

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Paul Wozniak and King Service Holding Inc.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Paul Wozniak (“Wozniak”) and King Service Holding Inc. (“King Service”) with Wozniak and King Service 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. King Service is a New York corporation that markets and sells certain consumer products in interstate commerce, including in California.

1.2 General Allegations

Wozniak alleges that King Service 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”), manufactures, imports, sells, and/or distributes for sale in the United States including California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it has so recently 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 birth defects and other reproductive harm. King Service contends that it currently only sells the products listed in section 1.3 below in California through internet or website retailers.

1.3 Product Description

The products that are covered by this Settlement Agreement are limited to the portable greenhouses (and accessories to portable greenhouses) such as, the *OGrow Deluxe Walk-In Portable Greenhouses, OG6834-S, UPC #7 99975 25819 5; Ogrow Ultra Deluxe 4-Tier Portable Bloomhouse, OG2719-4T, UPC #7 99975 25814 0; Ogrow Greenhouse Cloche*

Replacement Cover, OGRC7036-M, UPC #7 99430 52088 1; and Ogrow Greenhouse Replacement Cover, OGRC2719-5T, UPC #7 99430 52090 4 that are manufactured, imported, distributed, sold and/or offered for sale by King Service directly to or indirectly into the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On March 30, 2017, Wozniak served King Service, The Home Depot, Inc., and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that King Service 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 Service 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 King Service 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 King Service 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 December 6, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations 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 agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment or Warnings

As of the Effective Date, King Service shall not manufacture, cause to be manufactured, or otherwise shipped for sale in the State of California, Products unless they are: (i) Reformulated Products as defined in Section 2.1 above; or (ii) sold with clear and reasonable warnings below in compliance with subsection 2.3 below. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products manufactured or imported for sale in California after the Effective Date.

2.3 Clear and Reasonable Warnings

- (a) **Internet Warnings**: For Products sold via the internet or other electronic means, a product-specific warning must automatically be provided to California consumers prior to or during the purchase of the Product, without requiring the California to seek out the warning. The warning shall include the following language (or identical language except for the chemical or chemicals identified):

“WARNING: This product can expose you to chemicals including di(2-ethylhexyl)phthalate (DEHP), which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to ww.P65Warnings.ca.gov.”

To ensure compliance with this subsection, within thirty (30) days of the Effective Date, King Service shall provide a written notice directly to the authorized agent for each of the Products' retail seller(s) in California who is subject to Proposition 65, by a means that confirms receipt by the authorized agent, which: (1) states that the Product likely could result in an exposure to one or more listed chemicals; (2) includes the exact name or description of the Product; and (3) includes the above-warning language (the "Internet Warning Notice"). King Service must renew the Internet Warning Notice within six months of the Effective Date of this Agreement, then annually thereafter during the period in which the product is sold in California by the retail seller.

(b) **In-Store Warnings**: Should King Service sell the Products in brick and mortar stores located within the State of California, King Service shall fully comply with the safe harbor warning requirements then currently set forth in Title 27 of the California Code of Regulations, Article 6, sections 25601, et seq.

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, King Service shall pay a total of \$2,400 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code § 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% remitted to Wozniak.

On or before December 8, 2017, King Service shall issue two checks to the address in Section 3.3 for the following amounts to: (a) "Paul Wozniak, Client Trust Account" in amount of \$600; and (b) "OEHHA" in the amount \$1,800. The payments shall be sent via an overnight tracking delivery service on the business day preceding the due date. Wozniak and his counsel will then ensure payment to OEHHA.

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, King Service expressed a desire to resolve Wozniak's fees and costs. The Parties then negotiated a resolution of the compensation due to Wozniak 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, King Service shall reimburse Wozniak and his counsel \$12,600 as follows: (1) a check in the amount of \$4,200 to be delivered on December 20, 2017; (2) a check in the amount of \$4,200 to be delivered on January 10, 2018; and (3) a check in the amount of \$4,200 to be delivered on February 1, 2018. King Service's payments shall be delivered to the address in Section 3.3, in the form of a check payable to "The Chanler Group," and shall be sent via an overnight tracking delivery service on the business day preceding each due date. The reimbursement shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to King Service'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

3.4 Failure to Make Payment

Should King Service fail to make the payment required in section 3.2 above, then: (a) Wozniak may initiate a lawsuit against King Service for violations of Proposition 65 based on the Notice at any time after February 15, 2018; (b) any release contained in this Settlement Agreement shall be deemed null and void; (c) Wozniak may seek civil penalties, costs and fees in excess of those set forth in this Section 3; (d) any applicable statute of limitation shall be deemed tolled from the Effective Date through February 15, 2018; or (e) Wozniak may seek any other remedies available under California law that he has standing to pursue.

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak's Release of Proposition 65 Claims

Wozniak acting on his own behalf, and *not* on behalf of the public, releases King Service, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom King Service directly or indirectly distributed or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including The Home Depot, Inc., franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice.

In further consideration of the promises and agreements herein contained, Wozniak, in his individual capacity only and *not* in his representative capacity, provides a release herein 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 Wozniak 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 the Products manufactured, imported, distributed, or sold by King Service prior to the Effective Date.

The Parties further understand and agree that the releases found in this Section 4.1 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 King Service. Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve King Service's Products.

4.2 King Service's Release of Wozniak

King Service, 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.

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 King Service shall provide written notice to Wozniak 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 King Service 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:

King Service:

Brent G. Cheney, Esq.
Parker Milliken
555 South Flower Street, 30th Floor
Los Angeles, CA 90071

Wozniak:

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)**

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 agree to all of the terms and conditions contained herein.

AGREED TO:

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Date: December 6, 2017

Date: December 6, 2017

By: 
Paul Wozniak

By: 
Israel Friedman, President
King Service Holding Inc.