

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Englander (“Englander”) and American Art Clay Company, Inc. (“AMACO”), with Englander and AMACO each individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Englander alleges that AMACO 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 AMACO manufactures, sells, and/or distributes for sale in California, Hand Tools with vinyl/PVC Tool Grips containing di(2-ethylhexyl)phthalate (“DEHP”) and diisononyl phthalate DINP. DEHP and DINP are listed pursuant to Proposition 65 as chemicals known to cause cancer, birth defects or other reproductive harm. Englander alleges that AMACO failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP and DINP from vinyl/PVC tool grips.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC tool grips containing DEHP and/or DINP, including, but not limited to the *Amaco Glass Tool Dragon Running Pliers, Item# 40047K, #00498R, (UPC# 0 39672 40047 4)*, manufactured, sold or distributed for sale in California by AMACO (“Products”).

### 1.4 Notice of Violation

On or about September 24, 2015, Englander served AMACO and certain requisite

public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that AMACO violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose 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**

AMACO 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 subject to Mr. Englander’s Notice, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by AMACO 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 AMACO of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by AMACO. However, this Section shall not diminish or otherwise affect AMACO’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 August 1, 2016.

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

### **2.1 Reformulation Commitment**

On or before August 1, 2016 and continuing thereafter, AMACO agrees to only manufacture for sale or purchase for sale in or into California, “Reformulated Products”. For purposes of this Settlement Agreement, “Reformulated Products” are:

- (a) Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and

8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

AND,

(b) Products containing DINP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.

Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DINP content in a solid substance.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, AMACO agrees to pay (\$1,500.00) in civil penalties. On or before the Effective Date, AMACO shall pay the civil penalty in the amount of \$1,500.00. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Englander, and delivered to the address in Section 3.3 herein. AMACO will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of (\$1125.00) and (b) “Peter Englander, Client Trust Account” in the amount of (\$375.00).

#### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter.

Under these legal principles, AMACO agrees to pay (\$19,000.00) to Englander and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of AMACO's management, and negotiating a settlement that provides a significant public benefit. AMACO's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

**4.1 Englander's Release of AMACO** This Settlement Agreement is a full, final and binding resolution between Englander, as an individual and not on behalf of the public, and AMACO, of any violation of Proposition 65 that was or could have been asserted by Englander, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against AMACO, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom AMACO 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 the failure to warn about alleged exposures to DEHP and DINP contained in Products manufactured, distributed, sold or offered for sale by AMACO in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Englander, as an individual and not on behalf of the public, on his own behalf, and on

behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP and DINP contained in the Products manufactured, distributed, sold and/or offered for sale by AMACO before the date that this Settlement Agreement is fully executed by the Parties. The releases provided by Englander under this Settlement Agreement are provided solely on Englander's behalf and are not releases on behalf of the public.

#### **4.2 AMACO's Release of Englander**

AMACO, on its own behalf, and on behalf of 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 by Englander and his attorneys and other representatives, whether in the course of investigating claims in this matter, or otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **4.3 Mutual Waiver Under California Civil Code Section 1542**

The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which provides as follows:

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

The Parties, each on his/its own behalf, and on behalf of his/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and

relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 and 4.2, above.

**5. 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.

**6. 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 otherwise rendered inapplicable by reason of law generally, as to AMACO specifically as a result of a statutory exemption, or as to the Products, then AMACO may provide written notice to Englander of any asserted change in the law, or its applicability to AMACO or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, AMACO or the Products are so affected.

**7. NOTICE**

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

**AMACO**

Bond Sandoe III, President  
American Art Clay Company, Inc.  
6060 Guion Road  
Indianapolis, IN 46254

Ann Grimaldi, Esq. Grimaldi Law  
Offices  
50 California Street, Suite 1500  
San Francisco, CA 94111

**Englander**

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

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. 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.

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

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

**10. MODIFICATION**

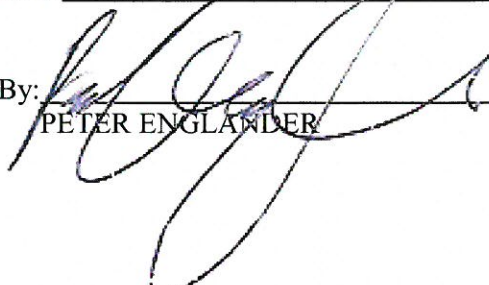
This Settlement Agreement may be modified only by written agreement of the Parties.

**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:**

Date: 7/19/2016

By:   
PETER ENGLANDER

**AGREED TO:**

Date: 7/21/16

By:   
BOND SANDOE III, PRESIDENT  
AMERICAN ART CLAY COMPANY, INC.