

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Great Plains Industries, Inc. (“Great Plains”), with Englander and Great Plains 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. Great Plains 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Englander alleges that Great Plains manufactures, sells, and distributes for sale in California, vinyl/PVC fuel pump nozzle grips (“Nozzle Grips”) containing the phthalate chemical Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Englander alleges that Great Plains failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Nozzle Grips.

1.3 Product Description

The products covered by this Settlement Agreement are Nozzle Grips containing DEHP that are manufactured, sold or distributed for sale in California by Great Plains, including, but not limited to, the Nozzle Grips offered in connection with the *Nozzle, Auto 3/4” NPT, UNLD, UL, POP, P/N: 110121-8, UPC #0 31401 10121 8*. As used herein, “Products” refers to nozzle grips.

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1.4 Notice of Violation

On December 1, 2015, Englander served Great Plains and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Great Plains violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Nozzle Grips. 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

Great Plains 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 Great Plains 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 Great Plains of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Great Plains. This Section shall not, however, diminish or otherwise affect Great Plains’ 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 29, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on May 1, 2016 and continuing thereafter, Great Plains agrees that any Products it manufactures for sale or purchases for sale in or into California will be, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

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, Great Plains agrees to pay \$10,000 in civil penalties. Within five days of the Effective Date, Great Plains shall pay the civil penalty in the amount of \$10,000. 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 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Englander, and delivered to the address in Section 3.3 herein. Great Plains will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$7,500 and (b) “Peter Englander, Client Trust Account” in the amount of \$2,500.

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 reached, Great Plains expressed a desire to resolve Englander’s 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. Under these legal principles, within five days of the Effective Date, Great Plains agrees to pay \$24,000 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating,

bringing this matter to the attention of Great Plains' management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

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 Great Plains

This Settlement Agreement is a full, final and binding resolution between Englander and Great Plains, 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, representatives, attorneys, successors, and assignees, against Great Plains, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Great Plains directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Great Plains in California before the Effective Date.

In further consideration of the promises and agreements herein, Englander, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all 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 exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Great Plains before the Effective Date. The releases provided by Englander under this Settlement Agreement are provided solely on Englander's own behalf and not on behalf of the public in California.

4.2 Great Plains' Release of Englander

Great Plains, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or 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, 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 deemed 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Great Plains 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 Great Plains:

Victor Lukic, President
Great Plains Industries, Inc.
5252 East 36th Street North
Wichita, KS 67220

For Englander:

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

With a copy to:

Bruce Nye
Adams, Nye & Becht LLP
222 Kearny Street
7th Floor
San Francisco, CA 94108

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.

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11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

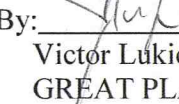
AGREED TO:

AGREED TO:

Date: 4/21/2016

Date: 4. 26. 16

By: 
PETER ENGLANDER

By: 
Victor Lukic, President
GREAT PLAINS INDUSTRIES, INC.