

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and The Premium Connection, Inc. (“Premium Connection”), with Englander and Premium Connection individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Premium Connection 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Englander alleges that Premium Connection manufactures, imports, sells, or distributes for sale in the state of California, hand tools with grips that contain di(2-ethylhexyl)phthalate (“DEHP”) and lead without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP and lead are listed pursuant to Proposition 65 as chemicals that are 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, which are more fully described in Section 1.7 below, are hand tools with grips containing DEHP and/or lead that are manufactured, sold, or distributed for sale in California by Premium Connection, including, but not limited to, the *Ruff & Ready Tools 26 Piece Tool Set, #010-P2222 (#6 07656 02222 8)*.

### 1.4 Notice of Violation

On or about November 21, 2012, Englander served Premium Connection and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Premium Connection violated Proposition 65 by failing to warn its customers and consumers

in California that the Products expose users to DEHP and lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Premium Connection 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 Premium Connection 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 Premium Connection of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Premium Connection. This Section shall not, however, diminish or otherwise affect Premium Connection'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 the date of full execution of this agreement.

### **1.7 Definitions**

**1.7.1** "Covered Products" means any hand tools made with soft PVC/plastic grip components.

**1.7.2** "Newly Obtained Covered Product" shall mean any Covered Product ordered, purchased, or otherwise obtained by Premium Connection on or after December 1, 2013. A Covered Product will not be considered a "Newly Obtained Covered Product" if it has been purchased or ordered by Premium Connection by December 1, 2013, but which is being processed for shipment or in shipment on December 1, 2013.

**1.7.3** “Noticed Product” means the *Ruff & Ready Tools 26 Piece Tool Set, #010-P2222 (#6 07656 02222 8)*.

**1.7.4** “Previously Obtained Covered Product” shall mean any Covered Product ordered, purchased, or otherwise obtained by Premium Connection prior to December 1, 2013.

**1.7.5** “Products” shall refer to all Covered Products and “Product” shall refer to any one make or model of the Products.

**1.7.6** “Reformulated Product” shall mean a Product that (a) contains a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency (“USEPA”) 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, and (b) contains a maximum of 100 parts per million lead content when analyzed pursuant to USEPA testing methodologies SW6020 and SW3050B, and does not exceed 1.0 micrograms (µg) when analyzed pursuant to the NIOSH 9100 testing protocol.

**1.7.7** “Reformulated Product Standard” shall be the standard that which, if met, shall cause a Product to meet the definition of a Reformulated Product.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Commitment**

**2.1.1** No later than December 1, 2013, Premium Connection shall provide the Reformulated Product Standard to its then-current supplier(s) and/or manufacturer(s) of Products that will be sold or offered for sale to California consumers and shall instruct each supplier to use reasonable efforts to provide

Reformulated Products. In addressing the obligation set forth in the preceding sentence, Premium Connection shall not employ statements that will encourage the supplier(s) of Products to delay compliance with the Reformulated Product Standard. Upon request, within 15 days of any such request, Premium Connection shall provide Englander with copies of such supplier or manufacturer notification and any response to the same (“Reformulation Correspondence”). Englander shall treat such Reformulation Correspondence as confidential business information, and shall not share either the Reformulation Correspondence or any information contained in the Reformulation Correspondence without the written permission of Premium Connection.

**2.1.2** As of December 1, 2013, Premium Connection shall not order, cause to be ordered, manufacture, or cause to be manufactured any Product that is not a Reformulated Product.

## **2.2 Warning Obligation for Previously Obtained Noticed Products**

As of December 1, 2013, Premium Connection shall not sell, distribute, or otherwise deliver or cause to be sold, distributed, or otherwise delivered Previously Obtained Noticed Products into California or to any of its customers that Premium Connection reasonably believes supplies Products to consumers in California or to retail locations in California unless such Previously Obtained Noticed Products are Reformulated Products or are sold and/or shipped with one of the clear and reasonable warnings set forth in Section 2.4.

## **2.3 Warning Obligation for Previously Obtained Covered Products**

As of December 1, 2013, Premium Connection shall not sell, distribute, or otherwise deliver or cause to be sold, distributed, or otherwise delivered Previously Obtained Covered Products into California or to any of its customers that Premium Connection reasonably believes supplies Products to consumers in California or to retail locations in California unless such

Previously Obtained Covered Products are Reformulated Products or are sold and/or shipped with one of the clear and reasonable warnings set forth in Section 2.4.

#### **2.4 Warning Procedures**

For those Products that are subject to the warning requirement of Section 2.2, Section 2.3, or Section 2.5 Defendant shall provide the following warning (“Warning”):

WARNING: This product contains [lead][and][DEHP,] [a] chemical[s] known [to the State of California] to cause cancer and birth defects or other reproductive harm.

**2.4.1** For sales in retail stores, the Warning shall be permanently affixed to or printed on (at the point of manufacture, prior to shipment to California, or prior to distribution within California) the outside packaging of each unit of the Product, or on a “hang tag” secured to the container of each individual unit of the Product. The Warning shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the packaging or labeling, as to render it likely to be read and understood by an ordinary individual prior to purchase. If the Warning is displayed on the Product packaging or labeling, the Warning shall be at least the same size as the largest of any other health or safety warnings on the product packaging or labeling, and the word “warning” shall be in all capital letters. If printed on the labeling itself, the Warning shall be contained in the same section of the labeling that states other safety warnings concerning the use of the product.

#### **2.5 Satisfaction of Warning Obligations when Products not Sold Directly to Consumers by Premium Connection**

In instances in which a Product must be sold with a Warning pursuant to Section 2.2 or 2.3, and is not sold directly to California consumers by Premium Connection, Premium Connection shall be deemed in compliance with the warning requirements if it (a) provides compliant warning labels to its customers that it reasonably believes provides Products to California consumers or retailers and (b) with each customer’s next order requires such

customers to sign a certification indicating that it understands the warning obligations set forth in Sections 2.2 through 2.4 and will comply with those requirements.

### **3. MONETARY PAYMENTS**

#### **3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Premium Connection shall pay a total of \$20,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code section 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:

##### **3.1.1 Initial Civil Penalty**

Premium Connection shall pay an initial civil penalty in the amount of \$5,000 on or before fifteen days from the Effective Date. Premium Connection shall issue two separate checks to: (a) “OEHHA” in the amount of \$3,750; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,250. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

##### **3.1.2 Final Civil Penalty**

Premium Connection shall pay a final civil penalty of \$15,000 on or before March 15, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than March 1, 2014, an officer of Premium Connection provides Englander with written certification that all Products manufactured, imported, distributed, sold and offered for sale in California by Premium Connection on and after the date of such certification, and continuing into the future, 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. Premium Connection shall issue two

separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$11,250; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$3,750.

### **3.2 Attorney 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. Premium Connection 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 section 1021.5, for all work performed through the mutual execution of this agreement. Premium Connection shall pay \$25,000 for fees and costs incurred as a result of investigating, bringing this matter to Premium Connection’s attention, and negotiating a settlement in the public interest. Premium Connection 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 fifteen days from the Effective Date, to the address listed in Section 3.3.1(a) below.

### **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 3.1.1 through 3.1.2, 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 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
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 Gyurics  
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, Premium Connection shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number will be provided upon request after this Settlement Agreement is fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Englander's Release of Premium Connection**

This Settlement Agreement is a full, final, and binding resolution between Englander and Premium Connection 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 Premium Connection, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Premium Connection directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers,

franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP and lead contained in Products sold or distributed for sale by Premium Connection in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Englander, on his own behalf and on behalf of 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 Premium Connection and Releasees, including, without limitation, all actions and causes of action, 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 DEHP and lead in Products manufactured, sold, or distributed for sale in California by Premium Connection prior to the Effective Date.

#### **4.2 Premium Connection’s Release of Englander**

Premium Connection, on its own behalf and on behalf of 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 by Englander and his attorneys and other representatives, whether in the course of investigating claims, 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, Premium Connection may request in writing that Englander draft and file a complaint, 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 section 25249.7, or as may be otherwise allowed by law. If requested,

Englander and Premium Connection 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 sections 1021 and 1021.5, if so requested, Premium Connection agrees to reimburse Englander and his counsel for the reasonable fees and costs incurred in connection with 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, Premium Connection will remit payment to the address provided in Section 3.3.1(a)

**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 Premium Connection 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 The Premium Connection, Inc.:

Ronald Worth, President  
The Premium Connection, Inc.  
6165 South Pecos Road  
Las Vegas, NV 89120

With a copy to:

James M. Mattesich, Esq.  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814

For Peter 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 and Safety Code section 25249.7(f).

**11. MODIFICATION**

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

**12. AUTHORIZATION**

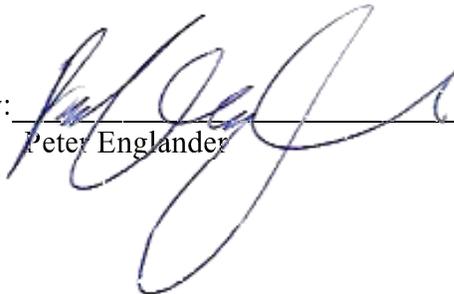
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: November 22, 2013

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Peter Englander

By: \_\_\_\_\_  
Ronald Worth, President  
The Premium Connection, Inc.

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: \_\_\_\_\_

Date: 11/15/2013

By: \_\_\_\_\_  
Peter Englander

By:   
Ronald Worth, President  
The Premium Connection, Inc.