

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Peter Englander and Liberty Hardware Mfg. Corp.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Peter Englander (“Englander”) and Liberty Hardware Mfg. Corp. (“Liberty”) with Englander and Liberty collectively referred to as the “Parties.” Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Liberty 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 §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that Liberty manufactures, imports, sells and/or distributes for sale in California, certain products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Englander alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC safety treads containing DEHP including, but not limited to, the *Delta Bath/Shower Safety Treads, DF545, UPC #8 85785 43749 0* that are manufactured, imported, distributed, sold and/or offered for sale by Liberty in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about August 17, 2017, Englander served Liberty, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Liberty violated Proposition 65 when it failed to warn its customers and consumers in California that the 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

Liberty denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, including, but not limited to, Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Liberty of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Liberty of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean December 15, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those 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 any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Liberty shall not manufacture, import, or distribute the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above.

2.3 Extended Reformulation Commitment


As of the Effective Date, Liberty shall also not manufacture, import, or distribute the Products for sale in the State of California unless they contain concentrations of less than 0.1 percent (1,000 parts per million) each of butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate (“DINP”) (collectively, the “Additional Listed Phthalates,”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance.¹

2.4 Cure for Unintentional Formulation

As of the Effective Date, if Liberty discovers that, despite its good faith efforts to implement the Reformulation and Extended Reformulation Commitments set forth in Sections 2.2 and 2.3 above, Products manufactured at its request do not meet the Reformulation Standards set forth in Sections 2.1 and 2.3 through no fault of its own, such Products may be imported, distributed, offered for sale or sold in the State of California provided that they contain a Proposition 65 warning as further described below.

One of the following Proposition 65 warning statements shall be placed on the Product packaging in at least 7 point font so that it is legible and 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:

¹ Products that were acquired or supplied to third parties by Liberty prior to the Effective Date shall be deemed exempted from the requirements of Sections 2.2 and 2.3 and permitted to be sold through as previously manufactured, packaged and labeled.

 **WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

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, Liberty shall pay a total of \$3,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows: within 10 days of the Effective Date, Liberty shall issue two checks: (1) to “Peter Englander, Client Trust Account” totaling \$750; and (2) to the “Office of Environmental Health Hazard Assessment” totaling \$2,250. Upon receipt, Englander and his counsel will then ensure payment to OEHHA. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Reimbursement of 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 finalized, Liberty expressed a desire to resolve Englander’s fees and costs. The Parties then negotiated a resolution of 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 Settlement Agreement, Liberty shall reimburse Englander and his counsel \$23,000. Liberty’s payment shall be delivered to the address in Section 3.3,

within 10 days of the Effective Date, in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Englander investigating, bringing this matter to Liberty’s attention and negotiating a settlement of the matter. Englander shall provide to Liberty a completed Internal Revenue Service form W-9 for Englander and a completed Internal Revenue Service form W-9 for The Chanler Group before the Effective Date.

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 Proposition 65 Claims

Englander acting on his own behalf, and *not* on behalf of the public, releases Liberty, its parents (including Masco Corporation), subsidiaries, affiliated entities under common ownership (including, but not limited to Masco Corporation of Indiana dba Delta Faucet Company), directors, officers, agents employees, attorneys, and each entity to whom Liberty directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP and Additional Listed Phthalates from the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that

manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Liberty.

4.2 Englander's Individual Releases of Claims

Englander, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to Additional Listed Phthalates in the Products manufactured, imported, distributed, or sold by Liberty prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Liberty. Nothing in this Section affects Englander's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Liberty's Products.

4.3 Liberty's Release of Englander

Liberty, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Englander and 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 to enforce Proposition 65 against it in this matter 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 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Liberty 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. Nothing in this Settlement Agreement shall be interpreted to relieve Liberty from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Liberty:

Jim O'Doherty
Corporate Counsel - Litigation
Masco Corporation
17450 College Parkway
Livonia, MI 48152
(313) 792-6518

With a copy to:

Robert Falk
Morrison & Foerster LLP
425 Market Street
31st Floor
San Francisco, CA 94105-2482

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.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

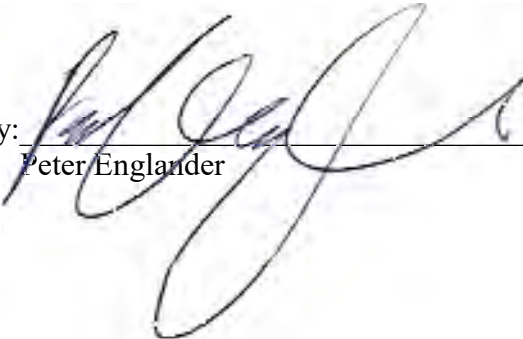
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 12/12/2017

Date: _____

By:  _____
Peter Englander

By: _____
Mark Stull, President
Liberty Hardware Mfg. Corp.

For Englander:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

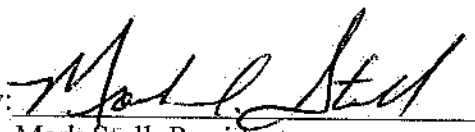
AGREED TO:

AGREED TO:

Date: _____

Date: 12/13/17

By: _____
Peter Englander

By:  _____
Mark Stull, President
Liberty Hardware Mfg. Corp.