SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander ("Englander") and FKA Distributing Co., LLC (FKA), HoMedics USA , LLC ("HoMedics"), and SI Products, LLC ("SI Products") (on behalf of themselves, predecessors and successors, "Settling Entities"), with Englander and Settling Entities collectively referred to as the "Parties." Englander is an individual residing in the State of California who seeks to promote awareness of exposures to toxic and potentially toxic chemicals and to improve human health by reducing or eliminating hazardous and potentially hazardous substances contained in consumer and commercial products. For purposes of this Settlement Agreement, Settling Entities are presumed to employ ten or more persons and is presumed 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"), Settling Entities employ ten or more persons and are 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"); and Settling Entities are presumed to employ ten or more persons and are presumed persons 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 FKA, HoMedics and SI Products manufactured, imported, sold and/or distributed for sale in California, massage pillows containing foam padding containing tris(1,3-dichloro-2-propyl) phosphate ("TDCPP") without the requisite Proposition 65 health hazard warnings. TDCPP is a flame retardant chemical used in both soft and rigid polyurethane foam, plastics and fabric backings.

Pursuant to Proposition 65, on October 28, 2011, California identified and listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the "clear and reasonable warning" requirements of Proposition 65 one year later on October 28, 2012. Cal. Code Regs., tit. 27, §

27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges that TDCPP escapes from massage pillows with foam padding in FKA, HoMedics and SI Products products, leading to human exposures.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as massage pillows and other products containing foam padding containing TDCPP including, but not limited to, the *HoMedics Portable Foot Massage Pillow, Model No. FM-4CWA (#0 31262 04446 4),* the *HoMedics Shiatsu + Vibration Massage Pillow SP-25HA (#0 31262 04597 3),* and *The Sharper Image Shiatsu Massage Pillow with Heat, Model No. MSG-P110D (# 8 45516 00017 1),* manufactured, imported, sold and/or distributed for sale in California by FKA, HoMedics, and SI Products ("Products").

1.4 Notice of Violation

On June 10, 2013, Englander served FKA, HoMedics, SI Products, certain Retailers/Wholesalers and certain requisite public enforcement agencies with a "60-Day Notices of Violation" ("Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and workers in California that the Products expose users to TDCPP.

To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission and Denial of Liability

FKA, HoMedics and SI Products deny the material factual and legal allegations contained in Englander's Notice and in his General Allegations; and they maintain that all products they have 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 FKA, HoMedics or SI Products 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 FKA, HoMedics or SI Products of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect FKA, HoMedics or SI Products obligations, responsibilities, and duties under this Settlement Agreement.

2. DEFINITIONS

2.1 California Customers

"California Customer" shall mean any customer that FKA, HoMedics or SI Products reasonably understand is located in California, has a California warehouse or distribution center, maintains a retail outlet in California, or has made internet sales into California on or after January 1, 2011.

2.2 Detectable

"Detectable" shall mean containing no more than 25 parts per million ("ppm") (the equivalent of .0025%) of any one chemical in any material, component, or constituent of a subject product, when analyzed by a laboratory accredited by the State of California, a federal agency, American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar nationally recognized accrediting organization now or in the future (such laboratory referred hereinafter as an "Accredited Lab") pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence, and measure the quantity, of TDCPP.

2.3 Effective Date

"Effective Date" shall mean September 10, 2014.

2.4 Private Label Covered Products

"Private Label Covered Products" means Products that bear a brand or trademark owned or licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of California.

2.5 Reformulated Products

"Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP.

2.6 Reformulation Standard

The "Reformulation Standard" shall mean containing no more than 25 ppm of TDCPP.

2.7 Retailer-Wholesaler

"Retailer" means an individual or entity that offers a Product for retail sale direct to consumers in the State of California and includes "Wholesaler," which is an individual or entity who buys a Product for sale to a Retailer and/or an individual or entity for ultimate sale to consumers in the State of California.

3. INJUNCTIVE RELIEF: REFORMULATION/WARNING

3.1 Reformulation/Warning Commitment

Commencing on September 10, 2014, Settling Entities shall not manufacture or import for distribution or sale to California Customers, or cause to be manufactured or imported for distribution or sale to California Customers, any Products that are not Reformulated Products, or that do not comply with the warnings provisions contained in Section 3.5.

3.2 Vendor Notification/Certification

On or before the Effective Date, FKA, HoMedics and SI Products shall provide written notice to all of its then-current vendors of the Products, instructing each such vendor to use reasonable efforts to provide it with only Reformulated Products, or with products that contain warnings consistent with the requirements in Section 3.5 (in the event that Settling Entities or another third party does not already apply such warnings). In addressing the obligation set forth in the preceding sentence, FKA, HoMedics, and SI Products shall not employ statements that will encourage a vendor to delay undertaking reasonable efforts to supply Reformulated Products, to the extent vendors have not already done so.

3.3 Products No Longer in FKA, HoMedics's or SI Products's Control

Settling Entities have already applied a compliant Proposition 65 warning to the Products and have undertaken efforts to ensure compliant warnings have been applied to Products no longer in FKA's, HoMedics' or SI Products' control.

3.4 Current Inventory

Any Products in, or manufactured and en route to FKA, HoMedics's or SI Products's inventory as of, or after September 10, 2014, that do not qualify as Reformulated Products and that FKA, HoMedics or SI Products has reason to believe may be sold or distributed for sale in

California, shall contain a clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies, or unless they already contain a Proposition 65 warning.

3.5 Product Warnings

3.5.1 Product Labeling

Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging, labeling, or directly on each Product. Each warning shall comply with Proposition 65 placement standards.

A warning provided pursuant to this Settlement Agreement shall state:

> **WARNING:** This product contains chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

3.5.2 Internet Website Warning

A warning shall be given in conjunction with the sale of the Products to California, or California Customers, via the internet, which warning shall appear on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall either: (a) appear adjacent to or immediately following the display, description, or price of the Product; (b) appear as a pop-up box; (c) appear as a link to the words "Proposition 65", or (d) otherwise appear automatically to the consumer. The warning text shall be legible to the ordinary consumer:

> **WARNING:** This product contains chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

3.6 Alternatives to Interim Warnings

The obligations of FKA, HoMedics and SI Products under Section 3.3 shall be relieved provided FKA, HoMedics and SI Products certifies on or before October 1, 2014, that only Products meeting the Reformulation Standard will be offered for sale in California, or to California Customers for sale in California, or that contain warnings pursuant to Section 3.5, after October 1, 2014. The obligations of FKA, HoMedics or SI Products under Section 3.4 shall be relieved provided FKA, HoMedics and SI Products certify on or before October 1, 2014 that, after

September 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in California, or to California Customers for sale in California, Products meeting the Reformulation Standard, or that contain warnings pursuant to Section 3.5.

4. MONETARY PAYMENTS

4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Settling Entities shall pay the penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (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 "The Chanler Group in Trust for Englander." Each penalty payment shall be made within two business days of the date it is due and be delivered to the addresses listed in Section 4.4 below.

4.1.1 Initial Civil Penalty. On or before September 15, 2014, Settling Entities shall collectively make an initial civil penalty payment in the amount identified of $5,000.

4.1.2 Second Civil Penalty. On or before January 1, 2015, Settling Entities shall collectively make a second civil penalty payment in the amount of $10,000. The amount of the second penalty may be reduced according to any penalty waiver Settling Entities are eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

4.1.3 Third Civil Penalty. On or before April 1, 2015, Settling Entities shall collectively make a third civil penalty payment in the amount of $10,000. The amount of the third penalty may be reduced according to any penalty waiver Settling Entities are eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

4.1.4 Reductions to Civil Penalty Payment Amounts. Settling Entities may reduce the amount of the second and/or third civil penalty payments by providing Englander with certification of certain efforts undertaken to reformulate their Products or limit the ongoing sale of non-reformulated Products in California. The options to provide a written certification in lieu of making a portion of a civil penalty payment constitute material terms of this Settlement Agreement, and with regard to such terms, time is of the essence.

4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of Products Sold or Offered for Sale in California.

If Settling Entities so elect, $5,000 of the second civil penalty shall be waived, to the extent that they have agreed that, as of October 1, 2014, and continuing into the future, it shall only manufacture or import for distribution or sale to California Customers or cause to be manufactured or imported for distribution or sale to California Customers, Reformulated Products. An officer or other authorized representative each of the Settling Entities shall provide Englander with a written certification confirming compliance with such conditions, which certification must be received by Englander's counsel on or before October 15, 2014.

4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.

If Settling Entities so elect, $5,000 of the third civil penalty shall be waived, to the extent that they have agreed that, as of April 1, 2015, and continuing into the future, they shall only manufacture or import for distribution or sale in California or cause to be manufactured or imported for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-dibromopropyl)phosphate ("TDBPP") or tris(2-chrolorethyl) phosphate ("TCEP"), in a detectable amount of more than 25 parts per million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence, and measure the quantity, of TDBPP or TCEP in a solid substance. An officer or other authorized representative of each of the Settling Entities shall provide Englander with a written certification confirming compliance with such conditions, which certification must be received by Englander's counsel on or before April 15, 2015.

4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated Exemplar Products from the California Market.

If Settling Entities so elect, $5,000 of the second civil penalty shall be waived, if an officer or other authorized representatives of each of the Settling Entities provides Englander with written certification, by January 15, 2015, confirming that each individual or establishment in California to

which they supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar Products held for sale in California.

4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to California of Unreformulated Inventory.

If Settling Entities so elect, $5,000 of the third civil penalty shall be waived, if an officer or other authorized representative of each of the Settling Entities provides Englander with written certification, on or before March 15, 2015, confirming that, as of April 15, 2015, they have and will continue to distribute, offer for sale, or sell in California, or to California Customers, only Reformulated Products.

4.2 Representations

Settling Entities represent that the sales data and other information concerning their respective sizes, knowledge of TDCPP, and prior reformulation and/or warning efforts, they provided to Englander was truthful to their 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 Settling Entities evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Settling Entities shall have 30 days to meet and confer regarding Englander's contention. Should this 30 day period pass without any such resolution between Englander and Settling Entities, Englander or the Settling Entities shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

4.3 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Englander and Settling Entities expressed a desire to resolve the fee and cost issue. Settling Entities then collectively agreed to pay 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, including the fees and costs incurred as a result of investigating, bringing this matter to Settling Entities' attention, and negotiating a settlement. In addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of time Englander's counsel will incur to monitor various provisions in this agreement over the next two years, with the exception of additional fees that may be incurred pursuant to Settling Entities' election in Section 11. Settling Entities more specifically agreed, to collectively pay Englander's counsel the amount of $40,000. Settling Entities further collectively agree to tender and shall tender its full required payment under this Section to a trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within 30 days of the Effective Date.

4.4 Payment Procedures

4.4.1 Issuance of Payments.

(a) All payments owed to Englander and his counsel, pursuant to Sections 4.1, 4.3 and 4.4 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 Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

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

4.4.2 Proof of Payment to OEHHA

A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 4.5.1(a) above, as proof of payment to OEHHA.

5. CLAIMS COVERED AND RELEASED

5.1 Englander's Release of Proposition 65 Claims

Englander, acting on his own behalf and in the public interest, releases Settling Entities, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom they directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers franchisees, cooperative members, and licensees (collectively, "Releasees"[1]), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to TDCPP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than the Settling Entities and their predecessors and successors, but shall extend to their owners and members, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Settling Entities, except that entities upstream of Settling Entities that is a Retailer or Wholesaler of a Product or Private Labeled Covered Product shall be released as to the Product or Private Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer or Wholesaler in question.

5.2 Englander's Individual Releases of Claims

Englander, 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 TDCPP in the

[1] By way of example and not limitation, the release extends to and benefits, among others: Walgreen Co.; Bed Bath & Beyond Inc.; Kohl's Corporation; and Kohl's Department Stores, Inc.

Products manufactured, imported, distributed, or sold by Settling Entities prior to the Effective Date. The Parties further understand and agree that this Section 5.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, any component parts thereof to Settling Entities' Products, except that entities upstream or downstream of Settling Entities that is a Retailer or Wholesaler of a Product Private Labeled Covered (or Additional) Product shall be released as to the Private Labeled Covered Products offered for sale in California by the Retailer or Wholesaler in question. Nothing in this Section affects Englander's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Settling Entities' Products.

5.3 Settling Entities' Release of Englander

Settling Entities, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and 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 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Products, then one or all of the Settling Entities 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. Nothing in this Settlement Agreement shall be interpreted to relieve Settling Entities from any obligation to comply with any pertinent state or federal law or regulation.

7. 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) overnight courier to any party by the other party at the following addresses:

To Settling Entities:

Gerald E. Hawxhurst
Crone Hawxhurst, LLP
10880 Wilshire Blvd., Suite 1150
Los Angeles, California 90024

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.

8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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.

9. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

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

10. MODIFICATION

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

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11. 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:

By: _____
Peter Englander

Date: September 8, 2014

AGREED TO:
FKA Distributing Co., LLC

By: _____
Name: Saby Sen

Date: September 4, 2014

AGREED TO:
SI Products, LLC

By: _____
Name: Saby Sen

Date: September 4, 2014

AGREED TO:
HoMedics USA, LLC

By: _____
Name: Saby Sen

Date: September 4, 2014