

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander ("Englander") and Zagg Inc. ("Zagg"), with Englander and Zagg 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. Zagg employs ten or more individuals 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 § 25249.6 *et seq.* ("Proposition 65").

1.2 General Allegations

Englander alleges that Zagg manufactures, sells, and distributes for sale in California vinyl/PVC zipper pulls containing di(2-ethylhexyl)phthalate ("DEHP") and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement, and to which this agreement is expressly limited, are the vinyl/PVC zipper pull component of the case provided with the *ZR Six Premium Earbuds*, UPC #8 43404 09678 7 that are sold or distributed for sale in California by Zagg (hereinafter, the "Products").

1.4 Notice of Violation

On March 23, 2016, Englander served Zagg, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation ("Notice"), alleging that Zagg violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce

the violations alleged in the Notice.

1.5 No Admission

Zagg denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale 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 Zagg 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 Zagg of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Zagg. This Section shall not, however, diminish or otherwise affect Zagg'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 September 15, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Reformulation Commitment

Commencing on the Effective Date, and continuing thereafter, Zagg agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California (a) "Reformulated Products" or (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2, below. For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in each accessible component (i.e., any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

Zagg agrees that, as of the Effective Date and continuing thereafter, all Products it sells and/or distributes for sale in California that do not qualify as Reformulated Products will bear a

clear and reasonable warning pursuant to this Section.

2.2.1 General Warning Requirements

Zagg agrees that 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 the warning applies, so as to minimize the risk of consumer confusion.

2.2.2 Product Warnings

For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Zagg that contains one of the following statements:

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

Or

WARNING: This product contains a chemical known to the state of California to cause cancer and birth defects or other reproductive harm.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Zagg agrees to pay \$13,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Englander. Englander's counsel shall be responsible for delivering OEHHA's portion of any penalty payment(s) made under this Settlement Agreement.

3.1.1 Initial Civil Penalty

Within five days of the Effective Date, Zagg shall make an initial civil penalty payment of \$4,500, in a single check made payable to "Peter Englander, Client Trust Account."

3.1.2 Final Civil Penalty; Waiver

On October 30, 2016, Zagg will make a final civil penalty payment of \$9,000. Pursuant to title 11 Cal. Code Regs. § 3203(c), the final civil penalty will be waived in its entirety if, by October 15, 2016, an officer of Zagg provides Englander's counsel with a signed declaration certifying that, as of the date of the declaration, all Products sold or distributed for sale in California by Zagg are Reformulated Products and that Zagg will continue to only offer Reformulated Products in the future. Alternately, Zagg may certify that it is no longer selling or distributing the Products in California, and, if Zagg sells or distributes Products in California in the future, it will only offer Reformulated Products, in compliance with Section 2. The option to provide a declaration certifying complete reformulation in lieu of making the final civil penalty payment required by this Section is a material term and time is of the essence.

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 this Settlement Agreement had been settled. Shortly after the other settlement terms had been finalized, 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 § 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Zagg agrees to pay \$25,200 to Englander and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Zagg's management and negotiating a settlement. Zagg's payment shall be delivered 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 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 Zagg

This Settlement Agreement is a full, final, and binding resolution between Englander, on his own behalf and not on behalf of the public, and Zagg, 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 Zagg, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Zagg directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, sold or distributed for sale in California by Zagg before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Englander on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Zagg and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Zagg, before the Effective Date.

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 Zagg's Release of Englander

Zagg, on its own behalf and on behalf of its 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 by Englander and his attorneys and other representatives, whether in the course of investigating claims, otherwise 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 held 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 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Zagg 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 Zagg:

Legal Department
Zagg Inc.
910 West Legacy Center, Suite 500
Midvale, UT 84047

with a copy to:

John Epperson, Esq.
Cooper White & Cooper LLP
201 California Street, 17th Floor

San Francisco, CA 94111

For 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 § 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:

AGREED TO:

Date: 10/12/2016 _____

Date: September 15, 2016 _____

By:  _____
PETER ENGLANDER

By:  _____
Randall Hales, CEO & President
ZAGGINC.