

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and between plaintiff Motorcycle Safety Foundation, Inc. (“MSF”), and defendants Stephen Garets (in his personal capacity and his official capacity as Director of Team Oregon Motorcycle Safety Program) and Dr. Edward Ray (in his official capacity as President of Oregon State University) (collectively, “DEFENDANTS”). MSF and DEFENDANTS are referred to herein as the “Parties,” and each, individually, is referred to herein as a “Party.”

RECITALS

WHEREAS, MSF has copyrighted and published motorcycle safety training curricula, including, but not limited to, all components of *Motorcycle RiderCourse: Riding and Street Skills* (“MRC:RSS”), *Basic RiderCourse*SM (“BRC”) and *Experienced RiderCourse*SM *Suite* (“ERC”) (collectively, the “MSF WORKS”);

WHEREAS, Oregon State University d/b/a Team Oregon Motorcycle Safety Program (“OSU”), has copyrighted, on behalf of the State of Oregon, acting by and through the State Board of Higher Education, and published the following motorcycle safety training curricula: *Basic Rider Training* (“BRT”), *Intermediate Rider Training* (“IRT”), *Rider Skills Practice* (“RSP”), *Advanced Rider Training* (“ART”), and *Advanced Motor Training* (“AMT”) (collectively, together with any revised versions thereof, the “TEAM OREGON WORKS”);

WHEREAS, on December 14, 2006, MSF filed a copyright infringement lawsuit against DEFENDANTS, styled *Motorcycle Safety Foundation, Inc. v. Oregon State University, et al.*, Case No. SACV06-1209 JVS (RNBx), in the United States District Court for the Central District of California (the “COPYRIGHT LITIGATION”);

WHEREAS, Defendant Stephen Garets is the Director of Team Oregon Motorcycle Safety Program and was sued in his official and personal capacities;

WHEREAS, Defendant Dr. Edward Ray is the President of Oregon State University and was sued in his official capacity;

WHEREAS, MSF alleges in the COPYRIGHT LITIGATION that: (1) the TEAM OREGON WORKS infringe on MSF's copyrights in the MSF WORKS, including, but not limited to, verbatim copying of text, graphics, and layout; (2) OSU markets and/or distributes the TEAM OREGON WORKS to persons and program providers outside of Oregon, thereby exporting the misappropriated materials to others; and (3) that DEFENDANTS need permission or a license from MSF in order to lawfully publish the TEAM OREGON WORKS;

WHEREAS, DEFENDANTS deny the allegations asserted by MSF in the COPYRIGHT LITIGATION and assert various affirmative defenses, and DEFENDANTS specifically deny that the TEAM OREGON WORKS incorporate MSF's copyrighted content, that they misappropriated MSF materials; or that they want or need permission or a license from MSF in order to lawfully publish the TEAM OREGON WORKS;

WHEREAS, in order to avoid the expense, consumption of time, and disruption that would result from continued litigation, and without making any admissions of any kind, except as expressly stated herein and subject to the executory provisions of this Agreement, MSF and DEFENDANTS desire to settle and fully and finally resolve all claims among and between them, whether known or unknown, suspected or unsuspected, arising under and related to the COPYRIGHT LITIGATION.

SETTLEMENT TERMS

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and other undertakings herein, and for other good and valuable consideration, the adequacy and receipt of which consideration is hereby acknowledged, the Parties agree as follows:

1. The Recitals above are true and correct and form a basis for this Agreement.

2. DEFENDANTS acknowledge that MSF has protectable claims of copyright in its motorcycle safety training curricula, including, but not limited to, *MRC:RSS*, *BRC*, and *ERC*. MSF acknowledges that OSU, on behalf of the State of Oregon, by and through the State Board of Higher Education, has protectable claims of copyright in its motorcycle safety training curricula, the *BRT*, *IRT*, *RSP*, *ART*, and *AMT*.

3. MSF hereby grants OSU a non-exclusive, non-transferrable, and non-assignable license, not subject to sub-license, to incorporate the MSF WORKS in the TEAM OREGON WORKS in the State of Oregon for use exclusively within the State of Oregon.

4. OSU will include the following statement on the page reserved for copyright statements in all TEAM OREGON WORKS printed after May 21, 2008: "The Team Oregon Motorcycle Safety Program has been granted a license to incorporate the Motorcycle Safety Foundation's copyrighted materials in this publication."

5.1. DEFENDANTS will not market and/or distribute any of the TEAM OREGON WORKS outside the State of Oregon. DEFENDANTS will not grant permission for anyone else to market and/or distribute the TEAM OREGON WORKS outside the State of Oregon; provided, however, DEFENDANTS are under no obligation to pursue legal action against anyone who markets and/or distributes the TEAM OREGON WORKS outside the State of Oregon.

5.2. From time to time, DEFENDANTS receive requests for the TEAM OREGON WORKS, including, but not limited to, public records requests made pursuant to Oregon Revised Statutes Chapter 192. DEFENDANTS acknowledge that Oregon law entitles copyright holders, such as DEFENDANTS, to withhold their consent to produce copyrighted materials in response to any such requests. DEFENDANTS agree to withhold their consent to produce the TEAM OREGON WORKS, but may permit inspection only, and will not allow any copies to be made, unless DEFENDANTS are otherwise ordered to do so by a court of law. Notwithstanding any other provision of this agreement, DEFENDANTS are not restricted in copying and distributing the TEAM OREGON WORKS as part of the Team Oregon Motorcycle Safety Program in the State of Oregon, and DEFENDANTS are not restricted in copying and distributing the TEAM OREGON WORKS in response to requests from within Oregon, so long as the requesters affirm that they are Oregon residents, and that they intend to use the materials only in Oregon and will not distribute the materials outside of Oregon.

6. In consideration of the promises contained in this Agreement, and effective upon this Agreement becoming effective, each of the Parties to this Agreement hereby releases, remises, acquits and forever discharges each other Party and each other Party's respective predecessors, successors, affiliates, subsidiaries, parents, divisions, partnerships and joint ventures, and all of the foregoing persons' and entities' respective past, present and future associates, representatives, owners, members, managers, estates, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, executors, partners, principals, trustees, directors, officers, employees, committee members, spouses, attorneys, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing, from any and all claims (including without limitation all rights and claims for fraud or misrepresentation,

or pursuant to any applicable statute, case law, and/or doctrine), debts, duties, benefits, costs, expenses, judgments, settlements, actions, causes of action, demands, obligations, liabilities, promises, acts, agreements, rights, damages (including, but not limited to, compensatory, contractual, bad faith, punitive, exemplary, statutory or extra-contractual damages, or any other damages), losses, attorneys' fees, or other relief of any kind or character, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether at law or in equity, which the Party now has or may hereafter acquire by reason of, in connection with, based on, arising out of, related to, or in any way involving the subject matter of the COPYRIGHT LITIGATION.

7. Within 10 days after this Agreement becomes effective, MSF will file a Request to dismiss with prejudice the COPYRIGHT LITIGATION pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, with all parties to bear their own attorneys' fees and costs in the COPYRIGHT LITIGATION.

8. Notwithstanding any statute or provision of the common law which provides that a general release does not extend to claims which a releasor does not know or suspect to exist at the time of executing the release, the releases provided for in Paragraph 6 shall be deemed to constitute full releases in accordance with their terms. The Parties each acknowledge that they have been informed of and are familiar with the provisions of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties each knowingly, voluntarily and expressly waive, to the fullest extent permitted by law, any and all rights and benefits they may have under Section 1542 or any other state statute,

law, or common law principle of similar effect, that would limit the effect of the foregoing releases based upon the Parties' knowledge at the time they execute this Agreement. The Parties each understand the provisions of this paragraph and knowingly and voluntarily enter into this waiver with the intention of releasing and discharging each other and their respective Related Persons from any and all present and future, foreseen and unforeseen, known and unknown claims and causes of action as provided in Paragraph 6 of this Agreement. Each of the Parties acknowledges and agrees that this waiver is an essential and material term of this Agreement, and that, without such waiver, the Agreement would not have been entered into.

9. The Parties understand and agree that entry into this Agreement shall not constitute or be construed as an admission of liability by any Party to any person or entity. This Agreement, each of its provisions, any prior drafts thereof, any negotiations, proceedings, or agreements relating to it and any matter arising in connection with such negotiations, proceedings or agreements shall not be offered or received in evidence in any litigation other than litigation brought to enforce the terms of this Agreement.

10. MSF agrees and covenants that it will not make any statement, written or verbal, that disparages DEFENDANTS. DEFENDANTS agree and covenant that they will not make any statement, written or verbal, that disparages MSF.

11. Each of the Parties hereto represents and warrants that the person executing this Agreement on behalf of that Party is of legal age, legally competent, and duly authorized to enter into this Agreement and to give the releases contained herein on behalf of that Party, individually and/or in his representative capacity, as applicable. Each Party agrees to execute all documents and to do all things necessary to effectuate the terms of this Agreement. To the extent applicable, each Party represents and warrants that the making and performance of this

Agreement will not violate its respective articles of incorporation, charter, by-laws, or other binding document.

12. This Agreement is made and executed by each of the Parties hereto with the advice of his or its own counsel, and the terms hereof are voluntarily accepted by each Party, after obtaining such advice and counsel. No Party has been coerced or induced to enter into this Agreement by any improper action by any other Party.

13. There are no third-party beneficiaries to this Agreement.

14. In the event any of the provisions of this Agreement are deemed to be invalid and/or unenforceable, those provisions shall be severed from the remainder of this Agreement only if and to the extent agreed upon by all the Parties in writing.

15. The Parties have each had an opportunity to negotiate this Agreement at arms length. Thus, this Agreement shall not be interpreted or construed as if any Party has unilaterally prepared it and imposed its terms on any other Party, but rather shall be construed as if all Parties participated in its negotiation and preparation. Accordingly, no uncertainty or ambiguity shall be interpreted against any one Party.

16. This Agreement constitutes the entire agreement between and among the Parties respecting the matters addressed herein and supersedes all prior oral or written agreements, and negotiations with respect to the matters provided for herein. This Agreement shall not be modified, altered or changed except by an instrument in writing, signed by the Party against whom enforcement of the amendment, alteration, or modification is sought.

17. This Agreement may be signed by each signatory on a separate page which does not contain the signatures of all other Parties; however, the separate pages on which a Party's signature appears shall be the signature page for that Party signing. A copy of this Agreement

shall be considered a complete document if it contains the separately signed signature pages of each Party required to sign. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on the Parties.

18. Each of the Parties shall bear his or its own legal fees and costs; no Party shall claim any of his or its own legal fees or costs from any other. Any such claims by one Party against another are hereby waived, given up and released.

IN WITNESS WHEREOF, each of the undersigned Parties has caused this Agreement to be duly executed on its behalf, to be effective as set forth in this Agreement.

MOTORCYCLE SAFETY FOUNDATION,
INC.

STEPHEN GARETS, IN HIS PERSONAL
CAPACITY AND HIS OFFICIAL CAPACITY
AS DIRECTOR OF TEAM OREGON
MOTORCYCLE SAFETY PROGRAM

By: _____
Tim Buche, its President



Dated _____

Dated: 12/17/08

DR. EDWARD RAY, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF OREGON
STATE UNIVERSITY



Dated: 12/15/08

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This Settlement Agreement (the “Agreement”) is entered into by and between plaintiff Motorcycle Safety Foundation, Inc. (“MSF”), and defendants Stephen Garets (in his personal capacity and his official capacity as Director of Team Oregon Motorcycle Safety Program) and Dr. Edward Ray (in his official capacity as President of Oregon State University) (collectively, “DEFENDANTS”). MSF and DEFENDANTS are referred to herein as the “Parties,” and each, individually, is referred to herein as a “Party.”

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WHEREAS, DEFENDANTS deny the allegations asserted by MSF in the COPYRIGHT LITIGATION and assert various affirmative defenses, and DEFENDANTS specifically deny that the TEAM OREGON WORKS incorporate MSF's copyrighted content, that they misappropriated MSF materials; or that they want or need permission or a license from MSF in order to lawfully publish the TEAM OREGON WORKS;

WHEREAS, in order to avoid the expense, consumption of time, and disruption that would result from continued litigation, and without making any admissions of any kind, except as expressly stated herein and subject to the executory provisions of this Agreement, MSF and DEFENDANTS desire to settle and fully and finally resolve all claims among and between them, whether known or unknown, suspected or unsuspected, arising under and related to the COPYRIGHT LITIGATION.

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6. In consideration of the promises contained in this Agreement, and effective upon this Agreement becoming effective, each of the Parties to this Agreement hereby releases, remises, acquits and forever discharges each other Party and each other Party's respective predecessors, successors, affiliates, subsidiaries, parents, divisions, partnerships and joint ventures, and all of the foregoing persons' and entities' respective past, present and future associates, representatives, owners, members, managers, estates, heirs, assigns, insurers, reinsurers, shareholders, creditors, liquidators, administrators, executors, partners, principals, trustees, directors, officers, employees, committee members, spouses, attorneys, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing, from any and all claims (including without limitation all rights and claims for fraud or misrepresentation,

or pursuant to any applicable statute, case law, and/or doctrine), debts, duties, benefits, costs, expenses, judgments, settlements, actions, causes of action, demands, obligations, liabilities, promises, acts, agreements, rights, damages (including, but not limited to, compensatory, contractual, bad faith, punitive, exemplary, statutory or extra-contractual damages, or any other damages), losses, attorneys' fees, or other relief of any kind or character, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether at law or in equity, which the Party now has or may hereafter acquire by reason of, in connection with, based on, arising out of, related to, or in any way involving the subject matter of the COPYRIGHT LITIGATION.

7. Within 10 days after this Agreement becomes effective, MSF will file a Request to dismiss with prejudice the COPYRIGHT LITIGATION pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, with all parties to bear their own attorneys' fees and costs in the COPYRIGHT LITIGATION.

8. Notwithstanding any statute or provision of the common law which provides that a general release does not extend to claims which a releasor does not know or suspect to exist at the time of executing the release, the releases provided for in Paragraph 6 shall be deemed to constitute full releases in accordance with their terms. The Parties each acknowledge that they have been informed of and are familiar with the provisions of California Civil Code Section 1542, which provides as follows:

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The Parties each knowingly, voluntarily and expressly waive, to the fullest extent permitted by law, any and all rights and benefits they may have under Section 1542 or any other state statute,

law, or common law principle of similar effect, that would limit the effect of the foregoing releases based upon the Parties' knowledge at the time they execute this Agreement. The Parties each understand the provisions of this paragraph and knowingly and voluntarily enter into this waiver with the intention of releasing and discharging each other and their respective Related Persons from any and all present and future, foreseen and unforeseen, known and unknown claims and causes of action as provided in Paragraph 6 of this Agreement. Each of the Parties acknowledges and agrees that this waiver is an essential and material term of this Agreement, and that, without such waiver, the Agreement would not have been entered into.

9. The Parties understand and agree that entry into this Agreement shall not constitute or be construed as an admission of liability by any Party to any person or entity. This Agreement, each of its provisions, any prior drafts thereof, any negotiations, proceedings, or agreements relating to it and any matter arising in connection with such negotiations, proceedings or agreements shall not be offered or received in evidence in any litigation other than litigation brought to enforce the terms of this Agreement.

10. MSF agrees and covenants that it will not make any statement, written or verbal, that disparages DEFENDANTS. DEFENDANTS agree and covenant that they will not make any statement, written or verbal, that disparages MSF.

11. Each of the Parties hereto represents and warrants that the person executing this Agreement on behalf of that Party is of legal age, legally competent, and duly authorized to enter into this Agreement and to give the releases contained herein on behalf of that Party, individually and/or in his representative capacity, as applicable. Each Party agrees to execute all documents and to do all things necessary to effectuate the terms of this Agreement. To the extent applicable, each Party represents and warrants that the making and performance of this

Agreement will not violate its respective articles of incorporation, charter, by-laws, or other binding document.

12. This Agreement is made and executed by each of the Parties hereto with the advice of his or its own counsel, and the terms hereof are voluntarily accepted by each Party, after obtaining such advice and counsel. No Party has been coerced or induced to enter into this Agreement by any improper action by any other Party.

13. There are no third-party beneficiaries to this Agreement.

14. In the event any of the provisions of this Agreement are deemed to be invalid and/or unenforceable, those provisions shall be severed from the remainder of this Agreement only if and to the extent agreed upon by all the Parties in writing.

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17. This Agreement may be signed by each signatory on a separate page which does not contain the signatures of all other Parties; however, the separate pages on which a Party's signature appears shall be the signature page for that Party signing. A copy of this Agreement

shall be considered a complete document if it contains the separately signed signature pages of each Party required to sign. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on the Parties.

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IN WITNESS WHEREOF, each of the undersigned Parties has caused this Agreement to be duly executed on its behalf, to be effective as set forth in this Agreement.

MOTORCYCLE SAFETY FOUNDATION,
INC.

STEPHEN GARETS, IN HIS PERSONAL
CAPACITY AND HIS OFFICIAL CAPACITY
AS DIRECTOR OF TEAM OREGON
MOTORCYCLE SAFETY PROGRAM

By: 
Tim Buche, its President

Dated DEC. 19, 2008

Dated: _____

DR. EDWARD RAY, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF OREGON
STATE UNIVERSITY

Dated: _____