

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Peter Englander and Racing Products Group, Inc.**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Peter Englander (“Englander”) and Racing Products Group, Inc. (“Racing Products”) with Englander and Racing Products each referred to individually as a “Party” and collectively referred to as the “Parties.” Englander is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products. Racing Products 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 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Englander alleges that Racing Products manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Englander alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are tire pressure gauges with tubing containing DEHP including, but not limited to, *Longacre Racing Products Basic 2” GID Tire Gauge, LON52024, #512060-407* that are manufactured, imported, distributed, sold and/or offered for sale by Racing Products in the State of California, hereinafter the “Products.”

#### **1.4 Notice of Violation**

On or about October 14, 2016, Englander served Racing Products, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Racing Products violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

#### **1.5 No Admission**

Racing Products denies the material, factual and legal allegations contained in the Notice and maintains that all of the products that it has sold and/or 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 Racing Products of any fact, finding, conclusion of law, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Racing Products of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Racing Products’ obligations, responsibilities and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 19, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products containing DEHP in concentrations at or 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 any other methodology utilized by federal or state government agencies for the purpose of determining the DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date, all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by Racing Products shall be Products that qualify as Reformulated Products as defined in Section 2.1, or shall carry appropriate health hazard warnings per section 2.3, below.

## **2.3 Product Warnings**

Commencing on or before the Effective Date, Racing Products 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.** Racing Products 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 contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

**⚠ WARNING:** This product can expose you to di(2-ethylhexyl)phthalate, 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](http://www.P65Warnings.ca.gov).

Or:


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

**(ii) Point-of-Sale Warnings.** Alternatively, Racing Products may provide warning signs in the form below to its customers in California with instructions to post the

warnings in close proximity to the point of display of the Products. Such instruction sent to Racing Products' customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or:


 **WARNING:** This product can expose you to di(2-ethylhexyl)phthalate, 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](http://www.P65Warnings.ca.gov).

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used.<sup>1</sup>

WARNING: The following products contain DEHP, a phthalate chemical, known to the State of California to cause birth defects and other reproductive harm:

*[list products for which warning is required]*

Or:

 **WARNING:** The following products can expose you to di(2-ethylhexyl)phthalate, 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](http://www.P65Warnings.ca.gov).

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that Racing Products sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Racing Products 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


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<sup>1</sup>For purposes of this Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.


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 contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

 **WARNING:** This product can expose you to di(2-ethylhexyl)phthalate, 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](http://www.P65Warnings.ca.gov).


Or:

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

**(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 contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

 **WARNING:** This product can expose you to di(2-ethylhexyl)phthalate, 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](http://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: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

**⚠ WARNING:** This product can expose you to di(2-ethylhexyl)phthalate, 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](http://www.P65Warnings.ca.gov).

Or:

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

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, Racing Products shall pay \$2,000 in civil penalties in accordance with this Section. Englander agrees that these civil penalties completely satisfy the requirements of Health & Safety Code 25249.7(b)(2) pertaining to Products manufactured prior to the Effective Date. Each penalty payment will be allocated in accordance with California Health & Safety Code sections 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 paid to Englander. Within five (5) days of the Effective Date, Racing Products shall issue a check payable to “Peter Englander, Client Trust Account” in the amount of \$500, and a check made payable to “OEHHA” in the amount of \$1,500, delivered to the address in Section 3.3 below. Englander’s counsel shall have sole responsibility for remitting the proper portion of Racing Products penalty payment(s) under this Settlement Agreement to OEHHA.

#### **3.2 Reimbursement of 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. 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 section 1021.5. For all work performed through the mutual execution of this

agreement and the Court's approval of the same, but exclusive of fees and costs on appeal, if any, Racing Products shall reimburse Englander and his counsel \$15,500. Racing Products' payment shall be delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group" within five (5) business days of the effective date. The reimbursement shall cover all fees and costs incurred by Englander investigating, bringing this matter to Racing Products' attention and negotiating a settlement of the matter in the public interest.

**3.3 Payment Address**

All payments required by 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 Proposition 65 Claims**

Englander, acting on his own behalf and *not* on behalf of the public, releases Racing Products and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (collectively, "Releasees") and each entity to whom Racing Products directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by Racing Products prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by Racing Products with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by Racing Products after the Effective Date. The Parties further understand and agree that this Section 4.1 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 Racing Products, provided, however, that Englander does hereby release Kuriyama Canada, Inc. and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (“Kuriyama”) for any violations arising under Proposition 65 for unwarned exposures with respect to the Products offered for sale in, sold in or distributed in California by Racing Products prior to the Effective Date.

#### **4.2 Englander’s Individual Release of Claims**

Englander, in his individual capacity only and *not* in his representative capacity, provides a release to Racing Products, Releasees, and Downstream Releasees 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 DEHP in Products manufactured, imported, distributed or sold by Racing Products 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 Racing Products, other than Kuriyama, whose release shall be limited to the Products offered for sale in California by Racing Products prior to the Effective Date. Nothing in this Section affects Englander’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Racing Products’ Products.

#### **4.3 Racing Products’ Release of Englander**

Racing Products, 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 (or those that could have been taken or made) by Englander and his attorneys and other



representatives 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 are 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Racing Products may provide Englander with written notice 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. Nothing in this Settlement Agreement shall be interpreted to relieve Racing Products from its obligation to comply with any pertinent state or federal law or regulation.

**7. NOTICE**

Unless specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by the other Party at the following addresses:

For Racing Products:

Harry Jaynes, CEO  
Racing Products Group, Inc.  
16892 146th Street SE  
Monroe, WA 98272

For Englander:

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

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**10. MODIFICATION**

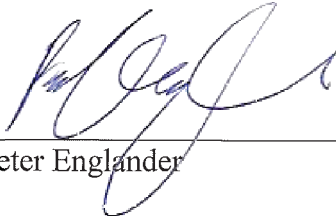
This Settlement Agreement may be modified only by a written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective clients and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

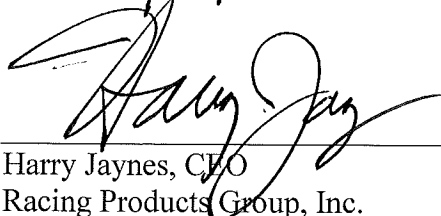
**AGREED TO:**

Date: 5/23/17

By:   
Peter Englander

**AGREED TO:**

Date: 5/16/17

By:   
Harry Jaynes, CEO  
Racing Products Group, Inc.