

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”), Seymour Midwest LLC, formerly known as Midwest Rake Company LLC and Seymour Manufacturing Co., Inc. Seymour Midwest LLC and Seymour Manufacturing Co., Inc. are collectively referred to herein as “Seymour.” Englander and Seymour are collectively referred to as the “Parties.” 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. Seymour 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 Seymour manufactures, distributes, sells, and/or offers for sale in California vinyl/PVC hand tool grips 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 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 hand tool grips that contain DEHP including, but not limited to, the *Seymour By-Pass Pruner, WP-1030, (#0 31365 05302 8)*, which were manufactured, distributed, sold and/or offered for sale in California by Seymour, hereinafter referred to as the “Products.”

### 1.4 Notice of Violation

On or about April 3, 2013, Englander served Seymour and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Seymour 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**

Seymour denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, distributed, sold and/or offered 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 Seymour 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 Seymour of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Seymour. This Section shall not, however, diminish or otherwise affect Seymour'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 July 1, 2014.

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

### **2.1 Reformulation Standards and Commitment**

Commencing on the Effective Date and continuing thereafter, Seymour shall only manufacture, distribute, sell, or offer 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. For purposes of this agreement, "Accessible Components" 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, Seymour shall pay a total of \$10,000 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**

Seymour shall pay an initial civil penalty in the amount of \$4,000 on or before the Effective Date. Seymour shall issue two separate checks to: (a) “OEHHA” in the amount of \$3,000; and (b) “Peter Englander, Client Trust Account” in the amount of \$1,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

#### **3.2 Final Civil Penalty**

Seymour shall pay a final civil penalty of \$6,000 on or before October 1, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than September 15, 2014, an officer of Seymour provides Englander with written certification that, as of the date of such certification and continuing into the future, Seymour has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, distributed, sold and offered for sale in California by Seymour 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. Seymour shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$4,500; and (b) “Peter Englander, Client Trust Account” in the amount of \$1,500.

#### **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, 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.

#### **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. Seymour 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. Seymour shall pay \$28,000 for fees and costs incurred as a result of investigating, bringing this matter to Seymour's attention,

and negotiating a settlement in the public interest. Seymour shall issue a 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 Seymour**

This release is provided in Englanders’s individual capacity and is not a release on behalf of public. This Settlement Agreement is a full, final and binding resolution between Englander and Seymour, 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 Seymour, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Seymour directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees, and retailers, (“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 Seymour in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Englander, on behalf of himself, in his individual capacity, 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 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 manufactured, distributed, sold and/or offered for sale by Seymour before the Effective Date, against Seymour and Releasees.

**5.2 Seymour's Release of Englander**

Seymour, 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. 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.

**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.

**8. 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 Seymour:

Bill Henthorn, President  
Seymour Midwest LLC  
2666 S Country Club Rd  
Warsaw, IN 46580

With copy to:

Bruce Nye  
Adams Nye Becht LLP  
222 Kearny Street, Seventh Floor  
San Francisco, CA 94108

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.

**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 & Safety Code § 25249.7, subdivision (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: June 17, 2014

Date: 6.9.14

By:   
Peter Englander

By:   
Bill Henthorn, President  
Seymour Midwest LLC  
Seymour Manufacturing Co. Inc.