

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Peter Englander and Accessory Zone, LLC

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Accessory Zone, LLC (“Accessory Zone”), with Englander and Accessory Zone collectively referred to as the “parties,” and individually as a “party.” Englander is an individual residing in the State of California who has asserted that he seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Englander alleges that Accessory Zone 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 § 25249.6, *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Englander has alleged that Accessory Zone has sold vinyl accessory bags/pouches which contain the phthalate, di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings. DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

#### 1.3 Covered Products

The “Products” that are covered by this Settlement Agreement are limited to the *FreshSweet Pouch, Item #BMFS6148 (#8 45763 02840 9)* and the *XOXO bag, #BMX04520C (#8 45763 02672 6)* manufactured, imported, sold and/or distributed by Accessory Zone for sale in the State of California.

#### 1.4 Notices of Violation

On August 16, 2012, Englander attempted to serve Accessory Zone and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that would have provided recipients with notice alleging that Accessory Zone was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in

the State of California to DEHP. The intended recipients of the Notice on behalf of Accessory Zone were no longer with the company.

On April 11, 2013, Englander served Accessory Zone, The TJX Companies, Inc. and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that provided recipients with notice alleging that Accessory Zone and The TJX Companies, Inc. were in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in the State of California to DEHP.

The Notice and Supplemental Notice are referred to collectively herein as the “Notices.” To the best of the parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

Accessory Zone denies the material, factual, and legal allegations contained in Englander’s Notices and maintains that all Products it has sold and distributed in the State of California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Accessory Zone 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 Accessory Zone of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Accessory Zone. However, this section shall not diminish or otherwise affect Accessory Zone’s obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.7 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date of the complete execution of Settlement Agreement by the parties.

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## **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 methodologies 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 Accessory Zone shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

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

In settlement of all the claims referred to in this Settlement Agreement, Accessory Zone shall pay a total of \$14,000 in civil penalties in accordance with this Section. Each 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:

### **3.1 Initial Civil Penalty**

Accessory Zone shall pay an initial civil penalty in the amount of \$4,000. Accessory Zone shall issue two separate checks made payable as follows: (a) the first to “OEHHA” in the amount of \$3,000 due within five (5) days of the Effective Date; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,000 due within five (5) days of the Effective Date. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

### **3.2 Final Civil Penalty**

On or before May 30, 2014, Accessory Zone shall pay a final civil penalty of \$10,000. The final civil penalty shall be waived in its entirety, however, if, no later than May 15, 2014, an officer of Accessory Zone provides Englander with written certification that, as of the date of the

date of the certification and continuing into the future, Accessory Zone has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Accessory Zone are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence, subject to notice and cure as provided herein below. In the event Accessory Zone fails to provide said written certification as provided above, Englander has given Accessory Zone written notice of its failure to do so in accordance with the notice provisions contained herein, and Accessory Zone has failed to cure by providing said written certification within 10 days following such written notice, Accessory Zone shall issue two separate checks for its final civil penalty payments made payable as follows: (a) "OEHHA" in the amount of \$7,500; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$2,500.

### **3.3 Payment Procedures**

#### **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

(a) All payments owed to Englander, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**3.3.2 Issuance of 1099 Forms.** After each penalty payment, Accessory Zone shall issue separate 1099 forms for each payment to (a) Englander, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the parties, (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 3.3.1(a) above.

#### **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 Effective Date. Accessory Zone shall pay \$24,000 for fees and costs incurred as a result of investigating, bringing this matter to Accessory Zone’s attention, negotiating a settlement in the public interest, and complying with the terms of the Settlement Agreement, payable in installments as follows: \$8,000 on or before August 15, 2013, \$8,000 on or before October 15, 2013, and \$8,000 on or before December 15, 2013. Accessory Zone shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make checks payable to “The

Chanler Group” and shall deliver payment pursuant to the schedule set forth herein above to the address listed in Section 3.3.1(a) above.

## **5. RELEASE OF ALL CLAIM**

### **5.1 Englander’s Release of Accessory Zone**

This Settlement Agreement is a full, final, and binding resolution between Englander and Accessory Zone of any violation of Proposition 65 based on the alleged failure to warn about exposures to DEHP contained in the Products manufactured, distributed and/or sold by Accessory Zone sold to customers in California before the Effective Date 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 Accessory Zone, its parents, subsidiaries, affiliated entities under common ownership, owners, directors, officers, employees, attorneys (collectively “Accessory Zone” for purposes of this Section 4.1) and each entity to whom Accessory Zone directly or indirectly distributes or sells the Products including, but not limited to, Accessory Zone’s downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers (“Releasees”).

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 rights to institute or participate in, directly or indirectly, any form of legal action arising under Proposition 65 only with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Accessory Zone before the Effective Date and releases all claims including, without limitation, all actions, 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) (collectively “Claims”) against Accessory Zone and its Releasees limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Accessory Zone before the Effective Date.

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## **5.2 Accessory Zone's Release of Englander**

Accessory Zone on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Englander, 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.

## **6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the complete execution of this Settlement Agreement by the Parties, Accessory Zone may send Englander a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to California Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Englander agrees to reasonably cooperate with Accessory Zone and to use his best efforts, and that of his counsel, to obtain approval of the Parties' settlement by a Superior Court in California and an entry of judgment in accordance with the terms set forth herein. Pursuant to California Code of Civil Procedure §§ 1021 and 1021.5, Accessory Zone will reimburse Englander and his counsel for the reasonable fees and costs incurred in drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement, in an amount not to exceed \$18,000, exclusive of fees and costs that may be incurred on any appeal. Within ten (10) days after its receipt of monthly invoices from Englander for work performed under this Section, Accessory Zone will remit payment to The Chanler Group at the address set forth in Section 3.3.1(a).

## **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.

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**8. NOTICES**

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 from the other party at the following addresses:

To Accessory Zone:

Mark Benun, Officer  
Accessory Zone, LLC  
10 West 33rd Street, Suite 515  
New York, NY 10001

with a copy on behalf of  
Accessory Zone to:

Steven M. Gerber, Esq.  
666 Fifth Avenue, 26th Floor  
New York, NY 10103

To 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.

**9. COUNTERPARTS; FACSIMILE/PDF 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. A facsimile or pdf signature shall be as valid as the original.

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

Englander and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party

hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

**12. AUTHORIZATION**

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

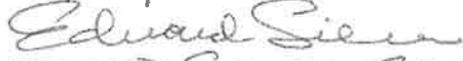
AGREED TO:

AGREED TO:

Date: July 10, 2013

Date: JULY 22, 2013

By:   
Plaintiff, Peter Englander

By:   
EDWARD SIERRA C.O.O.  
Mark Benun, Officer  
Defendant, Accessory Zone LLC