date. The releases provided by Englander under this Settlement Agreement are provided solely on Englander’s own behalf and not on behalf of the public in California.

#### **4.2 Innovative’s Release of Englander**

Innovative, 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

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, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 5/3/2016

Date: 5-3-16

By: 

PETER ENGLANDER

By: 

Peter Vinci, President  
INNOVATIVE PRODUCTS OF AMERICA