

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and ALDI Inc. (“ALDI”), with Englander and ALDI 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 contained in consumer products. ALDI 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 section 25249.5 et seq. (“Proposition 65”).

1.2 General Allegations

Englander alleges that ALDI manufactured, imported, distributed, and/or sold in the State of California, trunk organizers with vinyl/PVC components that contain di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Englander alleges that ALDI failed to provide consumers and other individuals exposed to DEHP from the trunk organizers with vinyl/PVC components it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as trunk organizers with vinyl/PVC components containing DEHP that are manufactured, imported, purchased or offered for sale by Orbit Industries and supplied to ALDI, who sells or re-sells such products in California, including, but not limited to, the *Auto XS Car Accessories Trunk Organizer with Cooler*, #48335, #041498155988.

1.4 Notice of Violation

On May 31, 2017, Englander served ALDI, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that ALDI violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

ALDI denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold and/or offered 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 ALDI of any allegation, 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 ALDI of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ALDI. This Section shall not, however, diminish or otherwise affect ALDI’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 April 27, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing within thirty days of the Effective Date and continuing thereafter, ALDI shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are either: (a) Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by ALDI with a clear and reasonable warning pursuant to

Section 2.3.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warning

Commencing within thirty days of the Effective Date and continuing thereafter, for any Products offered for sale in California by ALDI that are not Reformulated Products, ALDI agrees to only offer such Products for sale with a clear and reasonable warning in accordance with this Section or Title 27 California Code of Regulations section 25602 and 25603. ALDI further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when 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 of purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing the following statement:



WARNING: This product can expose you to chemicals including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

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, ALDI agrees to pay a total of \$2,000 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 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Englander. ALDI will deliver its payment on or before May 1, 2018 in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Peter Englander, Client Trust Account" in the amount of \$500. Englander's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

3.2 Attorneys' 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 through the mutual execution of this agreement, ALDI shall reimburse Englander and his counsel \$13,000 to be delivered in two (2) installments according to the following schedule: (1) \$5,500 due on May 1, 2018; and (2) \$7,500 due on June 1, 2018. Each payment shall be in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Englander investigating, bringing this matter to ALDI's attention, and negotiating a settlement of the matter in the public interest.

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 ALDI

This Settlement Agreement is a full, final, and binding resolution between Englander, in his individual capacity and not on behalf of the public, and ALDI, 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, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against ALDI, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom ALDI directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date in California by ALDI, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Englander, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees

and heirs hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against ALDI 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 for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by ALDI.

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 in California.

4.2 ALDI's Release of Englander

ALDI, 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, Englander's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against ALDI 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 applied to the Products, then ALDI may provide written notice to Englander of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to the Products, to the extent that the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required by 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 ALDI:

Zac Birkey, Director Corporate Buying
ALDI Inc.
1200 North Kirk Road
Batavia, IL 60510

Meredith Oliva
Director of Legal, Corporate
ALDI Inc.
1200 North Kirk Road
Batavia, IL 60510-1477

With a copy to ALDI's Counsel:

Michael J. Boxerman
Marcus & Boxerman
20 North Clark St., Ste. 2500
Chicago, Illinois 60602

For Englander:

The Chanler Group
Attn: Prop 65 Coordinator
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 section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

11. ENFORCEMENT OF SETTLEMENT AGREEMENT

Any Party may file suit in California Superior Court to enforce the terms and conditions contained in this Settlement Agreement. The prevailing Party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

No action to enforce this Settlement Agreement, however, may be commenced or maintained unless the Party seeking enforcement notifies the other Party of the specific acts alleged to breach this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than thirty (30) days in an effort to resolve the alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Settlement Agreement.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

[SIGNATURES FOLLOW]

AGREED TO:

Date: 4/27/2018

By: 

PETER ENGLANDER

AGREED TO:

Date: 4/27/2018

By: 

ZAC BIRKEY

Director Corporate Buying
ALDI INC.