

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and King Par, LLC (“King Par”), with Held and King Par each individually referred to as a “Party” and collectively as the “Parties.” Held 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. King Par 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 § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Held alleges that King Par manufactures, sells, and/or distributes for sale in California, vinyl/PVC golf ball retriever grips that contain 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. Held alleges that King Par failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its vinyl/PVC golf ball retriever grips sold in California.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC golf ball retriever grips containing DEHP including, but not limited to, the *Club Champ Golf Accessories & Equipment 15 Foot Telescoping Ball Retriever, K40324, (UPC #0 40169 40324 3)*, manufactured, sold and/or distributed for sale in California by King Par (collectively, “Products”).

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

On April 30, 2014, Held served King Par and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that King Par 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**

King Par 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 King Par 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 King Par of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by King Par. This Section shall not, however, diminish or otherwise affect King Par’s obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean February 2, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing thereafter, King Par shall only purchase for sale or manufacture for sale in California, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies

used by state or federal agencies for purposes of determining DEHP content in a solid substance.

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

#### **3.1 Civil Penalty Payments**

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, King Par agrees to pay \$18,000 in civil penalties. Each 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 Held.

**3.1.1 Initial Civil Penalty.** Within five days of the Effective Date, King Par shall pay an initial civil penalty of \$6,000. King Par will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$4,500; and (b) “Anthony E. Held, Client Trust Account” in the amount of \$1,500.

**3.1.2 Final Civil Penalty.** On February 27, 2015, King Par shall pay a final civil penalty of \$12,000. The final civil penalty shall be waived in its entirety if, no later than February 17, 2015, an officer of King Par provides Held’s counsel with written certification that, as of the date of its certification, all of the Products it ships or distributes for sale in California are Reformulated Products as defined by Section 2, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Agreement is a material term, and time is of the essence.

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

The Parties reached an accord on the compensation due to Held 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, King Par agrees to pay \$26,000 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of King Par's management, and negotiating a settlement in the public interest. All payments of Moorberg's attorney's fees and costs shall be made according to the Payment Schedule set forth in section 3.3.3.

### **3.3 Payment Procedures**

#### **3.3.1 Payment Addresses.** Payments shall be delivered as follows:

(a) All payments and tax documentation required for Held and his counsel under this Settlement Agreement shall be delivered to:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

(b) All payments and tax forms required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses as appropriate:

#### For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

#### For Courier or Other Non-U.S. Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**3.3.2 Proof of Payment to OEHHA.** King Par agrees to provide Held with a copy of each penalty check sent to OEHHA, enclosed with King Par's penalty

payment(s) to Held, and delivered to the address provided in Section 3.3.1(a).

### **3.3.3 Payment Schedule for Held's Attorney' Fees and Costs**

King Par's Reimbursement of Held's fees and costs under this Settlement Agreement shall be paid in two installments of \$13,000 each, made payable to "The Chanler Group" to be delivered on the 15<sup>th</sup> of each month from February 2015 through March 2015.

### **3.3.4 Acceleration of Payments**

In the event that King Par fails to make any payment under this Settlement within 10 days of the date that the obligation is due and owing, all sums payable under this Settlement, including any civil penalty and/or attorneys' fee and cost reimbursement amounts, shall become immediately due.

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

### **4.1 Held's Release of King Par**

This Settlement Agreement is a full, final and binding resolution between Held and King Par, of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against King Par, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom King Par directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP in Products that King Par sold or distributed for sale by King Par prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on behalf of himself, 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, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP from Products sold or distributed for sale by King Par before the Effective Date. The releases provided by Held under this Settlement Agreement are provided solely on Held's behalf and are not releases on behalf of the public.

#### **4.2 King Par's Release of Held**

King Par on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Held 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 Held and his attorneys and other representatives, whether in the course of investigating claims, otherwise 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 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 as to the Products, then King Par may provide written notice to Held of any asserted change in the law, and shall have no further 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 notices 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 King Par:

John Runyon, Chief Executive Officer  
King Par, LLC  
5140 Flushing Road  
Flushing, MI 48433

with a copy to:

Bruce Nye, Esq.  
Adams Nye Becht LLP  
222 Kearney Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108-4521

For Held:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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)**

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. **MODIFICATION**

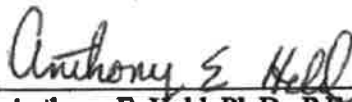
This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

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

**AGREED TO:**

Date: January 9, 2015

By:   
Anthony E. Held, Ph.D., P.E.

**AGREED TO:**

Date: 12-5-2014

By:   
John Runyon, Chief Executive Officer  
KING PAR, LLC