

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Peter Englander and Bicycle Tools Incorporated

This Settlement Agreement (Settlement Agreement) is entered into by and between Peter Englander (Englander) and Bicycle Tools Incorporated (Bicycle) with Englander and Bicycle collectively referred to as the “Parties.” Englander 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. Bicycle 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

Englander alleges that Bicycle manufactures, imports, sells and/or distributes for sale in California, gloves with vinyl/PVC components that contain 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 cancer, birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are gloves with vinyl/PVC components containing DEHP including, but not limited to, the *Park Tool Glove, GLV-1, UPC #7 63477 00360 7* that are manufactured, imported, distributed, sold and/or offered for sale by Bicycle in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about August 1, 2017, Englander served Bicycle and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Bicycle 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.

1.5 No Admission

Bicycle denies the material, factual and legal allegations contained in the Notice 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 Bicycle 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 Bicycle 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 August 27, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are 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 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.

2.2 Reformulation Commitment

As of the Effective Date, Bicycle 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 appropriate health hazard warnings per section 2.3, below.

2.3 Product Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Bicycle Tools that are not Reformulated Products, Bicycle Tools will only offer such Products with a clear and reasonable warning in accordance with this Section and/or Title 27 California Code of Regulations section 25600, et seq., as amended from time to time. The Parties agree that the warning specifications in this Settlement Agreement comply with Proposition 65 and its regulations as of the date of this Agreement and with regulations adopted on or about August 30, 2016 and which become effective August 30, 2018. Bicycle Tools agrees that the warning will be prominently placed with such conspicuousness when 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. For purposes of this Settlement Agreement, a clear and reasonable warning shall consist of a warning affixed to or printed on the packaging, label, tag, or directly to a Product sold in California.

(b) Retail Store Sales. Bicycle shall affix a warning to the packaging, label, or directly on each Product provided for sale in retail outlets in California that states:

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

(b) Internet Sales. As of the Effective Date, 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 which a Product is displayed; (b) on the same web page as the order form for the

Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a California 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.

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

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, Bicycle agrees to pay a total of \$3,200 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.

Bicycle will deliver its payment on or before September 1, 2018, in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$2,400; and (b) "Peter Englander, Client Trust Account" in the amount of \$800. Englander's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement to OEHHA. Bicycle Tools shall issue three separate 1099 forms to OEHHA, Englander and The Chanler Group for the respective amount paid to each under this agreement.

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. Shortly after the other settlement terms had been finalized, Bicycle 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, Bicycle shall reimburse Englander and his counsel \$25,000. Bicycle's payment shall be delivered to the address in Section 3.3, on or before September 1, 2018, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Englander investigating, bringing this matter to Bicycle'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:

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 Bicycle

This Settlement Agreement is a full, final and binding resolution between Englander, as an individual and *not* on behalf of the public, and Bicycle, of any violation of Proposition 65 that was or could have been asserted by Englander on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Bicycle, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Bicycle directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, 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 Bicycle in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Englander 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 Englander's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Englander 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, manufactured, distributed, sold and/or offered for sale by Bicycle, before the Effective Date (collectively, Claims), against Bicycle and Releasees.

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 Bicycle. Nothing in this Section affects Englander's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Bicycle's Products.

4.2 Bicycle's Release of Englander

Bicycle, 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 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 Bicycle shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Bicycle from any obligation to comply with any pertinent state or federal toxics control law.

7. **NOTICE**

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

For Bicycle:

Eric Hawkins, President
Bicycle Tools Incorporated
5115 Hadley Avenue North
Saint Paul, MN 55128

With a Copy to:

Paul R. Smith, Esq.
Larkin Hoffman
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437-1060

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**

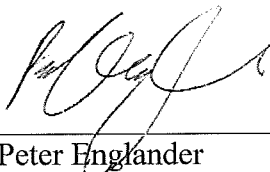
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

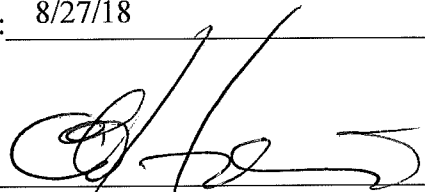
AGREED TO:

AGREED TO:

Date: 8/27/18 _____

Date: 8/27/18 _____

By:  _____
Peter Englander

By:  _____
Eric Hawkins, President
Bicycle Tools Incorporated