

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Paul Wozniak and Invacare Corporation**

This Settlement Agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and Invacare Corporation, and its subsidiaries and affiliated entities under common ownership, including The Aftermarket Group (TAG) (collectively “Invacare”) with Wozniak and Invacare collectively referred to as the “Parties.” Wozniak is an individual residing in 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. Invacare 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 §§ 25249.5 *et seq.* (Proposition 65).

### **1.2 General Allegations**

Wozniak alleges that Invacare manufactures, imports, sells and/or distributes for sale in California, upholstery on certain wheelchairs and their accessory parts such as legrest, armrest and calf pads that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Wozniak alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are wheelchairs and wheelchair components containing DEHP including, but not limited to, upholstered components such as seats, cushions and backs, leg rests, and armrests and calf pads, including, but not limited to, Invacare *Wheelchair Elevating Leg rests Model/Ref T94HCP, Full Length Armrest – 8881091686U67, Legrest Calf Pad – 8881091819U550, The Aftermarket Group Armrest –*

*Model/Ref AC015358*, each manufactured, imported, or purchased for resale by Invacare and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

#### **1.4 Notices of Violation**

On or about January 7, 2020, Wozniak served Invacare and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Invacare 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 the allegations set forth in the Notice.

On or about April 24, 2020, Wozniak served Invacare and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation and on or about June 8, 2020 Wozniak served Invacare with a Second Supplemental 60-Day Notice of Violation (Supplemental Notices) that arguably expanded so as to include additional downstream sellers of the same vinyl materials used on aspects of wheelchairs such as armrests, seats, cushions and backs, alleging that Invacare violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. Wozniak’s previous Notice and this Settlement Agreement shall be deemed to include the arguably potential claims expanded by the Supplemental Notices if no public enforcer has yet commenced and is diligently prosecuting the allegations set forth in the Supplemental Notices during the requisite waiting period.

#### **1.5 No Admission**

Invacare denies the material, factual and legal allegations contained in the Notice and Supplemental Notices and maintains that all 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 Invacare of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Invacare of any fact, finding, conclusion, issue of law or

violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean June 25, 2020.

**2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

**2.1 Injunctive Relief**

In the event Invacare proceeds with the option to reformulate, commencing on September 2, 2020 (“Compliance Date”), and continuing thereafter, Invacare shall only manufacture for sale, import for sale, and purchase for resale in California Products that are Reformulated Products as defined by Section 2.2. Any Products, that are not Reformulated Products as defined by Section 2.2, which Invacare sells, ships for sale, or distributes for sale to customers or consumers in California after the Compliance Date, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, in addition to direct sales to customers after the Compliance Date, Invacare sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Invacare shall also provide warnings for such Products by identifying the specific Product to which the warning applies as set forth in Sections 2.5 through 2.6. Section 2 shall not apply for Products that have already entered the stream of commerce prior to the Compliance Date.

**2.2 Invacare’s Future Efforts to Reformulate**

**2.2.1 Reformulation**

In addition to the obligation to warn under Section 2.3, Invacare represents it has begun reviewing the option to reformulate under Section 2.2 to meet a concentration limit of 1000 parts per million (0.1%) for DEHP in all accessible components of the Products manufactured, imported or sold in California on and after the Compliance Date subject to commercial feasibility. For purposes of this Section 2.2, commercial feasibility refers to the following material factors: (1) the availability of other materials that do not

incorporate other substances regulated under Proposition 65 (“New Materials”); (2) performance characteristics, including efficacy, durability, and stability, of any New Materials or the resulting product; (3) the availability and reliability of the supply of New Materials; and (4) whether there are any material cost considerations for the use of New Materials. If Invacare’s reasonable efforts lead to the commercial feasibility to meet the reformulation standard referenced in Section 2.2.2 for a subset of Products, Invacare may elect to reformulate such products.

### **2.2.2 Reformulation Standards**


Reformulated Products are those Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001-09.3 or CPSC-CH-C1001-09.4 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance. Invacare may rely on its suppliers’ test results performed in compliance with the requirements of this section so long as performed by a certified laboratory in the United States or an internationally recognized laboratory outside of the United State such as Intertek, SGS, Eurofins or TuV which is accredited by the State of California, a federal agency, the National Environmental Laboratory Accreditation Program or similar nationally recognized accrediting organization as set forth in 27 CCR section 25900 (a)(3) for detecting the presence of DEHP through the methods set forth above in this subparagraph 2.2.2.

### **2.3 Clear and Reasonable Warnings**


Commencing after the Compliance Date, Invacare shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers in

California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) **Warning.** The warning shall consist of the following statement (Warning):

 **WARNING:** This product can expose you to 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](http://www.P65Warnings.ca.gov).

(b) **Short-Form Warning.** Invacare may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning) instead of the Warning described in 2.3(a), and subject to the additional requirements in Sections 2.5 and 2.6 as follows:

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

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

#### **2.4 Product Warnings**

Invacare shall affix a warning to the Product label or otherwise directly applied to the Product, provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the

product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

### **2.5 Mail Order Catalog Warnings**

In the event that, after the Compliance Date, Invacare prints new catalogs and sells Products, via mail order through such catalogs to customers located in California, Invacare shall provide a warning for each Product both on the Product label in accordance with Section 2.4 and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

### **2.6 Internet Warnings**

If, after the Compliance Date, Invacare sells Products, via the internet to customers located in California, Invacare shall provide warnings for each Product both on the product label in accordance with section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “warning” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If warning is provided using the short-form warning label content pursuant to section 25602(a)(4), the warning provided on the website may use the same content. The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point font.

### **3. CIVIL PENALTY PAYMENTS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice and Supplemental Notices or referred to in this Settlement Agreement, Invacare agrees to pay a civil penalty of \$30,000. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (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 Wozniak. Invacare shall provide two checks made payable to: (a) “OEHHA” in the amount of \$22,500; and (b) “Paul Wozniak” in the amount of \$7,500 delivered on or before July 3, 2020. Thereafter, Wozniak’s counsel shall send OEHHA’s portion of the penalties paid by Invacare to OEHHA.

Invacare will deliver all of its civil penalty payments to the address in Section 3.4 by overnight courier, with a tracking number, such that payments are received by Wozniak’s counsel on July 3, 2020.

#### **3.2 Reimbursement of Attorneys’ Fees and Costs**

The Parties acknowledge that Wozniak 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, Invacare expressed a desire to resolve Wozniak’s fees and costs. The Parties then negotiated a resolution of the compensation due to Wozniak’s 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 and through the required future acts to be pursued such as reporting requirements and allocating fines to OEHHA and Wozniak, Invacare shall reimburse Wozniak’s counsel \$69,500. Invacare will deliver its payment to the address in Section 3.4 by overnight courier, with a tracking number, such that payment is received by Wozniak’s counsel on or before July 3, 2020, in the form of a check payable to “Chanler, LLC.” The reimbursement

shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to Invacare's attention and negotiating a settlement of the matter.

### **3.3 Payment Address**

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

Chanler, LLC  
Attn: Proposition 65 Controller  
72 Huckleberry Hill Road  
New Canaan, CT 06840

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Wozniak's Release of Invacare**

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and not on behalf of the public but yet furthers its health interest, and Invacare, of any violation of Proposition 65 that was or could have been asserted by Wozniak on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Invacare, its parents, subsidiaries, affiliated entities under common ownership, and their respective directors, officers, employees, attorneys, and each entity to whom Invacare directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, dealers, providers, wholesalers, customers, retailers (including but not limited to Amazon, Inc., Vitality Medical, Inc., 2<sup>nd</sup> Phoenix, Inc., Alvery International, LLC, MonsterScooters.com and SB Medical/Mobility Equipment), franchisees, cooperative members, companies that had a role in assembling the Products or supplying any component parts thereof and downstream distributors and dealers who sold the Products or any component parts thereof to other entities, The Aftermarket Group (a/k/a TAG), and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Invacare or any of the Releasees in California before the Compliance Date, as alleged in the Notice and Supplemental Notices.



In further consideration of the promises and agreements herein contained, Wozniak as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Wozniak's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Wozniak may have, including, without limitation, all actions, and causes of action, in law or in equity, 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 DEHP in the Products, as alleged in the Notice and Supplemental Notices, manufactured, distributed, sold and/or offered for sale by Invacare or any of the Releasees, before the Compliance Date (collectively, Claims), against Invacare and Releasees.

#### **4.2 Invacare's Release of Wozniak**

Invacare, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Wozniak 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 Wozniak 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 under the Notice and Supplemental Notices.

#### **5. SEVERABILITY**

If, after Invacare has fulfilled its responsibilities under Section 3, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court of competent jurisdiction 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 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of

this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Invacare 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 Invacare from any obligation to comply with any pertinent state or federal law.

**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered; (b) sent by first-class (registered or certified mail) return receipt requested; or (c) sent by overnight courier, to one party by the other party at the following addresses:

For Invacare:

Legal Dept.  
Invacare Corporation  
One Invacare Way  
Elyria, OH 44035

With a Copy to:

Garth N. Ward, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
701 B Street  
Suite 1900  
San Diego, CA 92101

For Wozniak:

Proposition 65 Coordinator  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840

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)**

Wozniak 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 and have read, understood and agreed to all of the terms and conditions contained herein.

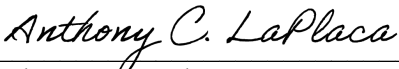
**AGREED TO:**

**AGREED TO:**

Date: June 25, 2020

Date: June 25, 2020

By:   
Paul Wozniak

By:   
Anthony C. LaPlaca, SVP & General Counsel  
Invacare Corporation