

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and PADI Worldwide Corp. (“PADI”), with Moorberg and PADI each individually referred to as a “Party” and collectively as the “Parties.” Moorberg 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. PADI 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 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moorberg alleges that PADI manufactures, sells, and distributes for sale in California vinyl/PVC cases for sport diving training materials containing 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. Moorberg alleges that PADI failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its vinyl/PVC cases for sport diving materials.

### 1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC cases and other components containing DEHP that are offered in connection with educational materials manufactured, sold or distributed for sale in California by PADI (“Products”) including, but not limited to, the (a) *PADI Peak Performance Buoyancy*, #60177, #3159840000, (b) *PADI Adventures in Diving Kit*, #60332, #3159832000, (c) *PADI Rescue eLearning Pak*, #70820, #3159834000, and (d) *PADI Digital Underwater Photography Manual*, #70092, #1866560012 .

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

On June 26, 2015, Moorberg served PADI and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that PADI violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its vinyl/PVC cases for sport diving materials. 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**

PADI 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 PADI 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 PADI of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by PADI. This Section shall not, however, diminish or otherwise affect PADI’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 April 1, 2016.

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

### **2.1 Reformulated Products**

Commencing on April 1, 2016 and continuing thereafter, PADI agrees to only manufacture for sale in California or purchase for sale in or into California: (a) “Reformulated Products”, or (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2, below. For purposes of this Settlement Agreement, Reformulated Products shall mean Products containing no more than 1,000

parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

PADI agrees that as of the Effective Date, all Products it manufactures or sells in California which do not qualify as Reformulated Products will bear a clear and reasonable health hazard warning pursuant to this Section and as provided for in Title 27, California Code of Regulations, §§ 25601 et seq. PADI further 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning that appears on a Product's label or other labeling (as defined by Title 27, California Code of Regulations, § 25602) and contains one of the following statements:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.

or

**WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, PADI agrees to pay \$16,000 in civil penalties. Each 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 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Moorberg. Moorberg’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment(s) made under this Settlement Agreement.

### **3.1.1 Initial Civil Penalty Payment**

Within seven days of the Effective Date, PADI shall make an initial civil penalty payment of \$5,250, in a single check made payable to “Mark Moorberg, Client Trust Account.”

### **3.1.2 Final Civil Penalty Payment; Waiver for Reformulation**

On June 15, 2016, PADI shall make a final civil penalty payment in the amount of \$10,750. Pursuant to Title 11 California Code of Regulations § 3203(c), Moorberg agrees that the final civil penalty will be waived in its entirety if, no later than June 1, 2016, an officer or other authorized representative of PADI provides Moorberg’s counsel with an original, signed written certification that all of the Products it is shipping for sale or distributing for sale in California are Reformulated Products as defined by Section 2.1, and that PADI will continue to only offer Reformulated Products in California in the future. The option to provide a declaration certifying early completion of reformulation in lieu of making the final civil penalty payment is a material term of this Settlement Agreement, and time is of the essence.

### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Moorberg and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, within seven days of the Effective Date, PADI agrees to pay \$25,250 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of PADI’s management,

and negotiating a settlement.

### **3.3 Payment Address**

All payments under 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 Moorberg's Release of PADI**

This Settlement Agreement is a full, final and binding resolution between Moorberg, as an individual and not on behalf of the public, and PADI, of any violation of Proposition 65 that was or could have been asserted by Moorberg on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against PADI, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom PADI directly or indirectly distributes or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("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 PADI in California before the Effective Date, as alleged in the notice of violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by PADI, Releasees and Downstream Releasees with regard to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale in California after the Effective Date.

In further consideration of the promises and agreements herein, Moorberg, 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 Moorberg's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moorberg may have, including, without limitation, all actions and causes of action, in law or 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 arising under Proposition 65 with respect to exposures to DEHP in the Products, as alleged in the notice of violation, manufactured, distributed, sold and/or offered for sale, by PADI before the Effective Date.

The releases provided by Moorberg under this Settlement Agreement are provided solely on Moorberg's own behalf and not on behalf of the public in California.

#### **4.2 PADI's Release of Moorberg**

PADI, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moorberg and his attorneys and other representatives, for any and all actions taken or statements made by Moorberg and his attorneys and other representatives, whether in the course of investigating claims, 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 provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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 PADI may provide written notice to Moorberg 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 notice 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 PADI:

Drew Richardson, President  
PADI Worldwide Corp.  
30151 Tomas Street  
Rancho Santa Margarita, CA 92688

With a copy to:

Levi Heath, Esq.  
Barnes & Thornburg LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067-2904

For Moorberg:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
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)

Moorberg and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 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, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 4/4/2016 \_\_\_\_\_

Date: 3/31/2016 \_\_\_\_\_

By:  \_\_\_\_\_  
MARK MOORBERG

By:  \_\_\_\_\_  
Name: CHAD KUEHN  
PADI WORLDWIDE CORP.