

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered by and between Peter Englander (“Englander”) and World and Main (Cranbury), LLC (“World and Main”), with Englander and World and Main 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. World and Main 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 World and Main sells and distributes for sale in California without a Proposition 65 warning the following categories of products: (i) vinyl/PVC hoses containing di(2-ethylhexyl) phthalate (“DEHP”); (ii) electrical components and accessories containing DEHP and Lead; (iii) flashlights containing DEHP and Lead; (iv) hand tools containing DEHP, di-n-butyl phthalate (“DBP”), and/or Lead; (v) household hardware accessories containing DEHP and Lead; (vi) household plumbing accessories containing DEHP; and (vii) tape measures containing DEHP. DEHP, DBP, and Lead are each listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP is also listed under Proposition 65 as a chemical that is known to cause cancer.

1.3 Covered Products

For purposes of this Settlement Agreement “Covered Products” are defined as: (i) vinyl/PVC hoses containing di(2-ethylhexyl) phthalate (“DEHP”); (ii) electrical components and accessories containing DEHP and Lead; (iii) flashlights containing DEHP and Lead; (iv) hand tools containing DEHP, DBP, and/or Lead; (v) household hardware accessories containing DEHP and Lead; (vi) household plumbing accessories containing DEHP; and (vii) tape measures containing DEHP that are sold and/or distributed for sale in California by World and Main.

These products include, but are not limited to, the (i) Helping Hand 3-Setting Hand-Held Shower, FQ01167, #156090-23314, UPC #0 70792 01167 6; (ii) Bright-Way 3 Outlet Grounded Wall Tap, 30HDCWT-32810, UPC #0 71555 10335 5; (iii) Flashlight with Nonslip Grip, #146863, UPC #0 75877 51016 7; (iv) Claw Hammers, UPC #0 74972 96605 3, Ripping Hammer UPC #0 74972 96600 8, Steel Hammer UPC #0 74972 96709 8, and Forged Hammer UPC #0 74972 96617 6; (v) Ultra Door Stop Hinge Pin, UPC #7 49694 70058 1; (vi) Aqua Plumb Shower Sensations Massage Hand Shower, UPC #7 53274 02904 7; and (vii) 16' Monster Tape, UPC #0 74972 90115 3, respectively, as identified in Englander's Notices.

1.4 Notices of Violation

On August 1, 2017, Englander served World and Main, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation ("August Notice"). The August Notice alleges that World and Main violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the vinyl/PVC hose components of World and Main's hand-held shower products.

On February 14, 2018, Englander served World and Main, the California Attorney General, and all other requisite public enforcers with a Supplemental 60-Day Notice of Violation (the "February Notice"). The February Notice alleges that World and Main violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP, DBP, and/or Lead from the Covered Products.

The August Notice and February Notice are referred to collectively herein as the "Notices." No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in either of the Notices.

1.5 No Admission

World and Main denies the material, factual, and legal allegations in the Notices, and maintains that all the products that it has sold, distributed for sale, or offered for sale in California, including the Covered Products, comply with all laws. Nothing in this Settlement Agreement shall be construed as an admission by World and Main 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 World and Main of any fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by World and Main. This Section shall not, however, diminish or otherwise affect World and Main'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 April 16, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

2.1.1 Commencing on the Effective Date and continuing thereafter, World and Main agrees to only manufacture for sale, purchase for sale, or distribute for sale in California Covered Products that are either (a) "Reformulated Products" as defined by Section 2.2, or (b) that are offered with a clear and reasonable warning pursuant to Section 2.3.

2.1.2 The requirements in this Section 2 shall not apply to any Covered Product that as of the Effective Date is in the stream of commerce or is otherwise in World and Main's inventory stock as of that date.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, Reformulated Products are Covered Products containing (a) no more than 1,000 parts per million (0.1%) of either DEHP or DBP in any component analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C; (b) no more than 90 parts per million (0.009%) Lead content when sampled and analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (c) yield a result of no more than 1.0 micrograms of Lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies, the Parties may use equivalent methodologies utilized by a state or federal agency to determine DEHP, DBP, and/or Lead content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, subject to Section 2.1.2 above, for all Covered Products that do not meet the definition of Reformulated Products established by Section 2.2, World and Main shall provide clear and reasonable warnings in accordance with this Section, or title 27 California Code of Regulations section 25600 et seq., as amended from time to time. World and Main further agrees that any warning used will be prominently placed in relation to a Product with such conspicuousness when 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 of purchase or use. For purposes of this Consent Judgment, a warning displayed or transmitted according to the above criteria that is affixed directly to a Product or its accompanying labeling or packaging that contains one of the following statements shall be deemed clear:

⚠ WARNING: This product can expose you to chemicals, including [DEHP] [DBP] [Lead], which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov¹

or the following “short-form” warning:

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov²

If World and Main sells Covered Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white

¹ The “long-form” warning must refer to at least one of the chemicals present in the product above the concentrations set forth in Section 2.2.

² This short-form warning may be used only on a product, product label, or as part of an internet warning, and must be in a type size no smaller than the largest type size used for consumer information on the product and no case smaller than 6-point type. The short-form warning may not be used on a warning sign, e.g., point-of-sale or shelf sign.

equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

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 Notices or referred to in this Settlement Agreement, World and Main agrees to pay \$5,000 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 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Englander. World and Main agrees to deliver its payment to the address set forth in Section 3.3 within ten (10) days of the Effective Date in two checks made payable to: (a) “OEHHA” in the amount of \$3,750; and (b) “Peter Englander, Client Trust Account” in the amount of \$1,250. OEHHA’s portion of the penalty paid under this Settlement Agreement shall be delivered to OEHHA by Englander’s counsel.

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 ten (10) days of the Effective Date, World and Main agrees to pay \$34,000 to Englander and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of World and Main’s management, and negotiating a settlement that provides a significant public benefit. World and Main’s payment under this Section shall be delivered in 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

4. CLAIMS COVERED AND RELEASED

4.1 Englander's Release of World and Main

This Settlement Agreement is a full, final, and binding resolution between Englander and World and Main, 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 World and Main and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys (“Releasees”), and each entity to whom World and Main directly or indirectly distributes or sells Covered Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream Releasees”), based on the failure to warn about exposures to DEHP, DBP and/or Lead in Covered Products manufactured, sold, or distributed for sale by World and Main before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Englander on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, 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 World and Main, Releasees and Downstream 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 arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP, DBP and/or Lead in Covered Products manufactured, sold or distributed for sale by World and Main, 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 in California.

4.2 World and Main's Release of Englander

World and Main, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Englander and his attorneys and other representatives, for any actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

4.3 Public Benefit

It is World and Main's position that the commitments it has agreed to herein, and actions to be taken by World and Main under this Settlement Agreement, confer a significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to World and Main or any Releasee's failure to provide a warning concerning exposures to DEHP, DBP, and/or Lead with respect to the Covered Products they have respectively manufactured distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that World and Main is in material compliance with this Settlement Agreement. This Section does not constitute a release by Englander under this Settlement Agreement.

5. SEVERABILITY

If, after the execution of this Settlement 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 so long as the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Agreement being contrary to the intent of the Parties in entering into this Agreement, or unless the Parties modify the Agreement such that the provision deemed unenforceable by the court is replaced with an enforceable provision that reflects the intent of the parties.

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. If Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then World and Main 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 Covered Products are so affected.

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 World and Main:

Diane Garrity
Vice President of Administration and Legal Affairs
World and Main (Cranbury), LLC
324A Half Acre Road
Cranbury, NJ 08512

Joshua A. Bloom, Esq.
Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, CA 94607

For Englander:

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

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 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. ENFORCEMENT OF SETTLEMENT AGREEMENT

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

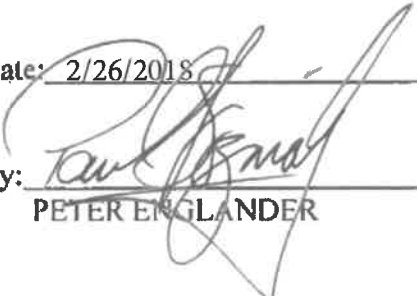
No action to enforce this Settlement Agreement may be commenced or maintained unless the party seeking enforcement notifies the other party of the specific acts alleged to breach this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than 30 days in an effort to resolve any alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Settlement Agreement.

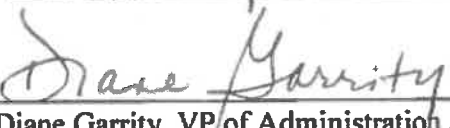
12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 2/26/2018
By: 
PETER ENGLANDER

Date: February 16, 2018
By: 
Diane Garrity, VP of Administration and
Legal Affairs
WORLD AND MAIN (CRANBURY), LLC