

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Control Group Companies, LLC (“Control Group”), with Englander and Control Group 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. Control Group 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 & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that Control Group manufactures, imports, distributes, sells or offers for sale in California vinyl/PVC zipper bags 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 are vinyl/PVC zipper bags containing DEHP that are manufactured, imported, distributed, sold or offered for sale in California by Control Group including, but not limited to, the *Multi-Purpose Zipper Bags by Control Group, Stock #72611B3, UPC #8 13732 01020 5* (hereinafter, “Products”).

1.4 Notice of Violation

On May 31, 2017, Englander served Control Group, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Control Group 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

Control Group denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it sold and 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 Control Group 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 Control Group of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Control Group. This Section shall not, however, diminish or otherwise affect Control Group'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 March 21, 2018.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS


Commencing on the Effective Date and continuing thereafter, Control Group agrees to only manufacture, import, distribute, sell or offer for sale, in California, Products that are either: (a) Reformulated Products as defined in Section 2.1, below; or (b) Products bearing a health hazard warning, as described specified in Section 2.2.

2.1 Reformulated Products

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 any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Product Warnings

Commencing on the Effective Date and continuing thereafter, Control Group agrees to provide clear and reasonable warnings, in accordance with this Section, for all Products sold or distributed for sale in California that do not qualify as Reformulated Products. Each warning shall be prominently placed in relation to the Product 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. For purposes of this Settlement Agreement, a clear and reasonable warning satisfying these criteria shall consist of a warning affixed directly to the packaging, labeling, or directly on each Product provided or distributed for sale in California, stating the following:

 **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

In the event that Control Group sells Products via an internet website to customers located in California, the warning requirements of this Section shall be satisfied if the foregoing warnings appear either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser prior to during the checkout process. The foregoing warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims

alleged in the Notice and referred to in this Settlement Agreement, within five days of the Effective Date, Control Group agrees to pay \$3,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty paid to Englander. Control Group shall issue its payment in two checks for the following amounts: (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 any penalty payment made 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 this Settlement Agreement had been settled. After the Parties reached an agreement as to all other settlement terms, the Parties then reached an accord on the compensation due to Englander and his counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement.

Under these legal principles, the Parties agree that Control Group shall make two, equal installment payments of \$10,000 each, for a total of \$20,000, to Englander and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Control Group’s management, and negotiating a settlement in the public interest. The first installment payment of \$10,000 shall be due within five days of the Effective Date, and the second payment of \$10,000 shall be due on or before April 20, 2018. Control Group’s payments 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 Control Group

This Settlement Agreement is a full, final, and binding resolution between Englander, on his own behalf and not on behalf of the public, and Control Group, of any violation of Proposition 65 that was or could have been asserted by Englander on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Control Group, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Control Group directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers (including, without limitation, Office Depot, Inc.), franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, distributed sold or offered for sale in California by Control Group 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 that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Control Group and Releasees including, without limitation, all actions and causes of action, 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 the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Control

Group, 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 Control Group's Release of Englander

Control Group, 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 Control Group 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 Control Group:

Jon Diplock, President
Control Group Companies, LLC
95 Dermody Street
Cranford, NJ 07016

with a copy to:

Linda G. Harvey, Esq.
Greeberg Dauber Epstein & Tucker
A Professional Corporation
One Gateway Center, Suite 600
Newark, NJ 07102

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: 4/6/2018

Date: April 5, 2018

By: 
PETER ENZLANDER

By: 
Jon Diplock, President
CONTROL GROUP COMPANIES, LLC