

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Peter Englander and Hallmart Collectibles, Inc.

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Hallmart Collectibles, Inc. (“Hallmart”), with Englander and Hallmart collectively referred to as the “parties.” Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Hallmart employs ten or more persons and is a person in the course of doing business for purposes of 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 Hallmart has manufactured, imported, distributed, sold and/or offered for sale in the State of California, pillows containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The Products covered by this Settlement Agreement are limited to and defined as follows: *Kathy Ireland Home by Hallmart Collectibles Clayton Pillow Yellow*, Item 61565 (#6 79610 61565 4), *Kathy Ireland Home by Hallmart Collectibles Clayton Pillow Red*, Item 61566 (#6 79610 61566 4), *Clayton Pillow Brown*, Item 61567 (#6 79610 61567 4), *Kathy Ireland Home by Hallmart Collectibles Clayton Pillow Black*, Item 61568 (#6 79610 61568 4), *Kathy Ireland Home by Hallmart Collectibles Clayton Pillow Creme*, Item 61570 (#6 79610 61570 4), *Kathy Ireland Home by Hallmart Collectibles Clayton Pillow Burgundy*, Item 61572 (#6 79610 61572 4), *Kathy Ireland Home Essentials by Hallmart Collectibles Hacienda 9 Pc Queen Set*, Item 61069 (#6 79610 61069 7) and *Kathy Ireland Home Essentials by Hallmart Collectibles*

Hacienda Set, Item 61068. The definition of “Products” specifically excludes any and all pillows containing DEHP that are not listed in this section above; this provision is a material component of the Consent Judgment.

1.4 Notice of Violation

On April 25, 2012, Englander served Hallmart and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Hallmart was in violation of Proposition 65 for failing to warn its customers and consumers that its pillows exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Hallmart denies the material, factual and legal allegations contained in Englander’s 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. Nothing in this Settlement Agreement shall be construed as an admission by Hallmart 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 Hallmart of any fact, finding, conclusion, issue of law or violation of law. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Hallmart under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean October 25, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing DEHP in concentrations of 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 DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, all Products manufactured, imported, distributed, sold or offered for sale in the State of California by Hallmart shall qualify as Reformulated Products as defined in Section 2.1 above.

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

Pursuant to Health & Safety Code §25249.7(b), Hallmart shall pay \$9,000 in civil penalties.

3.1 Initial Civil Penalty. Within five days of the Effective Date, Hallmart shall pay an initial civil penalty of \$3,000, and time is of the essence. The penalty payments will be allocated according to California Health & Safety Code §§ 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Englander. Hallmart shall issue two separate checks for the penalty payment, as follows:

- (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$2,250; and
- (b) one check to "The Chanler Group in Trust for Peter Englander" in the amount of \$750.

Two separate 1099s shall be issued for the above payments, as follows: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Englander, whose address and tax identification number shall be furnished, upon request.

3.2 Final Civil Penalty. On or before March 29, 2013, Hallmart shall pay a final civil penalty of \$6,000. However, the final civil penalty shall be waived in its entirety if an officer of Hallmart provides Englander with written certification that, as of the Effective Date, and continuing into the future, Hallmart has sold and will continue to sell only Reformulated Products as defined by Section 2.1 of this Consent Judgment. Englander must receive any such certification no later than March 15, 2013, and time is of the essence.

///

The final civil penalty payment shall also be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d). Hallmart shall issue two separate checks for the final civil penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$4,500, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Peter Englander” in the amount of \$1,500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments, as follows: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Englander, whose information shall be provided upon request (if different than the information already provided to Hallmart under Section 3.1 above).

3.3 Payment Address.

The payments and tax information required pursuant to Sections 3.1 and 3.2 shall be delivered to Englander’s counsel at the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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. Hallmart shall pay \$21,500 for fees and costs incurred as a result of investigating, bringing this matter to Hallmart’s attention and negotiating a settlement in the public interest, and time is of the essence. Hallmart shall

issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to “The Chanler Group” and shall deliver payment within five days of the Effective date to the Payment Address specified in Section 3.3.

5. RELEASES

5.1 Englander’s Release of Hallmart

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

In further consideration of the promises and agreements herein contained, Englander on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all Englander’s rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Englander may have including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses – including, but not limited to, investigation fees, expert fees, and attorneys’ fees (exclusive of fees and costs on appeal) – (“claims”) limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Hallmart before the Effective Date against Hallmart and its Releasees.

///

///

5.2 Hallmart 's Release of Englander

Hallmart on behalf of itself, its past and current agents, representatives, attorneys, successors and/or 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Hallmart may ask Englander, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the proposed consent judgment pursuant to California Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Englander agrees to reasonably cooperate with Hallmart and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Hallmart will reimburse Englander and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the proposed consent judgment, in an amount not to exceed \$18,000, exclusive of fees and costs that may be incurred on appeal. Hallmart will remit payment to The Chanler Group, at the address set forth in Section 3.3 above. Such additional fees shall be paid by Hallmart within ten days after its receipt of monthly invoices from Englander for work performed under this Section.

7. 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.

///

8. 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 Hallmart shall provide written notice to Englander of any asserted change in the law, and shall have no further 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 Hallmart from any obligation to comply with any pertinent state or federal toxics control law.

9. 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 Hallmart:

Jesse Galili, President
Hallmart Collectibles, Inc.
11684 Ventura Blvd, Suite 953
Studio City, CA 91604

Copy on behalf of Hallmart:

Jeffrey Lenkov, Esq.
Manning & Kass, Ellrod,
Ramirez, Trester LLP
5801 South Figueroa Street
Los Angeles, CA 90017

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.

///

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Englander agrees to comply with the reporting 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.

13. 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: October 26, 2012

Date: _____

By:  _____
Peter Englander

By: _____
Jesse Galili, President
Hallmart Collectibles, Inc.

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Englander agrees to comply with the reporting 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.

13. 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: _____

Date: _____ 10-25-12

By: _____
Peter Englander

By: _____
Jesse Galli, President
Hallmart Collectibles, Inc.