

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and The Boelter Companies, Inc. (“Boelter”), with Englander and Boelter 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. Boelter 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 Boelter manufactures, sells, and distributes for sale in California, vinyl/PVC beverage coolies 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 Boelter failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the products.

### 1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC beverage coolies containing DEHP that are manufactured, sold, or distributed for sale in California by Boelter including, but not limited to, the *SF 49ers Officially Licensed Magna-Coolie*, UPC #0 40766 07411 2 (“Products”).

### 1.4 Notice of Violation

On October 28, 2016, Englander served Boelter and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Boelter 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 Products. 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**

Boelter 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 Boelter 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 Boelter of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Boelter. This Section shall not, however, diminish or otherwise affect Boelter'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 that this Settlement Agreement is executed by both Parties.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing thereafter, Boelter agrees to only sell, manufacture, or distribute for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing no more than 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 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, Boelter agrees to

pay \$4,500 in civil penalties. 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. Within five days of the Effective Date, Boelter shall delivery its civil penalty payment in two checks for the following amounts made payable to (a) “OEHHA” in the amount of \$3,375 and (b) “Peter Englander, Client Trust Account” in the amount of \$1,125.

### **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, Boelter 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, Boelter agrees to pay \$25,000 in the form of a check payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Boelter’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 Boelter**

This Settlement Agreement is a full, final, and binding resolution between Englander, in his individual capacity only and not on behalf of the general public, and Boelter, 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 Boelter, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Boelter 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 in Products sold or distributed for sale by Boelter 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 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, expenses, 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 Boelter 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 Boelter's Release of Englander**

Boelter, 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, 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 Boelter 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 Boelter:

Serena E. Pollack, Esq.  
The Boelter Companies, Inc.  
N22 W23685 Ridgeview Parkway  
West Waukesha, WI 53188

For Englander:

The Chanler Group  
Attn: Proposition 65 Coordinator  
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 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:**

Date: 3/15/17

By:

  
PETER ENGLANDER

**AGREED TO:**

Date: 3/15/17

By:

  
Eric Boelter, President  
THE BOELTER COMPANIES, INC.