

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Parties

This Agreement is entered into by and between Peter Englander (“Englander”) and Pier 1 Imports (U.S.), Inc. (“Pier 1”), with Englander and Pier 1 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 contained in consumer products. Pier 1 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 25249.5 et seq. (“Proposition 65”).

1.2 General Allegations

Englander alleges that Pier 1 manufactured, imported, distributed, and/or sold in the State of California LED light cords that contain di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Englander alleges that Pier 1 failed to provide consumers and other individuals exposed to DEHP from the LED light cords it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as LED light cords containing DEHP that are manufactured, sold, or distributed for sale in California by Pier 1 including, but not limited to, the *Pier 1 Imports Glimmer Strings Flexible LED Lights, SKU 2732256*.

1.4 Notice of Violation

On August 1, 2017, Englander served Pier 1 Imports, Inc., the parent company of Pier 1, the California Attorney General, and all other requisite public enforcers with a document titled, "60-Day Notice of Violation" ("Notice"), alleging that Pier 1 Imports, Inc. violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice. Pier 1 Imports, Inc. and its subsidiary, Pier 1 Imports (U.S.), Inc., are hereinafter collectively referred to as "Pier 1."

1.5 No Admission

Pier 1 denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold and/or offered 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 Pier 1 of any allegation, fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Pier 1 of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Pier 1. This Section shall not, however, diminish or otherwise affect Pier 1's obligations, responsibilities, and duties under this Agreement.

1.6 Effective Date

For purposes of this Agreement, the term "Effective Date" shall mean February 16, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, Pier 1 shall only manufacture for sale, purchase for sale, or import for sale in

California, Products that are Reformulated Products as defined by Section 2.2, below.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain 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 other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

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, Pier 1 agrees to pay a total of \$2,500 in civil penalties. 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 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Englander.

Pier 1 will deliver its payment on or before March 16, 2018 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. Englander’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Agreement.

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. Pier 1 agrees to pay \$17,500 to Englander and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Pier 1’s management, and

negotiating a settlement that provides a significant public benefit. Pier 1's payment shall be delivered in the form of a check payable to "The Chanler Group" on or before March 16, 2018.

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

4. CLAIMS COVERED AND RELEASED

4.1 Englander's Release of Pier 1

This Agreement is a full, final, and binding resolution between Englander, in his individual capacity and not on behalf of the public, and Pier 1 as to any alleged 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, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against Pier 1, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to which Pier 1 directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date in California by Pier 1, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Englander, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Pier 1 and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65 regarding the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by Pier 1.

The releases provided by Englander under this Agreement are provided solely on Englander's behalf and are not releases on behalf of the public in California.

4.2 Pier 1's Release of Englander

Pier 1, 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, Englander's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against Pier 1 in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this 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 applied to

the Products, then Pier 1 may provide written notice to Englander of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement with respect to the Products, to the extent that the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required by this 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 Pier 1:

Kevin C. Mayer, Esq.
Crowell & Moring LLP
515 South Flower St., 40th Floor
Los Angeles, CA 90071-2201
kmayer@crowell.com

For Englander:

The Chanler Group
Attn: Prop 65 Coordinator
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 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 his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. MODIFICATION

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

11. ENFORCEMENT OF THIS AGREEMENT

Any party may file suit in the California Superior Court to enforce the terms and conditions contained in this Agreement. The prevailing party, as determined by the Court, shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

No action to enforce this Agreement may be commenced or maintained unless the party seeking enforcement notifies the other party of the specific acts alleged to breach this Agreement and, thereafter, meets and confers with the other Party for a period of not less than 45 days in an effort to resolve the alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Agreement.

12. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understand, and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

PIER 1 IMPORTS (U.S.), INC.

Date: 3/2/2018

Date: 2/26/18

By: 
PETER ENGLANDER

By: 

Name: Carrie Egan

Title: VP Global Procurement

