

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Jokari/US, Inc. (“Jokari”) and Peter Englander (“Englander”), with Englander and Jokari collectively referred to as the “Parties.”

#### 1.2 General Allegations

Englander alleges that Jokari has manufactured, distributed and/or sold in the State of California vinyl/PVC can openers containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits without the requisite warning pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”). 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 limited to *Jokari Ring Pull Can and Jar Openers, #06040, #1470390, UPC #0 32368 06040 2*, manufactured, imported and/or distributed for sale in the State of California by Jokari.

#### 1.4 Notice of Violation

On or about September 24, 2015, Englander served Jokari 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 Jokari’s failure to warn consumers that the vinyl/PVC can openers, including 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

Jokari 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 Jokari 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 Jokari of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect Jokari'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 Products**

As of the Effective Date, all Products manufactured or imported for sale in California shall be Reformulated Products or bear a clear and reasonable warning pursuant to Section 2.3, below. Reformulated Products are defined as Products containing concentrations of 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 phthalate 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 Jokari by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Jokari under laws other than Proposition 65.

## 2.2 Vendor Notification Requirement

To the extent it has not already done so, on the Effective Date, Jokari shall provide the reformulation standard specified in Section 2.1 to each of its then-current Vendors of Products and vinyl/PVC components 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 components 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 Jokari, 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 distributed, shipped, sold or offered for sale in California by Jokari other than Reformulated Products, Jokari shall provide clear and reasonable warnings that state:

**WARNING:** The vinyl in this product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

Jokari may affix, or cause to be affixed, this warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale within the State of California. 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.

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#### **2.4 Customer Notification for Products No Longer in a Jokari's Control**

No later than 30 days after the Effective Date, Jokari shall send a letter, electronic or otherwise ("Notification Letter") to each California Customer and/or Retailer to which it, after September 24, 2014, supplied Products for resale in California. The Notification Letter shall advise the recipient that the vinyl portion of the Products "contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm," and request that the recipient either: (a) label the Products remaining in inventory for sale in California, or to California Customers, pursuant to Section 2.3; or (b) return, at Jokari's sole expense, all units of the Products held by a California Customer or for sale in California or to California Customers to Jokari or a party Jokari has otherwise designated. The Notification Letter shall require a response from the recipient within 15 days confirming whether the Products will be labeled or returned. Jokari shall maintain records of all correspondence or other communications generated pursuant to this Section for one year after the Effective Date and shall promptly produce copies of such records upon Englander's reasonable written request.

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

In settlement of all the claims referred to in this Settlement Agreement, Jokari shall pay a total of \$14,500.00 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**

Jokari shall pay an initial civil penalty in the amount of \$4,500.00 within five (5) days of the Effective Date in one check made payable as follows: "Peter Englander, Client Trust Account".

#### **3.2 Final Civil Penalty**

Jokari shall pay a final civil penalty of \$10,000.00 on or before June 30, 2016. The final civil penalty shall be waived in its entirety if an officer of Jokari provides Englander with written

certification that Jokari 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 June 15, 2016; time is of the essence.

Unless waived in its entirety, Jokari shall issue 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. Jokari 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.

### **3.3 Representations**

Jokari 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 Jokari, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Jokari 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 Jokari, Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

## **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. Jokari shall tender a check in the amount of \$24,500.00 payable to “The Chanler Group,” within five (5) days of the Effective Date, for fees and costs incurred as a result of investigating, bringing this matter to Jokari’s attention, and negotiating and reporting a settlement in the public interest. Jokari 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.

**5. PAYMENT ADDRESS**

All payments pursuant to Sections 3 and 4, 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

**6. RELEASE OF ALL CLAIMS**

**6.1 Englander’s Release of Jokari**

This Settlement Agreement is a full, final, and binding resolution between Englander and Jokari of any violation of Proposition 65 that was or could have been asserted by Englander on behalf of himself as an individual and not on behalf of the public, his past and current agents, representatives, attorneys, successors and/or assignees, against Jokari, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Jokari directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers, including Tuesday Morning Corporation and Tuesday Morning, Inc. (“Releasees”), based on the alleged failure to warn about potential exposures to DEHP contained

in the Products sold and/or offered for sale by Jokari in the State of California before the Effective Date as set forth in the Notice.

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

#### **6.2 Jokari's Release of Englander**

Jokari 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.

#### **7. 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 Jokari shall provide written notice to Englander of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

#### **8. 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 Jokari:

George Crompton, General Counsel  
Jokari/US, Inc.  
1220 Champion Circle, Suite 100  
Carrollton, TX 75006

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.

**9. 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.

**10. 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.

**11. 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).

**12. MODIFICATION**

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

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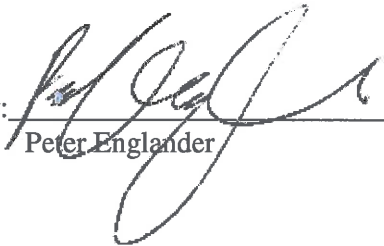


**13. AUTHORIZATION**

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:**

Date: 4/15/16

By:   
Peter Englander

**AGREED TO:**

Date: 4/18/16

By:   
Don Saller, President  
Jokari/US, Inc.