

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Peter Englander and Madison Industries, Inc.

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Madison Industries, Inc. (“Madison”), with Englander and Madison collectively referred to as the “parties.” Englander is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Englander alleges that Madison 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 alleges that Madison has manufactured, imported, distributed, sold, and/or offered for sale in the State of California, zippered vinyl mattress covers and home self-adhesive vinyl floor tiles containing di (2-ethylhexyl) phthalate (“DEHP”), without the requisite Proposition 65 health hazard warnings. DEHP is listed by the State of California as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as mattress covers and flooring, including but not limited to, the *Madison Zippered Vinyl Mattress Cover* (#0 26944 30144 7) and the *Homestyle Self Adhesive, Peel and Stick Vinyl Floor Tile, SKU #872666* (#0 26944 35302 6) manufactured, imported, distributed, shipped, sold, and/or offered for sale or shipment by Madison in the State of California (hereinafter the “Products”).

1.4 Notice of Violation

On August 31, 2012, Englander served Madison and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. 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

This Settlement Agreement resolves claims that are denied and disputed by Madison, and is entered into by Madison solely for the purposes of avoiding the expense and uncertainty of litigation. Madison denies the material, factual and legal allegations contained in Englander’s Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered for sale in California, including the Products, have been and are in compliance with all laws including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Madison 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 Madison of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Madison. However, this section shall not diminish or otherwise affect Madison’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 February 1, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Madison agrees that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be “Reformulated Products.” For purposes of this Settlement, Reformulated Products must limit DEHP concentration to less than 1,000 parts per million (“ppm”) by weight in any Accessible Component (i.e. any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance

3. PAYMENT OF PENALTIES

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, Madison shall pay an initial civil penalty in the amount of \$1,000.00. The civil penalty shall be apportioned in accordance with 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 Peter Englander. Madison shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$750.00, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Peter Englander” in the amount of \$250.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Peter Englander, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Englander's counsel on or before the Effective Date, at the following address:

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

3.2 Final Civil Penalty

Pursuant to Health & Safety Code § 25249.7(b), on May 1, 2013, Madison shall pay a final civil penalty in the amount of \$7,000.00. The final civil penalty shall be waived in its entirety, if, on or before April 1, 2013, an officer of Madison certifies to Englander's counsel, in writing, that all Products sold or offered for sale by Madison in California after June 1, 2013, are Reformulated Products, and that Madison will continue to do so after the date of certification.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with seventy-five percent of the penalty payment earmarked for OEHHA, and the remaining twenty-five percent of the penalty earmarked for Peter Englander. Madison shall issue two separate checks for the final penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$5,250.00, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Peter Englander" in the amount of \$1,750.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Peter Englander, whose information shall be provided five calendar days before the payment is due. Payment shall be delivered to Englander's counsel at the address listed in section 3.1 above.

4. REIMBURSEMENT OF ATTORNEY'S 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 issue to be resolved after the material terms of the agreement had been settled. Madison then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. 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 (“CCP”) § 1021.5, for all work performed through the mutual execution of this agreement. Madison shall reimburse Englander and his counsel \$25,000.00 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement. Madison 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 on or before the Effective Date, to the following address:

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

5. RELEASES

5.1 Englander's Release of Madison

This Settlement Agreement is a full, final and binding resolution between Englander, and Madison, 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 Madison, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Madison directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), based on

Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by Madison in California prior to the Effective Date. Madison's compliance with this Settlement Agreement shall be deemed compliance with Proposition 65 with respect to any actual or alleged exposures to DEHP in the Products, subject to Madison's requirements under Section 3.2 that it provide proof of reformulation by the requisite dates.

Englander also, 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 and releases all claims, 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) (collectively "Claims"), against Madison or the Releasees related to the Products, and further provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character or kind, known or unknown, suspected or unsuspected, as such Claims relate to the Products sold by Defendant or the Releasees in California. Englander further acknowledges that he is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Englander, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that he may have under, or which may be

conferred on him by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

5.2 Madison's Release of Englander

Madison 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. Madison further acknowledges that it is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Madison, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within eighteen (18) months of the execution of this Settlement Agreement, Madison may in its sole discretion, ask Englander, in writing, to draft and file a complaint, incorporating the terms of this Settlement Agreement into a consent

judgment, and seek the court's approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may otherwise be allowed by law. If so requested, Englander agrees to reasonably cooperate with Madison, and the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of a consent judgment by a superior court in California in a timely manner. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Madison will reimburse Englander and his counsel for their reasonable fees and costs incurred in drafting and filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an all inclusive total amount not to exceed \$12,500.00, excluding only any fees and costs incurred in the event of a third-party appeal (if any). Madison will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Madison within 20 days after its receipt of monthly invoices from Englander for any work performed under this paragraph.

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, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are 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 Madison 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 Madison from an obligation to comply with any pertinent state or federal toxic control laws.

9. 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.

10. NOTICES

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

To Madison:

J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell, APC
311 California Street, 10th Floor
San Francisco, CA 94104

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.

11. COUNTERPARTS; FACSIMILE 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.

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

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

13. MODIFICATION

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

14. AUTHORIZATION

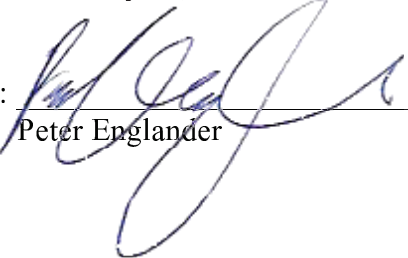
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: January 22, 2013

Date: _____

By:  _____
Peter Englander

By: _____
Michael Schwartz, President
Madison Industries, Inc.

when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

13. MODIFICATION

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

14. 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: ~~12/30/11~~ 1/30/13 MS

By: _____
Peter Englander

By: 
Michael Schwartz, President
Madison Industries, Inc.