

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Peter Englander and Supervalu Inc.

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Supervalu Inc. (“Supervalu”), with Englander and Supervalu collectively referred to as the “Parties.” Englander is an individual residing in the State of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Supervalu 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 Supervalu has manufactured, distributed, sold and/or offered for sale in California hand tool grips containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) and lead without the requisite Proposition 65 health hazard warnings. DEHP and lead are listed pursuant to Proposition 65 as chemicals known to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as hand tool grips containing DEHP and lead including, but not limited to, *Garden Weeder, Item No. 2882 (#0 11817 10505 5)*, manufactured, distributed, sold and/or offered for sale in California by Supervalu, hereinafter the “Products.”

### 1.4 Notice of Violation

On or about December 20, 2012, Englander served WinCo Foods, LLC, WinCo Holdings, Inc. (hereafter collectively “WinCo”), Supervalu Inc. 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 by Supervalu and WinCo for failing to warn their customers and consumers in California that the Products they sold exposed users to DEHP and lead. 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**

Supervalu denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Supervalu 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 Supervalu of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Supervalu. However, this Section shall not diminish or otherwise affect Supervalu'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 November 15, 2013.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Commitment**

As of the Effective Date, Supervalu shall only import, distribute, sell and/or offer for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing components that may be handled, touched or mouthed by a consumer, and which components yield: (1) less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; (2) less than 100 parts per million ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (3) contain less

than or equal to 1,000 ppm (0.1%) DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C.

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

In settlement of all the claims referred to in this Settlement Agreement, Supervalu shall pay a total of \$9,000 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**

Supervalu shall pay an initial civil penalty in the amount of \$3,500 on or before the Effective Date. Supervalu shall issue two separate checks to: (a) “OEHHA” in the amount of \$2,625; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$875. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

**3.2 Final Civil Penalty**

Supervalu shall pay a final civil penalty of \$5,500 on or before November 15, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than October 18, 2013, an officer of Supervalu provides Englander with written certification that, as of the date of such certification and continuing into the future, Supervalu 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 Supervalu as of October 18, 2013 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. Supervalu shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$4,125; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,375.

**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 through 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 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 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, Supervalu 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.

**3.3.3 Representation.** Supervalu represents that the sales data and other information concerning its knowledge of DEHP and lead, and prior reformulation and/or warning efforts, it provided to Englander was truthful to its knowledge and a material factor upon which Englander has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Settlement Agreement. If, within nine months of the Effective Date, Englander discovers and presents to Supervalu, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Supervalu shall have 30 days to meet and confer regarding Englander's contention. Should this 30 day period pass without any such resolution between the Parties, Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

**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. Supervalu shall pay \$23,500 for fees and costs incurred as a result of investigating, bringing this matter to Supervalu attention, and negotiating a settlement in the public interest. Supervalu 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. CLAIMS COVERED AND RELEASED**

### **5.1 Release**

This Settlement Agreement is a full, final and binding resolution between Englander and Supervalu, 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 Supervalu, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Supervalu directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, including WinCo, (“Releasees”), based on their failure to warn about alleged exposures to DEHP and lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Supervalu 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 his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he 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 and lead in the Products manufactured, distributed, sold and/or offered for sale by Supervalu before the Effective Date (collectively “claims”), against Supervalu and Releasees.

### **5.2 Englander’s Individual Release of Claims**

Englander also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and

satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP and lead in the Products manufactured, distributed, sold and/or offered for sale by Supervalu.

Englander acknowledges that he is familiar with Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Englander, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the exposures to DEHP and lead in the Products sold by Releasees.

### **5.3 Supervalu's Release of Englander**

Supervalu, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Englander, 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 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

Supervalu acknowledge that it is familiar with Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Supervalu, on behalf of itself, and its past and current owners, subsidiaries, affiliates, sister and related companies, employees, shareholders, directors, insurers, attorneys, successors, and assigns expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to alleged exposures to DEHP and lead in the Products sold by Releasees.

**6. POST EXECUTION ACTIVITIES**

Within twelve months of the execution of this Settlement Agreement Supervalu may ask Englander, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Englander agrees to reasonably cooperate with Supervalu and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Supervalu will reimburse Englander and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment in an amount not to exceed \$13,000, exclusive of fees and cost that may be incurred on appeal. Supervalu will remit payment to The Chanler Group, at the address set forth in Section 3.3.1 above. Such additional fees shall be paid by Supervalu within ten days after its receipt of monthly invoices from Englander for work performed under this paragraph.

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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Supervalu may 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.

9. **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: (a) first-class, registered or certified mail, return receipt requested; or (b) overnight courier on any party by the other party at the following addresses:

To Supervalu:

Karla Robertson  
Execute Vice President and General Counsel  
Attn: Thomas Darling  
Supervalu Inc.  
7075 Flying Cloud Drive  
Eden Prairie, MN 55344

To Englander:

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

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.

**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. A facsimile or .pdf signature shall be as valid as the original.

**11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Englander and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**12. MODIFICATION**

This Settlement Agreement may be modified only by 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: \_\_\_\_\_

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

By: \_\_\_\_\_

Peter Englander

By: \_\_\_\_\_

Supervalu Inc.

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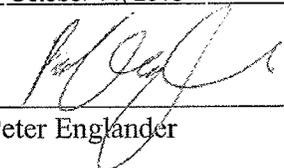
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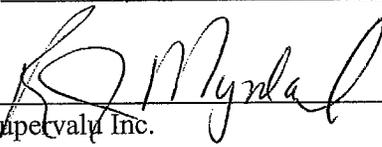
Date: October 14, 2013

By: 

Peter Englander

AGREED TO:

Date: 10/14/13

By: 

Sapetvalu Inc.