

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Peter Englander and CAS Enterprises, Inc.

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and CAS Enterprises, Inc. (“CAS”), with Englander and CAS individually referred to as a “Party” and 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 CAS 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 CAS has manufactured, imported, distributed, sold, and/or offered for sale in the State of California products with hand tool grips containing di (2-ethylhexyl) phthalate (“DEHP”),¹ without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as any hand tools with grips containing DEHP, including but not limited to, the *Kreg Face Clamp 3” Reach, Item #KHC-PREMIUM (#6 47096 80058 1)*, manufactured, imported, distributed, shipped, sold, and/or offered for sale or shipment, directly or indirectly, by CAS or its dealers or distributors in the State of California, hereinafter referred to as the “Products.”

¹ Also known as bis (2-ethylhexyl) phthalate.

1.4 Notice of Violation

On November 21, 2012, Englander served CAS 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 Proposition 65 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

CAS denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold, manufactured, imported, shipped, distributed, and/or offered for sale, directly or indirectly, in California, including the Products, have been and are in compliance with all laws. CAS specifically maintains that it did not knowingly or intentionally expose California consumers or customers to DEHP through reasonably foreseeable use of the Products it has distributed or sold in California, directly or indirectly. Nothing in this Settlement Agreement shall be construed as an admission by CAS of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by CAS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CAS. However, this section shall not diminish or otherwise affect CAS’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 22, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1- Reformulated Products

Commencing on the October 1, 2013, and continuing thereafter, CAS agrees that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in

California, directly or indirectly, other than Products that it has already received from its manufacturers, will be “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products that contain no more than 1,000 parts per million (“ppm”) DEHP by weight in any Accessible Component (i.e., any component of the Products 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.

2.2 Sales of Existing Products with Warnings

Nothing in this Settlement Agreement shall preclude CAS or its distributors or dealers from shipping and selling in California Products received from its manufacturers prior to October 1, 2013. CAS agrees that any Products that CAS received from its manufacturers on or after June 1, 2013, and which CAS directly or indirectly distributes to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated Products as defined in Section 2.1, will include a warning affixed to the packaging, labeling, or directly on each Product that states:

WARNING: This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.

3. PAYMENT OF PENALTIES

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, CAS shall pay an initial civil penalty in the amount of \$3,000.00. The civil initial civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the initial civil penalty remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the initial civil penalty remitted to Peter Englander. CAS shall issue two separate checks for

the initial civil penalty payment: (a) one check made payable to OEHHA in the amount of \$2,250.00, representing 75% of the initial civil penalty; and (b) one check to “The Chanler Group in Trust for Peter Englander” in the amount of \$750.00, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below on or before the Effective Date.

3.2 Final Civil Penalty

Pursuant to Health & Safety Code § 25249.7(b), on October 15, 2013, CAS shall pay a final civil penalty in the amount of \$14,000.00. The final civil penalty shall be waived in its entirety, if, on or before October 1, 2013, an officer of CAS certifies to Englander’s counsel, in writing, that all Products sold or offered for sale by CAS in California after October 1, 2013, other than Products subject to the requirements of Section 2.2 above, will be Reformulated Products.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with 75% of the final civil penalty earmarked for OEHHA, and the remaining 25% of the final civil penalty earmarked for Englander. If required to do so by the terms of this Section, CAS shall issue two separate checks for payment of the final civil penalty: (a) one check made payable to OEHHA in the amount of \$10,500.00 representing 75% of the final civil penalty; and (b) one check to “The Chanler Group in Trust for Peter Englander” in the amount of \$3,500.00, representing 25% of the final civil penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 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 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

(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 Section 3.3.1(a), as proof of payment to OEHHA.

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. CAS expressed its 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 (“CCP”) § 1021.5, for all work performed in this matter. Accordingly, CAS shall pay Englander and his counsel \$30,000.00 for fees and costs incurred as a result of investigating, bringing this matter to CAS’s attention, and negotiating a settlement. CAS 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 address listed in Section 3.3.1(a) above.

5. RELEASES

5.1 Englander's Release of CAS and Downstream Dealers

This Settlement Agreement is a full, final and binding resolution between Englander and CAS, of any violation of Proposition 65 that was or could have been asserted by Englander on behalf of himself or in the interest of the general public, his past and current agents, representatives, attorneys, successors, and/or assignees, against CAS, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom CAS directly or indirectly distributes or sells Products, including but not limited to, downstream distributors, dealers, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (collectively, “Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Products.

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, and in the interest of the general public, 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, but exclusive of fees and costs on appeal of a consent judgment pursuant to Section 6 below – of any nature whatsoever, whether known or unknown, fixed or contingent, arising under Proposition 65 with respect to DEHP in the Products (collectively “claims”), against CAS and Releasees.

5.2 CAS’s Release of Englander

CAS 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, CAS may ask Englander, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the interest of the general public in favor of CAS regarding the Products, 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 CAS, 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. If so requested by CAS, pursuant to Code of Civil Procedure sections 1021 and 1021.5, CAS will reimburse Englander and his counsel for their reasonable fees and costs incurred in filing the complaint, converting this Settlement Agreement into a proposed consent judgment and seeking judicial approval of that consent judgment, in an amount not to exceed \$15,000.00, exclusive of fees and costs that may be incurred on appeal. CAS will remit payment to The Chanler Group, at the address set forth in Section 3.3.1(a) above, within

ten (10) days after its receipt of monthly invoices from Englander's counsel for work performed under this Section.

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 no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products or due to the de-listing of DEHP from the requirements of Proposition 65, then CAS 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 CAS 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 CAS:

Todd Sommerfield
President
CAS Enterprises, Inc.
201 Campus Drive
Huxley, IA 50124

To Englander:

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

With copy to:

Richard Zuromski, Esq.
Carroll, Burdick & McDonough
44 Montgomery St., Ste. 400
San Francisco, CA 94104

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 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. 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: February 14, 2013

Date: _____

By:  _____
Peter Englander

By: _____
Todd Sommerfeld, President
CAS Enterprises, Inc.

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: 2-14-13

By: _____
Peter Englander

By: Todd Sommerfeld
Todd Sommerfeld, President
CAS Enterprises, Inc.