

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Mann & Bros., Inc. (“Mann & Bros.”), with Englander and Mann & Bros. 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. Mann & Bros. 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 Mann & Bros. manufactures, imports, distributes, sells or offers for sale in California tools with vinyl/PVC grips 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 tools with vinyl/PVC grips containing DEHP that are sold or distributed for sale in California by Mann & Bros. including, but not limited to, the *Wolverine 30 pcs. Roadside Emergency Tool and Auto Kit* (Products”).

### 1.4 Notices of Violation

On May 31, 2017, Englander served Wolverine World Wide, Inc. (“Wolverine”), the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Wolverine 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. On October 24, 2017, Englander served a Supplemental 60-Day Notice of

Violation (“Supplemental Notice”) alleging that, in addition to Wolverine, Mann & Bros. also violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. Hereinafter, the Notice and Supplemental Notice will be referred to, collectively, as the “Notices.” 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 Notices.

### **1.5 No Admission**

Mann & Bros. denies the material, factual, and legal allegations in the Notices, 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 Mann & Bros. 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 Mann & Bros. of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mann & Bros.. This Section shall not, however, diminish or otherwise affect Mann & Bros.’ 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 30, 2018.

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

Commencing on the Effective Date and continuing thereafter, Mann & Bros. shall only manufacture for sale, import for sale, sell or distribute for sale, in California, Products that are either: (a) Reformulated Products, as defined in Section 2.1, below; or (b) Products bearing one of the Proposition 65-compliant health hazard warnings, detailed in Section 2.2, below.

### **2.1 Reformulated Products Defined**


For purposes of this Consent Judgment, “Reformulated Products” are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million 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 equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## 2.2 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, Mann & Bros. shall provide clear and reasonable warnings as set forth in this section for all Products manufactured, imported, sold or distributed for sale, in California, that do not qualify as Reformulated Products. 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. For purposes of this Consent Judgment, 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 for sale in California that states:

For Products:

 **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](http://www.P65Warnings.ca.gov)

 **WARNING:** Reproductive Harm  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

## 2.3 Internet Product Warnings

In the event Mann & Bros. sells Products that do not qualify as Reformulated Products via the internet to customers located in California, the warning requirements of this Section shall be satisfied if, prior to purchase: (a) one of the foregoing warnings, described in Section 2.2, appears on the same page, in the same type size or larger than the Product description text, as the

Product; (b) a warning appears on the same web page as the price for the Product, in the same type size or larger than the Product description text; (c) a warning appears on one or more web pages displayed to the consumer prior to purchase, in the same type size or larger than the Product description text; or (d) a hyperlink, clearly marked “WARNING,” appears on the Product display page, in type large enough so that the consumer does not have to search for it, and a prominently placed warning appears elsewhere, such as on the Product description page, in a manner that clearly associates it with the Product to which the warning applies, prior to checkout or purchase.

### **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 Notices and referred to in this Settlement Agreement, within five days of the Effective Date, Mann & Bros. agrees to pay \$2,000 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. Mann & Bros. shall issue its payment in two checks for the following amounts: (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 any penalty payment made under this Settlement Agreement.

#### **3.2 Attorneys’ Fees and Costs; Installment Payments**

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 Mann & Bros. shall pay \$25,000, in three installment payments, as detailed below, to Englander and his counsel, for all fees and costs incurred in investigating, bringing this matter to the attention of Mann & Bros.’ management, and negotiating a settlement in the public interest. The first installment payment of \$9,000 shall be due within five days of the Effective Date. The remaining two installment payments shall be for \$8,000 each, and are due on or before May 30, 2018 and June 29, 2018, respectively. Mann & Bros.’ payments shall be delivered in the form of three checks 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 Mann & Bros.**

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

before the Effective Date, as alleged in the Notices. The Parties agree and acknowledge that the releases provided under this Settlement Agreement shall not extend upstream to any entity that manufactured the Products, or any components part thereof, nor to any entity that distributed or sold the Products, or any component parts thereof, to Mann & Bros.

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 Mann & Bros. 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 Mann & Bros., 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 Mann & Bros.' Release of Englander**

Mann & Bros., 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 Mann & Bros. 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 Mann & Bros.:

Jack Mann, President  
Mann & Bros., Inc.  
48 West 37<sup>th</sup> Street, 7<sup>th</sup> Floor  
New York, NY 10018

with a copy to:

Jeffrey S. Dweck, Esq.  
The Law Firm of Jeffrey S. Dweck P.C.  
43 West 33<sup>rd</sup> Street, Suite #304  
New York, NY 10001

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.

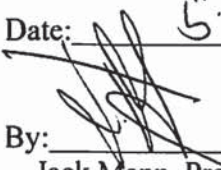
**AGREED TO:**

**AGREED TO:**

Date: 5/11/2018

Date: 5.7.2018

By:   
PETER ENGLANDER

By:   
Jack Mann, President  
MANN & BROS., INC.