

# SETTLEMENT AGREEMENT

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## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and LeeMarc Industries, LLC (“LeeMarc”), with Englander and LeeMarc 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. LeeMarc employs ten or more individuals 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 LeeMarc manufactures, sells, and distributes for sale in California, gloves with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

“Products,” under this Settlement Agreement include gloves with vinyl/PVC components containing DEHP that are manufactured, sold, or distributed for sale in California by LeeMarc including, but not limited to, the *Canari Gloves, OSH-002, Style #7033, UPC #7 90740 16332 4*.

### 1.4 Notice of Violation

On October 28, 2016, Englander served LeeMarc, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that LeeMarc violated Proposition 65 when it failed to warn its

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customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

**1.5 No Admission**

LeeMarc denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, sold, and distributed for sale 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 LeeMarc 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 LeeMarc of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by LeeMarc. This Section shall not, however, diminish or otherwise affect LeeMarc'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 31, 2017.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, LeeMarc agrees to only manufacture for sale, import 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 a maximum concentration of 0.1 percent (1,000 parts per million) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed 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.

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**3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty Payments**

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Settlement, LeeMarc shall pay \$3,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Englander. Within five days of the Effective Date, LeeMarc shall provide its payment in two checks for the following amount made payable to (a) “OEHHA” in the amount of \$2,250; and (b) “Peter Englander, Client Trust Account” in the amount of \$750. Englander’s counsel shall be responsible for delivering the penalty payment made under this Consent Judgment to OEHHA.

**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, within five days of the Effective Date, LeeMarc agrees to pay \$19,000 to Englander and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of LeeMarc’s management, and negotiating a settlement that provides a significant public benefit. LeeMarc’s payment shall be delivered 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 Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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**4. CLAIMS COVERED AND RELEASED**

**4.1 Englander's Release of LeeMarc**

This Settlement Agreement is a full, final, and binding resolution between Englander and LeeMarc, of any violation of Proposition 65 that was or could have been asserted by plaintiff on his own behalf or on behalf of Englander's past and current agents, representatives, attorneys, successors, and assignees, against LeeMarc, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, owners, and the successors, heirs, and assigns of each of them, and each entity to whom LeeMarc directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, sold or distributed for sale in California by LeeMarc before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, on Englander's own behalf and on behalf of his past and current agents, representatives, spouse, attorneys, successors, and assignees, hereby waives any and all rights that Englander may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against LeeMarc and Releasees including, without limitation, all actions and causes of action, 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 the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by LeeMarc, before the Effective Date.

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.

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#### **4.2 LeeMarc's Release of Englander**

LeeMarc, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Englander, his attorneys and other representatives, for any and all actions taken or statements made by Englander, 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 provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected. However, in the event any term or provision of this Settlement Agreement is found to be unenforceable by a court, the Parties agree to meet and confer to determine whether a modification to this Settlement Agreement is appropriate.

#### **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, or as to the Products, then LeeMarc may 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.

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**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:

For LeeMarc:

Scott Robinson, President  
LeeMarc Industries, LLC  
2471 Coral Street  
Vista, CA 92081

with a copy to:

Amy Lally, Esq.  
Sidney Austin LLP  
555 W 5<sup>th</sup> St., ste 4000  
Los Angeles, CA 90013

For 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 plaintiff's 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: 3/31/17

Date: 3-30-17

By: 

PETER ENGLANDER

By: 

Scot Robinson, President  
LEEMARC INDUSTRIES, LLC