

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Peter Englander and Brentwood Originals, Inc.**

This settlement agreement (“Settlement Agreement”) is entered into by and between Peter Englander (“Englander”) on one hand, and Brentwood Originals, Inc. (“Brentwood”) on the other hand, with Englander and Brentwood 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. For purposes of this Settlement Agreement only, Brentwood will be deemed to employ ten or more persons and to be 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 Brentwood has manufactured, imported, distributed, sold and/or offered for sale in the State of California, vinyl/PVC 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/or other reproductive harm.

#### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as vinyl/PVC pillows containing DEHP that are manufactured, imported, distributed and/or sold in California by Brentwood including, but not limited to, “Pillow, #1270, FALO15 (#7 38790 70206 3)”. All such vinyl/PVC pillows are referred to collectively herein as the “Products.”

#### **1.4 Notice of Violation**

On September 21, 2012, Englander served Brentwood and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Englander considered Brentwood to be in violation of California Health & Safety Code § 25249.6 for failing to warn 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**

Brentwood 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 any type of admission (including, without limitation, any admission of any fact, finding, conclusion, issue of law, or violation of law) by Brentwood; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Brentwood 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 Brentwood under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 30, 2013.

**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 Brentwood shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

///

3. **MONETARY PAYMENTS**

3.1 **Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

Brentwood shall pay a total civil penalty of \$7,500 as follows:

3.1.1 **Initial Civil Penalty.** Brentwood shall pay an initial civil penalty of \$2,500 within five (5) business days after the Effective Date. The initial civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount to be remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the amount to be remitted to Englander.

3.1.2 **Final Civil Penalty.** Brentwood shall pay a final civil penalty of \$5,000 on or before July 15, 2013. The final civil penalty shall be waived in its entirety, however, if an officer of Brentwood provides Englander with written certification that, as of the Effective Date and continuing into the future, Brentwood has met the reformulation standard specified in Section 2 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in the State of California are Reformulated Products. A written certification by an officer of Brentwood shall conclusively satisfy the requirement for the waiver of the final civil penalty as set forth in this Section 3.1.2 if it contains the following language: “Brentwood certifies that, as of, April 30, 2013, the effective date of the settlement agreement between the parties, and continuing into the future, Brentwood has met, and will continue to meet, the reformulation standard specified in Section 2 of that settlement agreement such that all vinyl/PVC pillows that it manufactures, imports, distributes and/or sells in the State of California including, but not limited to, “Pillow, #1270, FALO15 (#7 38790 70206 3)” (defined as the “Products” in that settlement agreement), contain di(2-ethylhexyl)phthalate (“DEHP”) in concentrations of less than 0.1 percent (1,000 parts per million) and, as such, are “Reformulated Products” (as defined in that settlement agreement).” Englander must receive any such certification on or before July 1, 2013, and time is of the essence. The final civil penalty shall also be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) &

(d), with seventy-five percent (75%) of the penalty amount to be remitted to OEHHA and the remaining twenty-five percent (25%) of the amount to be remitted to Englander.

**3.2 Reimbursement of Englander'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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Brentwood expressed a desire to resolve the fee and cost issue. The Parties then attempted to (and did) reach an accord on compensation 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 in this matter, except fees that may be incurred on appeal. Under these legal principles, within five (5) business days after the Effective Date, Brentwood shall pay \$22,500 for fees and costs incurred in investigating, litigating and negotiating a settlement of this matter.

**3.3 Payment Procedures**

**3.3.1 Initial Payments.** All payments required by Sections 3.1.1 and 3.2 shall be delivered to The Chanler Group in three checks made payable as follows:

- (a) one check to "OEHHA" in the amount of \$1,875;
- (b) a second check to "The Chanler Group in Trust for Peter Englander" in the amount of \$625; and
- (c) a third check to "The Chanler Group" in the amount of \$22,500.

**3.3.2 Final Civil Penalty Payments.** If the final civil penalty referenced in Section 3.1.2 above is not waived, payments shall be delivered in two checks made payable as follows:

- (a) One check made payable to "OEHHA" in the amount of \$3,750; and
- (b) One check to "The Chanler Group in Trust for Peter Englander" in the amount of \$1,250.

///

**3.3.3 Issuance of 1099 Forms.** After the settlement funds have been transmitted to Englander's counsel, Brentwood shall issue separate 1099 forms, as follows:

- (a) one 1099 form to the "Office of Environmental Health Hazard Assessment", P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,875;
- (b) a second 1099 form to "Peter Englander" in the amount of \$625, whose address and tax identification number shall be furnished upon request;
- (c) a third 1099 to "The Chanler Group" (EIN: 94-3171522) in the amount of \$22,500;

**3.3.4 Payment Address.**

**3.3.4.1** All payments owed to Englander and his attorneys pursuant to this Settlement Agreement 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

**3.3.4.2** All payments owed to OEHHA (EIN: 68-0284486) pursuant to this Settlement Agreement 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 3.3.4.1, as proof of payment to OEHHA.

**4. ENGLANDER'S RELEASE OF BRENTWOOD**

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

In further consideration of the promises and agreements herein contained, Englander on behalf of himself, and 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 that he may have against Brentwood and the Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Brentwood before the Effective Date.

**5. NOTICED PARTIES' RELEASE OF ENGLANDER**

Brentwood 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, Brentwood 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 consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Englander agrees to reasonably cooperate with Brentwood 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, Brentwood 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 consent judgment, in an amount not to exceed \$13,000, exclusive of fees and costs that may be incurred on appeal. Brentwood will remit payment to The Chanler Group, at the address set forth in Section 3.3.4.1 above. Such additional fees shall be paid by Brentwood within ten days after its receipt of monthly invoices from Englander for work performed under this paragraph.

**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 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 otherwise rendered inapplicable generally as to the Products, then Brentwood 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 Brentwood from any obligation to comply with any pertinent state or federal toxics control law.

**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 by the other party at the following addresses:

For Brentwood:

Loren Sweet, President  
Brentwood Originals, Inc.  
20639 South Fordyce Avenue  
Carson, CA 90810

For Englander:

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

Copy on behalf of Brentwood:

David Sadwick  
Tatro Tekosky Sadwick LLP  
333 S. Grand Avenue, Ste 4270  
Los Angeles, CA 90071

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

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

**11. MODIFICATION**

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

///

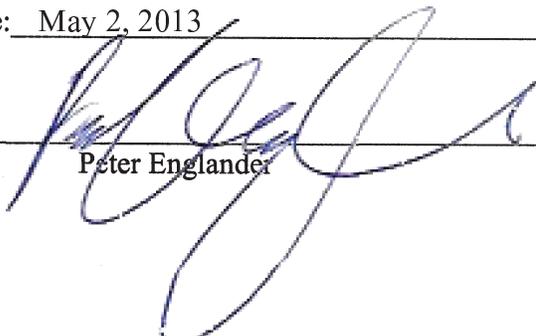
///

12. **AUTHORIZATION**

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

AGREED TO:

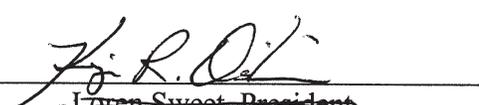
Date: May 2, 2013

By: 

Peter Englander

AGREED TO:

Date: APRIL 30, 2013

By: 

~~Loren Sweet, President~~  
Brentwood Originals, Inc.  
Kenji R. Onishi, Secretary