

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and E & A Worldwide Traders Inc. (“E & A Worldwide”), with Englander and E & A Worldwide 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. E & A Worldwide 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 E & A Worldwide manufactured, imported, distributed, and/or sold in the State of California luggage tags with vinyl/PVC straps 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 E & A Worldwide failed to provide consumers and other individuals exposed to DEHP from the luggage tags with vinyl/PVC straps 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 luggage tags with vinyl/PVC straps containing DEHP that are manufactured, sold, or distributed for sale in California by E & A Worldwide including, but not limited to, the *My Bag Luggage Tag*, UPC #7 88604 49953 5.

1.4 Notice of Violation

On October 11, 2017, Englander served E & A Worldwide, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that E & A Worldwide 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

E & A Worldwide 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 E & A Worldwide 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 E & A Worldwide of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by E & A Worldwide. This Section shall not, however, diminish or otherwise affect E & A Worldwide’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 the date on which this Settlement Agreement is executed by all parties hereto.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing on or before the date that is 120 days following the Effective Date and continuing thereafter, E & A Worldwide 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, below.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain DEHP in concentrations less than 1,000 parts per million (ppm) 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.

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, E & A Worldwide agrees to pay a total of \$2,500 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.

E & A Worldwide 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 \$1,875; and (b) “Peter Englander, Client Trust Account” in the amount of \$625. 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. E & A Worldwide agrees to pay \$16,500 to Englander and his counsel for all fees and

costs incurred investigating, bringing this matter to the attention of E & A Worldwide's management, and negotiating a settlement that provides a significant public benefit. E & A Worldwide's payment shall be delivered in two installments as follows: (a) \$7,500 in the form of a check payable to "The Chanler Group" on or before May 1, 2018; and (b) \$9,000 in the form of a check payable to "The Chanler Group" on or before June 1, 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 E & A Worldwide

This Settlement Agreement is a full, final, and binding resolution between Englander, in his individual capacity and not on behalf of the public and E & A Worldwide, 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 E & A Worldwide, 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 E & A Worldwide directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including specifically B.A.E. of New York, Inc., Tuesday Morning, Inc., Tuesday Morning Corporation, and Tuesday Morning Partners, Ltd.), 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 E & A Worldwide, 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 E & A Worldwide 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 or any other statute or the common law with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by E&A Worldwide before the Effective Date, as alleged in the Notice.

The Parties agree that compliance with the terms of this Settlement Agreement by E&A Worldwide shall be deemed compliance with Proposition 65 by Releasees with respect to any exposure to DEHP in the Covered Products manufactured, distributed or sold by E&A Worldwide after 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 in California.

4.2 E & A Worldwide’s Release of Englander

E & A Worldwide, 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 E & A Worldwide in this matter, or with respect to the Products.

4.3 Mutual Waiver of California Civil Code § 1542

The Parties each acknowledge he/it is familiar with §1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, each on his/its own behalf, and on behalf of his/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code §1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 and 4.2, above.

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 E & A Worldwide 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 E & A Worldwide:

Elan Eliav, Chief Executive Officer
E & A Worldwide Traders, Inc.
235 Little East Neck Road
West Babylon, NY 11704

with a copy to:

Trenton H. Norris
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

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 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.


AGREED TO:

Date: 3/19/2018

By: 
PETER ENGLANDER

AGREED TO:

Date: 3/16/18

By: 
ELAN ELIAV, CEO
E & A WORLDWIDE TRADERS INC.