

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Peter Englander and Smart & Final Stores, LLC

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Smart & Final Stores, LLC erroneously noticed as Smart & Final Inc. (hereinafter referred to as “S&F”), with Englander and S&F 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. S&F 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 S&F has manufactured, distributed, sold and/or offered for sale in the State of California mop wringer grips containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are mop wringer grips that Englander contends contain DEHP, specifically limited to the *First Street Deluxe Sponge Mop with Scrubber Strip*, #78575, #09193, FS0906 (#0 41512 10402 2), manufactured, distributed, sold and/or offered for sale in California by S&F, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about January 8, 2013, Englander served S&F 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 S&F for failing to warn its customers and consumers in California that the Products it sold 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

S&F 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 S&F 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 S&F of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by S&F. However, this Section shall not diminish or otherwise affect S&F'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 January 31, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, S&F shall only manufacture, distribute and/or import for sale or use in the State of California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products which contain less than or equal to 1,000 ppm (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C. "Accessible Component" shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

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

In settlement of all the claims referred to in this Settlement Agreement, S&F 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

S&F shall pay an initial civil penalty in the amount of \$1,500 on or before the Effective Date. S&F shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,125; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$375. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

S&F shall pay a final civil penalty of \$4,500 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 S&F provides Englander with written certification that, as of the date of such certification and continuing into the future, S&F has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by S&F 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. S&F shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$3,375; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,125.

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, S&F 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. S&F shall pay \$18,000 for fees and costs incurred as a result of investigating, bringing this matter to S&F's attention, and negotiating a settlement in the public interest. S&F 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 S&F, 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 S&F, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom S&F directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by S&F 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 in the Products manufactured, distributed, sold and/or offered for sale by S&F before the Effective Date (collectively "claims"), against S&F and Releasees.

5.2 S&F's Release of Englander

S&F 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.

6. POST EXECUTION ACTIVITIES

Within twelve months of the execution of this Settlement Agreement S&F 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 S&F 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, S&F 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 \$16,000, exclusive of fees and cost that may be incurred on appeal. S&F 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 S&F 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 S&F 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 S&F:

Donald G. Alvarado,
SVP/General Counsel
Smart & Final Stores, LLC
600 Citadel Drive
Commerce, CA 90040

To Englander:

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

With Copy to:

David G. Freedman
Attorney at Law
1801 Century Park East, 16th Floor
Los Angeles, CA 90067

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: January 23, 2014

Date: _____

By:  _____

By: _____

Peter Englander

Donald G. Alvarado
SVP/General Counsel
Smart & Final Stores, LLC

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.

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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:

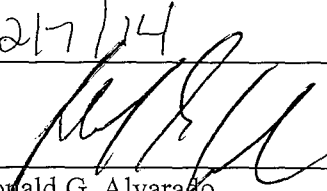
Date: _____

By: _____

Peter Englander

AGREED TO:

Date: 2/7/14 _____

By:  _____

Donald G. Alvarado
SVP/General Counsel
Smart & Final Stores, LLC