

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Superior Tool Corporation (“Superior Tool”), with Englander and Superior Tool 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. Superior Tool 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 Superior Tool manufactures, imports, sells, or distributes for sale in the State of California, hand tools with grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is 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 are defined as hand tools with grips containing DEHP that are manufactured, sold, or distributed for sale in California by Superior Tool, including, but not limited to, the *Superior Tool Mini Hacksaw, #37700 (#0 17197 57700 0)* and *Superior Tool PVC Saw, #37513 (#0 17197 57513 6)*. The hand tools with grips containing DEHP are referred to collectively as the “Products.”

### 1.4 Notice of Violation

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

California that the Products expose users 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**

Superior Tool 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 Superior Tool 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 Superior Tool of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Superior Tool. This Section shall not, however, diminish or otherwise affect Superior Tool'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 April 15, 2013.

## **2. INJUNCTIVE RELIEF**

Commencing on the Effective Date and continuing thereafter, Superior Tool shall only manufacture for sale and purchase for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency 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. 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, Superior Tool shall pay a total of \$20,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated according to 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**

Superior Tool shall pay an initial civil penalty of \$4,000 on or before May 1, 2013. Superior Tool shall issue two separate checks to: (a) “OEHHA” in the amount of \$3,000; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

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

Superior Tool shall pay a final civil penalty of \$16,000 on or before February 15, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than January 15, 2014, an officer of Superior Tool provides Englander with written certification that, as of the date of such certification, all Products manufactured, imported, distributed, sold and offered for sale in California by Superior Tool are Reformulated Products as defined by Section 2 and that Superior Tool will continue to only offer Reformulated Products in California in the future. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Superior Tool shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$12,000; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$4,000, and deliver the payments to the addresses provided in Section 3.3.

### **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. Shortly after the other settlement terms had been finalized, Superior Tool expressed a desire to resolve the fee and cost issue. 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. Superior Tool shall pay \$19,500 for fees and costs incurred as a result of investigating, bringing this matter to Superior Tool's attention, and negotiating a settlement in the public interest. Superior Tool shall provide payment in the form of five checks made payable to "The Chanler Group" and delivered according to the following schedule: (a) on or before May 1, 2013, Superior Tool shall deliver a check for \$1,000; (b) on or before June 1, 2013, Superior Tool shall deliver a second check for \$5,000; (c) on or before July 1, 2013, Superior Tool shall deliver a third check for \$5,000; (d) on or before August 1, 2013, Superior Tool shall deliver a fourth check for \$5,000; and (e) on or before September 1, 2013, Superior Tool shall deliver a fifth check for \$3,500. Superior Tool shall also provide Englander's counsel with a single 1099 form for the fee and cost payments made to The Chanler Group (EIN: 94-3171522) delivered to the address in Section 3.3.1(a) below.

Superior Tool represents that, as of the Effective Date, it lacks the financial capacity to satisfy all of the monetary obligations provided by this Settlement Agreement, and must do so in installments, as set forth above. The Parties agree, however, that, in the event that Superior Tool fails to make any payment required by this Settlement Agreement, or any payment is delayed by more than ten days, all amounts owed will become due immediately.

### **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 address:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

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, Superior Tool 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 Superior Tool**

This Settlement Agreement is a full, final, and binding resolution between Englander and Superior Tool 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 whether by operation of law or otherwise, against Superior Tool, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Superior Tool 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 contained in Products sold or distributed for sale by Superior Tool 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 Superior Tool 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 in Products manufactured, sold, or distributed for sale in California by Superior Tool prior to the Effective Date.

#### **4.2 Superior Tool’s Release of Englander**

Superior Tool, 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 eighteen months of the execution of this Settlement Agreement, Superior Tool 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 Superior Tool 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, Superior Tool 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, Superior Tool 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 Superior Tool 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 Superior Tool Corporation:

Jeffrey White, Chief Executive Officer  
Superior Tool Corporation

100 Hayes Drive, Unit C  
Cleveland, OH 44131

With a copy to:

Melissa Jones, Esq.  
Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
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

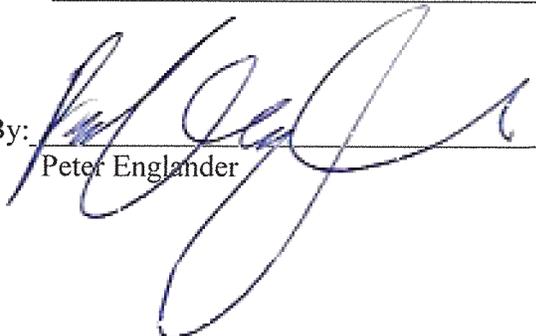
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

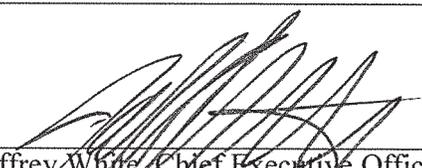
**AGREED TO:**

**AGREED TO:**

Date: March 18, 2013

Date: 4-17-13

By:   
Peter Englander

By:   
Jeffrey White, Chief Executive Officer  
Superior Tool Corporation