

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Home Expressions, Inc. (“Home Expressions”), with Englander and Home Expressions 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. Home Expressions 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 Home Expressions manufactures, sells, and distributes for sale in California, vinyl/PVC toilet seats 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 Home Expressions 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 toilet seats containing DEHP that are manufactured, sold, or distributed for sale in California by Home Expressions including, but not limited to, the *Home Collections Cushioned Vinyl Toilet Seat, D1097 C4599, #400133024360, BA-9505/WHI, UPC #8 47311 00515 3* (“Products”).

1.4 Notices of Violation

On October 14, 2016, Englander served Home Expressions retail customer in California, Ross Stores, Inc., and the requisite public enforcement agencies with a 60-

Day Notice of Violation (“Notice”), alleging that Ross Stores, Inc. violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products.

On January 18, 2017, Englander served Home Expressions and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Home Expressions 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 either of the Notices.

1.5 No Admission

Home Expressions denies the material, factual, and legal allegations contained in the Notices 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 Home Expressions 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 Home Expressions of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Home Expressions. This Section shall not, however, diminish or otherwise affect Home Expressions’ 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

2.1 Reformulation

Commencing 90 days after the Effective Date and continuing thereafter, Home Expressions 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 accessible 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 for Existing Product Inventory

As of the Effective Date, to the extent it ships or sells into California any Products in its inventory as of that date, it will provide warnings on such Products that comply with Proposition 65. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the purchase. The Parties agree that product labeling stating that “**WARNING:** This product contains chemicals known to the State of California to cause birth defects or other reproductive harm” shall constitute compliance with Proposition 65 with respect to DEHP in the Products.

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, Home Expressions agrees to pay \$3,000 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 ten (10) days of the Effective Date, Home Expressions shall pay the civil penalty in two checks for the following amounts by check made payable to: (a) “OEHHA” in the amount of \$2,250 and (b) “Peter Englander, Client Trust Account” in the amount of \$750.

Englander's counsel shall be responsible for delivering OEHHA's portion of the penalty paid under this Settlement Agreement.

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, Home Expressions 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 ten (10) days of the Effective Date, Home Expressions agrees to pay \$25,000 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 Home Expressions' 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 Home Expressions

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 Home Expressions, 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 Home Expressions, its

parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Home Expressions directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers (including Ross Stores, Inc.), franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged or actual failure to warn California consumers about exposures to DEHP from Products sold or distributed for sale by Home Expressions 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 Home Expressions 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 Home Expressions’ Release of Englander

Home Expressions, 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 Public Benefit

It is Home Expressions’ position that the commitments it has agreed to herein, and actions to be taken by Home Expressions under this Settlement Agreement, confer a

significant benefit to the general public, as set forth in California Civil Procedure Code section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Home Expressions' position that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Home Expressions' or any Releasees' failure to provide a warning concerning exposure to DEHP with respect to the Products they have respectively manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Home Expressions is in material compliance with this Settlement Agreement. This Section does not constitute a release by Englander under this Settlement Agreement.

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 Home Expressions 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 Home Expressions:

Peg Carew Toledo, Esq.
Peg Carew Toledo, Law Corporation
3001 Douglas Blvd., Suite 340
Roseville, CA 95661

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.

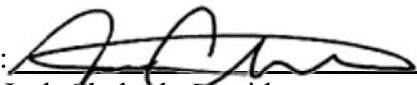
AGREED TO:

AGREED TO:

Date: August 21, 2017

Date: August 18, 2017

By: 
PETER ENGLANDER

By: 
Jack Chalouh, President
HOME EXPRESSIONS, INC.