

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between DRL, LLC (“DRL”) and Peter Englander (“Englander”), with Englander and DRL 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 chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. DRL 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 DRL has manufactured, imported, distributed, shipped and/or sold in the State of California ceramicware with exterior designs containing lead above the allowable state limits without the requisite Proposition 65 warning. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Notices of Violation

On or about September 24, 2015, Englander served Dylan’s Candybar, LLC and certain requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Dylan’s Candybar, LLC violated Proposition 65 when it failed to warn customers and consumers in California that certain ceramicware with exterior designs exposed users to lead (the “September 24, 2015 Notice”). To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the September 24, 2015 Notice. Englander and DRL have agreed to resolve the allegations in the September 24, 2015 Notice through this Settlement Agreement and thereby releasing Dylan’s Candybar, LLC.

On or about February 25, 2016, Englander served DRL, Dylan’s Candybar, Inc., Dylan’s Candybar, LLC and various public enforcement agencies with a “Supplemental 60-Day Notice

of Violation” (the “February 25, 2016 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on DRL’s alleged failure to warn consumers that certain ceramicware with exterior designs exposed users in the State of California to lead. To the best of the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the February 25, 2016 Notice.

1.4 Product Description

The “Products” that are covered by this Settlement Agreement are all units of *Dylan’s Candy Bar Candy House Ceramic Jar, UPC #8 42606 05544 8*, and *Dylan’s Candy Bar “Treat Jar” UPC # 8 42606 07576 7*, manufactured, imported, distributed, shipped, sold and/or offered for sale in the State of California by DRL or its affiliated entities under common ownership, including Dylan’s Candybar, LLC and Dylan’s Candybar, Inc., and all other Dylan’s Parties and Downstream Releasees as defined in Section 4.1, below.

1.5 No Admission

DRL denies all factual and legal allegations contained in the September 24, 2015 Notice and February 25, 2016 Notice, and maintains that all of the products that it has sold and/or offered for sale in the State of California, including the Products, have been and are in compliance with all federal, state, or local laws. Nothing in this Settlement Agreement shall be construed as an admission by DRL 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 DRL of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect DRL’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 the date this Settlement Agreement is signed by all Parties.

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2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD

2.1 Reformulated Products

Commencing on the Effective Date, and continuing thereafter, all of the Products manufactured, imported, distributed, shipped, sold and/or offered for sale in California by any of the Dylan's Parties (as defined in Section 4.1, below) shall be "Reformulated Products." For purposes of this Consent Judgment, Reformulated Products are products that: (a) contain no more than 90 parts per million ("ppm") lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0 microgram ("ug") of lead when a wipe is applied to all surfaces according to NIOSH Test Method No. 9100.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, DRL shall pay a total of \$5,000 in civil penalties (the "Total Civil Penalties") within five (5) business days of the Effective Date in one check made payable as follows: "Peter Englander, Client Trust Account". From the client trust account, Englander shall allocate the Total Civil Penalties according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the Total Civil Penalties paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and twenty-five percent (25%) of the Total Civil Penalties remitted to Englander. DRL shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

3.2 Reimbursement of Attorney's 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 and reporting of this agreement. DRL shall pay \$28,000 for fees and costs incurred as a result of investigating, bringing this matter to DRL's attention, and negotiating a settlement in the public interest. DRL shall tender a check payable to "The Chanler Group," within five (5) business days of the Effective Date. DRL shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

3.3 Payment Procedures

All payments pursuant to Sections 3.1 and 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

4. RELEASE OF ALL CLAIMS

4.1 Definitions

(a) "Dylan's Parties" means DRL, its parents, subsidiaries, and all other affiliated entities under substantially common ownership including but not limited to Dylan's Candybar, LLC and Dylan's Candy Bar, Inc., and all of the foregoing entities' directors, officers, employees, representatives, agents and attorneys; and

(b) "Downstream Releasees" means all entities and persons to whom any of the Dylan's Parties directly or indirectly distributes, ships, packages, or sells any and all of the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers.

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4.2 Representations

DRL represents that the sales data, product reformulation and/or knowledge of lead that it provided to Englander in negotiating this Settlement Agreement was truthful and a material factor upon which Englander relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date, Englander discovers and presents to DRL evidence demonstrating that the preceding representation was materially inaccurate, then DRL shall have 30 days to meet and confer regarding Englander's contention. In the event the 30-day meet and confer period passes without any such resolution between Englander and DRL, then Englander shall be entitled to make an appropriate motion to the Court to cure any breach of this Section 4.2 of the Settlement Agreement pursuant to Code of Civil Procedure § 664.6. The prevailing Party on the motion shall be entitled to its reasonable attorneys' fees as approved by the Court. The parties hereby stipulate and request for the Court to retain jurisdiction over the parties to enforce the settlement until the expiration of the nine (9) months following the Effective Date pursuant to Code of Civil Procedure § 664.6.

4.3 Englander's Release

This Settlement Agreement is a full, final, and binding resolution between Englander and DRL of any actual or alleged violation of Proposition 65 that was or could have been asserted by Englander on behalf of himself, as an individual (but not on behalf of the public), and any and all of his past and current agents, representatives, attorneys, successors and assignees against any and all of the Dylan's Parties and Downstream Releasees (collectively "Releasees"), arising under, based on or derivative of Proposition 65 or its implementing regulations through and including the Effective Date based on actual or alleged exposure to lead from the Products and/or failure to warn about lead in the Products, except as provided in Section 4.2 hereinabove.

In consideration of the promises and agreements contained herein, Englander on behalf of himself as an individual (but not on behalf of the public), and on behalf of any and all of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby releases,

discharges, and waives any and all rights to institute or participate in, directly or indirectly, any form of legal action and releases, discharges, and waives any and all actual or potential claims, actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees, of any nature whatsoever, whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect (collectively "Claims"), that he has or may have against any and all of the Releasees, arising under, based on, or derivative of Proposition 65 or its implementing regulations with respect to lead in the Products manufactured, distributed, shipped, sold and/or offered for sale by any and all of the Releasees through and including the Effective Date except as provided in Section 4.2 hereinabove. All Products that have been distributed, packed, shipped, or sold by any of the Dylan's Parties through and including the Effective Date of this Agreement are exempt from the provisions of Section 2.1, and are included within the scope of the release, discharge and waiver in this paragraph. The release in this Section 4.3 shall not extend upstream except as to MSRF, Inc. and Bilco International, Inc., and it shall remain limited to the Products that said upstream releasees manufactured, or otherwise procured, for the Dylan's Parties and which the Dylan's Parties then distributed, packaged, shipped, sold, and/or offered for sale. Englander further agrees to dismiss the action pending against Dylan's Candybar, LLC in Santa Clara County Superior Court entitled *Englander v. Dylan's Candybar, LLC*, Case No. 15CV288761, without prejudice within ten (10) days after the Effective Date.

4.4 DRL's Release of Englander

DRL 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 enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

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4.5 Release of Known and Unknown Claims

It is possible that other Claims not known to Englander or DRL arising out of the facts relating to the Claims released, discharged, and waived in Sections 4.3 or 4.4 will subsequently be developed or be discovered. Englander and DRL acknowledge that the Claims in this Settlement Agreement include all known and unknown Claims within the scope of the claims released, discharged, and waived in Sections 4.3 and 4.4 except as provided in Section 4.2 hereinabove, and they each waive the provisions of California Civil Code § 1542 as to any unknown Claims that may have existed prior to and including the Effective Date, except as provided in Section 4.2 hereinabove. California Civil Code § 1542 reads 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.”

Englander and DRL acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. 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 and/or lead, then DRL shall 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.

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6. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (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:

For DRL:

Dylan Lauren, C.E.O.
DRL LLC
c/o CBIZ MHM LLC
1065 Avenue of the Americas
New York, NY 10018

For Englander:

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

With a copy on behalf of DRL to:

Howard Slavitt
Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104

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.

7. COUNTERPARTS; FACSIMILE/PDF 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.

8. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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

Englander agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by a 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:

AGREED TO:

Date: 6/17/2016

Date: June 20 2016

By: 

Peter Englander

By: 

Dylan Lauren, C.E.O.
DRL LLC