

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and CVS Pharmacy, Inc. erroneously noticed as CVS Caremark Corporation (hereinafter referred to as “CVS”), with Englander and CVS collectively referred to as the “Parties” and each individually as a “Party.” 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. CVS 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 CVS manufactures, distributes, sells, and/or offers for sale in the State of California vinyl/PVC automobile document holders containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warning. 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 vinyl/PVC automobile document holders containing DEHP that were supplied to CVS by Allison Corp. and sold in California by CVS, including, but not limited to, the *AutoLogix Automotive Accessories Document Wallet, #55-1369 (#0 76040 51369 5)*, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about November 30, 2012, Englander served CVS, Allison Corp. and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Notice”), alleging that CVS was in violation of Proposition 65 for failing to warn its

customers and consumers in California that the Products exposed 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

CVS denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 CVS 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 CVS of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by CVS. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties of CVS under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean September 1, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards and Commitment

Commencing on the Effective Date and continuing thereafter, CVS shall only distribute, ship, sell, or offer to ship for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain no more than 1,000 parts per million (0.1%) DEHP in each Accessible Component 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. "Accessible Component" shall be defined as any component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product. By entering this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or

responsibilities that may be imposed upon CVS by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to CVS under laws other than Proposition 65. In addition, it is understood that CVS is not agreeing to accept, any greater obligations or responsibilities than are required by existing law to products not covered by this Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, CVS shall pay a total of \$6,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§ 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 Initial Civil Penalty

CVS shall pay an initial civil penalty in the amount of \$2,000 on or before the Effective Date. CVS shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

CVS shall pay a final civil penalty of \$4,000 on or before November 15, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than November 1, 2013, an officer of CVS provides Englander with written certification that, as of the date of such certification and continuing into the future, CVS has met the reformulation standard specified in Section 2.1 above, such that all Products imported, distributed, sold and offered for sale in California by CVS 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. CVS shall issue two separate checks for its final civil penalty payments 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.

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 and 3.2, 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 and 3.2, 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, CVS shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

4. REIMBURSEMENT OF 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. Englander 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 § 1021.5, for all work performed through the mutual execution of this agreement. CVS shall pay \$16,500 for fees and costs incurred as a result of investigating, bringing this matter to the attention of CVS, and negotiating a settlement in the public interest. CVS 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 above.

5. RELEASES

5.1 Englander’s Release of CVS

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

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, hereby waives all Englander’s rights to institute or participate in, directly or indirectly,

any form of legal action and releases all claims that Englander may have, 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 -- limited to and arising under Proposition 65 with respect to DEHP in the Products distributed, sold and/or offered for sale by CVS before the Effective Date, against CVS and Releasees.

5.2 CVS' Release of Englander

CVS 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, CVS may send Englander a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Englander and CVS agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

If so requested by CVS in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then CVS will reimburse Englander and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive of fees and costs incurred on appeal, if any. CVS shall remit payment to The

Chanler Group at the payment address provided in Section 3.3.1 within five business days of receiving a monthly invoice from Englander's counsel for work performed under this Section.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held 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.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any Party by the other Party at the following addresses:

To CVS:

Karen Feisthamel
Senior Legal Counsel
CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, RI 02895

To Englander:

Proposition 65 Coordinator
The Chanler Group
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.

10. 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.

11. POST-EXECUTION ACTIVITIES

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

12. MODIFICATION

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

13. 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.

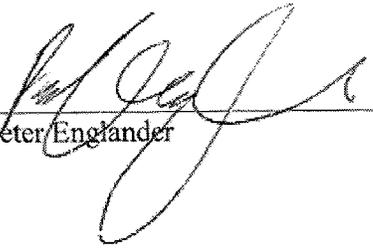
AGREED TO:

AGREED TO:

Date: September 25, 2013

Date: 9/18/2013

By:


Peter Englander

By:


Greg Froton, Vice President,
Merchandising
CVS Pharmacy, Inc.