

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Fastenal Company (“Fastenal”), with Englander and Fastenal 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. Fastenal 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 Fastenal manufactures, sells, and distributes for sale in California, fuel pump nozzles with vinyl/PVC covers 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 Fastenal failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the nozzle covers.

1.3 Product Description

The products covered by this Settlement Agreement are nozzle covers containing DEHP that are manufactured, sold, or distributed for sale in California by Fastenal including, but not limited to, the nozzle covers offered in connection with the following products: *Northway Fleet Supplies Fuel Control Nozzle – Automatic, Part #4133144, UPC #6 62956 33144 9; Northway[TM] FPM-12 Fuel Pump, Part #4133135; Northway[TM] FPM-24 Fuel Pump, Part #4133136; Northway[TM] FCNA/0-1/N Nozzle, Part #4133145; Great Plains Industries Inc. 3/4" Unleaded Cast Automatic Fuel*

Nozzle, Part #0401884; Great Plains Industries Inc. 3/4" Automatic Shutoff DEF Nozzle, Part #5102383; and Groz Industrial (Northway) Straight Spout Northway[TM] Automatic Fuel Nozzle with 3/4" NPT Inlet, Part #4133144 (hereinafter, "Products" or "Nozzle Covers").

1.4 Notice of Violation

On March 23, 2016, Englander served Fastenal and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Fastenal 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 Covers. 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

Fastenal 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 Fastenal 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 Fastenal of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fastenal. This Section shall not, however, diminish or otherwise affect Fastenal'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: REFORMULATED PRODUCTS

Commencing on the Effective Date and continuing thereafter, Fastenal 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.

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, Fastenal agrees to pay \$3,750 in civil penalties. Within five days of the date that this Settlement Agreement is fully executed by the Parties, Fastenal shall pay the civil penalty in the amount of \$3,750. 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. Fastenal will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$2,812.50 and (b) “Peter Englander, Client Trust Account” in the amount of \$937.50.

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, Fastenal 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 date that this Settlement Agreement is fully executed by the Parties, Fastenal agrees to pay \$21,250 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 Fastenal’s management, and negotiating a settlement that provides a significant public benefit.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to:

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 Fastenal

This Settlement Agreement is a full, final and binding resolution between Englander and Fastenal, 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 Fastenal, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fastenal 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 Fastenal 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 Fastenal 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 Fastenal's Release of Englander

Fastenal, 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.

4.3 Mutual Waiver of Unknown Claims

The Parties each acknowledge that he/it is familiar with Civil Code section 1542, 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, hereby expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on 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 that they 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 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 Fastenal 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 Fastenal:

John Milek, General Counsel
Fastenal Company
2001 Theurer Boulevard
Winona, MN 55987

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.

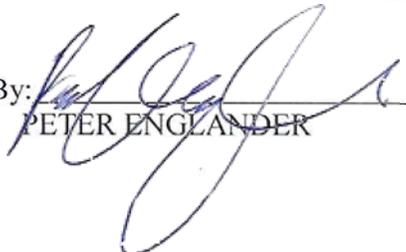
AGREED TO:

AGREED TO:

Date: 7/28/2016

Date: July 27, 2016

By:


PETER ENGLANDER

By:


Daniel L. Florness, President
FASTENAL COMPANY