

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Beatrice Home Fashions, Inc. (“Beatrice Home”), with Englander and Beatrice Home 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. Englander alleges that Beatrice Home 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 Beatrice Home manufactures, sells, and/or distributes for sale in California, lotion pumps with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer. Englander alleges that Beatrice Home failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to lead from its lotion pumps with exterior designs.

1.3 Product Description

The products that are covered by this Settlement Agreement are tumblers and lotion pumps with exterior designs containing lead including, but not limited to, the *Bathroom Set (Lotion Pump, Tumbler), Item 9027805-MMXVII, UPC #0 48986 71651 5*, manufactured, sold or distributed for sale in California by Beatrice Home (“Products”).

1.4 Notice of Violation

On or about August 1, 2017, Englander served Beatrice Home and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Beatrice Home violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Beatrice Home denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Beatrice Home 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 Beatrice Home of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Beatrice Home. However, this Section shall not diminish or otherwise affect Beatrice Home’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 December 5, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products that: (a) contain no more than 90 parts per million (“ppm”) (0.009%) lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance (e.g., ASTM C738-94 (2016)); *and* (b) yield no more than 1.0 microgram (“µg”) of lead when analyzed pursuant to NIOSH Test Method No. 9100.

2.2 Reformulation Commitment

As of the Effective Date, Beatrice Home shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above or carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings

Commencing on the Effective Date, Beatrice Home shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products 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.

(a) Retail Store Sales.

(i) Product Labeling. Beatrice Home shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

(b) Mail Order Catalog and Internet Sales. In the event that Beatrice Home sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Beatrice Home shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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


Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Beatrice Home may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

⚠ WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog can expose you to lead, which is known to the State of California to cause cancer, and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.


The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol

appears, Beatrice Home must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (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 during the checkout process. The following 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:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

 **WARNING:** Certain products identified with this symbol ▼ and offered for sale in this website can expose you to lead, which is known to the State of California to cause cancer, and 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, Beatrice Home shall pay a total of \$2,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code

§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander. On or before the Effective Date, Beatrice Home shall deliver the civil penalties, via wire transfer, to The Chanler Group Attorney Trust Account (“Attorney Escrow Account”). Upon receipt, Englander and his counsel will then ensure payment to OEHHA, of its portion of the civil penalty (\$1,500).

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 the agreement had been settled. Shortly after the other settlement terms had been finalized, Beatrice Home expressed a desire to resolve Englander’s fees and costs. The Parties then negotiated a resolution of 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 agreement, Beatrice Home shall reimburse Englander and his counsel \$18,000. Beatrice Home’s payment shall be delivered via wire transfer to the Attorney Escrow Account on or before the Effective Date. The reimbursement shall cover all fees and costs incurred by Englander or his attorneys investigating, bringing this matter to Beatrice Home’s attention and negotiating a settlement of the matter.

4. CLAIMS COVERED AND RELEASED

4.1 Englander’s Release of Proposition 65 Claims

Englander, acting on his own behalf, and *not* on behalf of the public, releases Beatrice Home, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Beatrice Home directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to, Rite Aid

Corporation and affiliates, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products, as set forth in the Notice.

Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities, other than Beatrice Home, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Beatrice Home.

4.2 Englander’s Individual Releases of Claims

Englander, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Beatrice Home prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Beatrice Home. Nothing in this Section affects Englander’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Beatrice Home’s Products.

4.3 Beatrice Home’s Release of Englander

Beatrice Home, on behalf of itself, 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 (or those that could have been taken or made) by Englander and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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, as to Beatrice Home specifically as a result of a statutory exemption, or as to the Products, then Beatrice Home may provide written notice to Englander of any asserted change in the law, or its applicability to Beatrice Home or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Beatrice Home or 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 Beatrice Home:

Sam Gindi, President
Beatrice Home Fashions, Inc.
151 Helen Street
South Plainfield, NJ 07080

For Englander:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

with copy to Beatrice Home's counsel:

Neil S. Goldstein, Esq.
Robinson Brog
875 Third Avenue
New York, NY 10022

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. 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:

Date: _____

By: _____
PETER ENGLANDER

AGREED TO:

Date: 12/5/17

By:  _____
Sam Gindi, President
BEATRICE HOME FASHIONS, INC.

with copy to Beatrice Home's counsel:

Neil S. Goldstein, Esq.
Robinson Brog
875 Third Avenue
New York, NY 10022

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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: 12/6/2017

Date: _____

By:  _____
PETER ENGLANDER

By: _____
Sam Gindi, President
BEATRICE HOME FASHIONS, INC.