

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Apache Hose & Belting Company, Inc. (“Apache Hose”), with Englander and Apache Hose 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. Apache Hose 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Englander alleges that Apache Hose manufactures, sells, and distributes for sale in California, vinyl/PVC fuel pump nozzle grips (“Nozzle Grips”) containing the phthalate chemical Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Englander alleges that Apache Hose failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Nozzle Grips.

### 1.3 Product Description

The products covered by this Settlement Agreement are Nozzle Grips containing DEHP that are manufactured, sold or distributed for sale in California by Apache Hose, including, but not limited to, the Nozzle Grips offered in connection with the *Universal Unleaded Auto – Shutoff Nozzle, MFG# 99000246, UPC #7 25559 53007 4* (“Products”).

### 1.4 Notice of Violation

On December 29, 2015, Englander served Apache Hose and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Apache

Hose violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Nozzle Grips. 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**

Apache Hose 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 Apache Hose 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 Apache Hose of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Apache Hose. This Section shall not, however, diminish or otherwise affect Apache Hose'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 May 1, 2016.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD**

### **2.1 Reformulation Standard**

Commencing on May 1, 2016, and continuing thereafter, Apache Hose agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## 2.2 Warnings Required: Product Labeling

Commencing on the Effective Date, for all Products other than Reformulated Products, Apache Hose shall provide clear and reasonable warnings that state:

**WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

or

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

Apache Hose may affix this warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale to institutional or individual consumers within the State of California and institutional customers with nationwide distribution. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product(s) the warning applies, so as to minimize the risk of consumer confusion.

## 3. MONETARY SETTLEMENT TERMS

### 3.1 Civil Penalty Payments

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, Apache Hose agrees to pay \$10,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (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. Englander's counsel shall be responsible for delivering OEHHA's portion of any civil penalty payment(s) made under this Settlement Agreement to OEHHA.

### **3.1.1 Initial Civil Penalty Payment**

Within five days of the Effective Date, Apache Hose shall make an initial civil penalty payment of \$2,000. It shall deliver its payment in a single check made payable to "Peter Englander, Client Trust Account."

### **3.1.2 Final Civil Penalty Payment; Waiver for Early Reformulation**

On July 1, 2016, Apache Hose shall make a final civil penalty payment in the amount of \$8,000. Pursuant to Title 11 California Code of Regulations section 3203(c), Englander agrees that the final civil penalty will be waived in its entirety if, no later than June 15, 2016, Apache Hose provides Englander's counsel with a signed declaration certifying that as of June 1, 2016, all of the Products it is shipping for sale or distributing for sale in California are Reformulated Products as defined by Section 2, and that Apache Hose will continue to only offer Reformulated Products in California in the future.

### **3.2 Attorneys' 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Apache Hose expressed a desire to resolve Englander's 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, within five days of the Effective Date, Apache Hose agrees to pay \$18,500 in the form of a check made payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to the attention of Apache Hose's management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments under 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 Apache Hose**

This Settlement Agreement is a full, final and binding resolution between Englander and Apache Hose, of any violation of Proposition 65 that was or could have been asserted by Englander on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Apache Hose, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Apache Hose directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Apache Hose in California before the Effective Date.

In further consideration of the promises and agreements herein, Englander, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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 exposures to DEHP from Products

manufactured, distributed, sold and/or offered for sale by Apache Hose before the Effective Date. The releases provided by Englander under this Settlement Agreement are provided solely on Englander's own behalf and not on behalf of the public in California.

**4.2 Apache Hose's Release of Englander**

Apache Hose, 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Apache Hose may provide written notice to Englander of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, 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:

For Apache Hose:

Tom Pientok, President  
Apache Hose & Belting Company  
4805 Bowling Street SW  
Cedar Rapids, IA 52404

For 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 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, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 4/26/2016

Date: 4-25-16

By: 

PETER ENGLANDER

By: 

Randall M. Walter, CFO  
APACHE HOSE & BELTING COMPANY