

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PETER ENGLANDER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 PETER ENGLANDER,

15 Plaintiff,

16 v.

17 PET FOOD EXPRESS, LTD.; *et al.*,

18 Defendants.

Case No. RG12657879

**STIPULATED SETTLEMENT
AGREEMENT**

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Stipulated Settlement Agreement is entered into by and between plaintiff, Peter
4 Englander (“Englander”), and defendant, Chuck Latham Associates, Inc. (“CLA”), with Englander
5 and CLA each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 General Allegations**

7 Englander alleges, and CLA disputes, that CLA sells or distributes for sale in California, hand
8 tools, specifically pet care and/or grooming tools, with vinyl grips containing di(2-ethylhexyl)
9 phthalate (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP
10 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth
11 defects or other reproductive harm.

12 **1.3 Product Description**

13 The products that are covered by this Stipulated Settlement Agreement are hand tools,
14 specifically pet care and/or grooming tools, with vinyl grips containing DEHP that Englander alleges
15 CLA sells, distributes for sale, or facilitates the sale of in California including, but not limited to, the
16 *DuraScoop Original (UPC #8 93725 00000 0)* (collectively “Products”).

17 **1.4 Notice of Violation**

18 On or about February 22, 2013, Englander served CLA and certain requisite public
19 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that CLA was in
20 violation of Proposition 65 for failing to warn its customers and consumers in California that the
21 Products expose users to DEHP. CLA denies selling the Products alleged by Englander in his Notice.

22 **1.5 Complaint**

23 On November 29, 2012, Englander filed the instant action, and on May 8, 2013 filed a First
24 Amended Complaint (“Complaint”), the operative pleading in this action, naming, CLA as a
25 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
26 the Notice.

1 **1.6 No Admission**

2 CLA represents that it is a manufacturer’s representative and denies that it sells or distributes
3 for sale in California or to California consumers, any products whatsoever. CLA maintains that they
4 facilitate the sale of products, and are not involved in the stream of distribution of products, as they
5 only facilitate the meeting between retailers and manufacturers, and cannot control the products, if
6 any, purchased by a retail entity. CLA further denies the material, factual, and legal allegations
7 contained in the Notice and Complaint. Nothing in this Stipulated Settlement Agreement shall be
8 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law,
9 nor shall compliance with this Settlement Agreement constitute or be construed as an admission of
10 any fact, finding, conclusion of law, issue of law, or violation of law. Further, nothing in this
11 Settlement Agreement shall be construed as an admission that CLA is in the business of selling any
12 products to any customers. This Section shall not, however, diminish or otherwise affect CLA’s
13 obligations, responsibilities, and duties under this Settlement Agreement.

14 **1.7 Jurisdiction**

15 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has
16 jurisdiction over CLA as to the allegations in the Complaint, that venue is proper in Alameda County,
17 and that this Court has jurisdiction to enter and enforce the provisions of this Settlement Agreement.

18 **1.8 Effective Date**

19 For purposes of this Settlement Agreement, the term “Effective Date” means November 1, 2013.

20 **2. INJUNCTIVE RELIEF: REFORMULATION**

21 **2.1 Reformulated Products**

22 Commencing on December 15, 2013, and continuing thereafter, when CLA sells products in
23 California, CLA shall only purchase for sale, manufacture for sale, or distribute for sale in California
24 “Reformulated Products.” For purposes of this Stipulated Settlement Agreement, Reformulated
25 Products contain a maximum of 1,000 parts per million (0.1%) DEHP content in any component
26 analyzed pursuant to EPA testing methodologies 3580A and 8270C or equivalent methodologies
27 utilized by state or federal agencies for the purpose of determining DEHP content in a solid
28 substance.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Settlement Agreement, CLA shall pay \$2,000
4 in civil penalties. Each civil penalty payment shall be allocated according to Health and Safety Code
5 section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California
6 Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of
7 the funds remitted to Englander.

8 **3.2 Reimbursement of Fees and Costs**

9 The parties acknowledge that Englander and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
11 issue to be resolved after the material terms of this Settlement Agreement had been settled. Shortly
12 after the other settlement terms had been finalized, CLA expressed a desire to resolve the fee and cost
13 issue. The Parties then attempted to (and did) reach an accord on the compensation due to Englander
14 and his counsel under general contract principles and the private attorney general doctrine codified at
15 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
16 execution of this Settlement Agreement. On or before the Effective Date, CLA shall pay \$9,000 for
17 the fees and costs incurred by Englander investigating, bringing this matter to CLA’s attention, and
18 negotiating a settlement in the public interest.

19 **3.3 Payment Procedures**

20 **3.3.1 Payment Addresses**

21 (a) All payments and tax documentation for Englander and his counsel shall be
22 delivered to:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710

28 (b) All payments to OEHHA, shall be delivered directly to OEHHA (Memo line
“Prop 65 Penalties”) at one of the following addresses, as appropriate:

1 **4.2 Englander’s Individual Release of Claims**

2 Englander, in his individual capacity only and *not* in his representative capacity, also provides
3 a release to CLA which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
5 liabilities and demands of Englander of any nature, character or kind, whether known or unknown,
6 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products alleged
7 to be sold or distributed for sale by CLA before the Effective Date.

8 **4.3 CLA’s Release of Englander**

9 CLA, on its own behalf, and on behalf of its past and current agents, representatives,
10 attorneys, successors, and assignees, hereby waives any and all claims against Englander in his
11 individual capacity only and *not* in his representative capacity, his attorneys and other
12 representatives, for any and all actions taken or statements made by Englander and his attorneys and
13 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
14 Proposition 65 against it in this matter, or with respect to the Products.

15 **4.4 Mutual Civil Code 1542 Release**

16 Englander, in his individual capacity only and not in any representative capacity, and CLA
17 each specifically intend that the releases contained in this Stipulated Settlement Agreement shall bar
18 and release all Claims, including those which are currently unknown to them. Englander and CLA
19 understand and accept the risk that either of them may later discover a claim encompassed by a
20 Release in this Stipulated Settlement Agreement which they did not know or suspect to exist, or
21 which they could not have known or suspected to exist. Englander and CLA hereby specifically
22 waive the protection of Civil Code section 1542 which reads as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS [OR HER]
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
26 BY HIM MUST HAVE MATERIALLY AFFECTED HIS/HER SETTLEMENT
27 WITH THE DEBTOR.
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1 **5. COURT APPROVAL**

2 This Stipulated Settlement Agreement is not effective until it is approved and entered by the
3 Court, and shall be null and void if, for any reason, it is not approved and entered by the Court within
4 one year after it has been fully executed by the Parties.

5 **6. SEVERABILITY**

6 If, subsequent to the Court’s approval and entry of this Stipulated Settlement Agreement, any
7 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
8 adversely affected.

9 **7. GOVERNING LAW**

10 The terms of this Stipulated Settlement Agreement shall be governed by the laws of the state
11 of California and apply within the state of California. In the event that Proposition 65 is repealed,
12 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
13 then CLA may provide written notice to Englander of any asserted change in the law, and shall have
14 no further obligations pursuant to this Stipulated Settlement Agreement with respect to, and to the
15 extent that, the Products are so affected. Nothing in this Stipulated Settlement Agreement shall be
16 interpreted to relieve CLA from any obligation to comply with any pertinent state or federal toxics
17 control laws.

18 **8. NOTICE**

19 Unless specified herein, all correspondence and notice required by this Stipulated Settlement
20 Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
21 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

22 For CLA:

23 Chuck Latham, President
24 Chuck Latham Associates, Inc.
25 18403 Longs Way
26 Parker, CO 80134
27
28

1 with a copy to:

2 Daniel G. Emilio
3 Emilio Law Group, APC
4 12832 Valley View Street, Suite 106
5 Garden Grove, CA 92845

6 For Englander:

7 The Chanler Group
8 Attn: Proposition 65 Coordinator
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Stipulated Settlement Agreement may be executed in counterparts and by facsimile or
16 portable document format (PDF) signature, each of which shall be deemed an original, and all of
17 which, when taken together, shall constitute one and the same document.

18 **10. POST EXECUTION ACTIVITIES**

19 Englander agrees to comply with the reporting form requirements referenced in Health and
20 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
21 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
22 furtherance of obtaining such approval, Englander and CLA agree to mutually employ their best
23 efforts, and that of their counsel, to support the entry of this agreement, and to obtain judicial
24 approval of their settlement in a timely manner. For purposes of this Section, “best efforts” shall
25 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, and
26 supporting the motion for judicial approval.

27 **11. MODIFICATION**

28 This Stipulated Settlement Agreement may be modified only by: (i) a written agreement of
the Parties and entry of a modified settlement agreement by the Court thereon; or (ii) a successful
motion or application of any Party, and the entry of a modified settlement agreement by the Court.

1 **12. AUTHORIZATION**

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

4 **AGREED TO:**

AGREED TO:

5
6 Date: October 23, 2013

Date: _____

7
8 By:  _____
9 PETER ENGLANDER

By: _____
Chuck Latham, President
CHUCK LATHAM ASSOCIATES, INC.

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

4 **AGREED TO:**

AGREED TO:

5
6 Date: _____

Date: 10/22/2012

7
8 By: _____

By: 

9 PETER ENGLANDER

Jeffrey E. Kahler, Chief Financial Officer
CHUCK LATHAM ASSOCIATES, INC.

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