

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Fluker’s Cricket Farm, Inc. (“Fluker’s”), with Englander and Fluker’s 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 products. Fluker’s 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that Fluker’s manufactures, imports, sells, or distributes for sale in the state of California, clamp lamps with vinyl components containing lead without first providing the clear and reasonable consumer warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical that is 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 clamp lamps containing lead that are manufactured, sold, or distributed for sale in California by Fluker’s, including, but not limited to, *Fluker’s’s Clamp Lamp (#0 91197 27005 5)* (collectively “Products”).

1.4 Notice of Violation

On or about May 24, 2012, Englander served Fluker’s and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that Fluker’s was alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to lead. 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

Fluker's denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or 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 Fluker's of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Fluker's of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Fluker's. This section shall not, however, diminish or otherwise affect Fluker'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 November 30, 2012.

2. INJUNCTIVE RELIEF

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Fluker's shall only ship, sell, or offer to ship for sale in California Products that are Reformulated Products, or that are sold with a clear and reasonable warning pursuant to section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" are Products containing a maximum of 100 parts per million lead by weight in any accessible component (i.e., any component that can be touched or handled during reasonably foreseeable use) analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and 6020A or 6010B, and that yields a result of no more than 1.0 micrograms of lead when sampled and pursuant to the NIOSH 9100 sampling protocol and tested pursuant to the EPA Analytical Methods 3050B and 6020A or 6010B (ICP/MS). For all sampling and testing protocols required by this Settlement Agreement, equivalent methodologies used by state or federal agencies to determine lead content in a solid substance

may also be used.

For the purposes of this Settlement Agreement, any analysis of Products, including but not limited to sample collections, testing and analysis, shall be conducted at laboratories that are accredited through the California Environmental Laboratory Accreditation Program (ELAP), or other laboratory with equivalent state or federal accreditation. .

2.2 Product Warnings

Commencing on the Effective Date and continuing thereafter, Fluker's shall, for all Products that are not Reformulated Products as defined by section 2.1, provide a clear and reasonable warning in compliance with this section. Each warning shall be prominently placed with such 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

Fluker's shall affix the warning to the Product packaging, labeling, or, if no packaging or labeling exists, directly on each Product with the following language:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

3. MONETARY PAYMENTS

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

Fluker's shall pay \$12,000 in civil penalties. On or before the Effective Date, Fluker's shall pay an initial civil penalty of \$4,000. Thereafter, on or before November 15, 2013, Fluker's shall pay the remaining penalty amount of \$8,000, except that the remaining portion of the penalty shall be waived in its entirety, however, if, no later than November 1, 2013, Fluker's certifies to Englander's counsel in writing that all of the Products purchased for sale or distributed for sale in California as of said date are Reformulated Products as defined by section 2.1.

Each civil penalty payment shall be allocated according to Health & Safety Code § 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the penalty amount remitted to Englander.

On or before the Effective Date, Fluker’s shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$3,000; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,000.

Fluker’s shall also provide Englander’s counsel with a separate 1099 form for each of its payments to: (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) “Peter Englander”, whose address and tax identification number shall be furnished, upon request, after this Settlement Agreement is fully executed by the Parties. Unless waived, Fluker’s shall provide Englander’s counsel with two additional 1099 forms for its civil penalty payments to Englander and OEHAA made in the 2013 calendar year, if any.

3.2 Attorney 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 California Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Fluker’s shall pay \$26,000 for all fees and costs incurred investigating, bringing this matter to the attention of Fluker’s management, and negotiating a settlement in the public interest. Fluker’s shall provide its payment in the form of a third check payable to “The Chanler Group” and issue a separate 1099 for fees and costs reimbursed to The Chanler Group (EIN: 94-3171522).

3.3 Payment Address

All payments and tax forms 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 Fluker's

This Settlement Agreement is a full, final, and binding resolution between Englander and Fluker's of any violation of Proposition 65 that was or could have been asserted by Englander, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Fluker's, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fluker's directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on alleged unwarned exposures to lead contained in Products that manufactured, sold or distributed for sale by Fluker's in California prior to 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 of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Fluker's and Releasees, 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, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to lead in Products manufactured, sold, or distributed for sale in California by Fluker's prior to the Effective Date.

4.2 Fluker's Release of Englander

Fluker's, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Fluker's may request in writing that Englander draft and file a complaint for the violations alleged in the Notice, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Englander and Fluker's agree to reasonably cooperate, and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, if so requested, Fluker's will reimburse Englander and his counsel for the reasonable fees and costs incurred for work performed pursuant to this section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Englander's counsel for work performed under this section, Fluker's shall remit payment to the address provided in section 3.3.

6. 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.

7. 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 as to the Products, then

Fluker's may provide written notice to Englander of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICES

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

For Fluker's:

David Fluker's, President
Fluker's's Cricket Farm, Inc.
1333 Plantation Road
Port Allen, LA 70767

with a copy to:

William W. Funderburk, Jr., Esq.
Castellón & Funderburk, LLP
811 Wilshire Boulevard, Suite 1025
Los Angeles, CA 90017

For Englander:

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

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. 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.

10. POST-EXECUTION ACTIVITIES

Englander agrees to comply with the reporting form requirements referenced in Health & Safety Code section 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

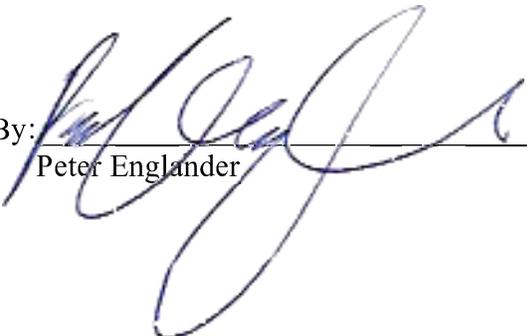
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: November 20, 2012

Date: _____

By:  _____
Peter Englander

By: _____
David Fluker, President
Fluker's Cricket Farm, Inc.

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AGREED TO:

AGREED TO:

Date: _____

Date: 11/21/12

By: _____
Peter Englander

By: David Fluker
David Fluker, President
Fluker's Cricket Farm, Inc.