

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and, Kemper Enterprises, Inc. (“Kemper”), with Englander and Kemper 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. Kemper 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 Kemper manufactured, imported, distributed, and/or sold in the State of California vinyl/PVC kitchen utensil grips 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 Kemper failed to provide consumers and other individuals exposed to DEHP from the vinyl/PVC kitchen utensil grips 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 vinyl/PVC kitchen utensil grips containing DEHP that are manufactured, sold, or distributed for sale in California by Kemper including, but not limited to, the *Kemper Dipping Tongs, DTA, UPC #7 85370 01385 9*.

1.4 Notice of Violation

On August 1, 2017, Englander served Kemper, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that Kemper 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

Kemper 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 Kemper 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 Kemper of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Kemper. This Section shall not, however, diminish or otherwise affect Kemper’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 2, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, Kemper shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are Reformulated Products as defined by Section 2.2, or Products which include a warning as provided in 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 Warning Alternative

Commencing 30 days from the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Kemper that are not Reformulated Products, Kemper will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Kemper 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 that states:

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

or

⚠ WARNING Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.

Kemper may use alternative methods of transmission specified by Title 27, Art. 6, § 25602, however, the warning language shall be one of the two options provided above.

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, Kemper agrees to pay a total of \$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 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Englander.

Kemper will deliver its payment on or before April 18, 2018 in two checks for the following amounts 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 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 in this matter. Kemper agrees to pay \$18,500 to Englander and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Kemper’s management, and negotiating a settlement that provides a significant public benefit. Kemper’s payment shall be delivered in the form of a check payable to “The Chanler Group” on or before April 18, 2018.

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 Kemper

This Settlement Agreement is a full, final, and binding resolution between Englander, in his individual capacity and not on behalf of the public, and Kemper, 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 Kemper, 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 Kemper 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 Kemper, 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 Kemper 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 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 Kemper.

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 Kemper's Release of Englander

Kemper, 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 Kemper 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 Kemper 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 Kemper:

Herbert Stampfl, President
Kemper Enterprises, Inc.
13595 12th Street
Chino, CA 91710
hstampfl@kempertools.com

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 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 45 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.

AGREED TO:

AGREED TO:

Date: 4/13/2018

Date: _____

By:  _____
PETER ENGLANDER

By: _____
HERBERT STAMPFL, PRESIDENT
KEMPER ENTERPRISES, INC.

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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.

AGREED TO:

AGREED TO:

Date: _____

Date: 4/11/2018

By: _____

By: Herbert H. Stampfl

PETER ENGLANDER

HERBERT STAMPFL, PRESIDENT
KEMPER ENTERPRISES, INC.