

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Private Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and Kwik Tek, Inc. (“Kwik Tek”). Together, Ferreiro and Kwik Tek are collectively referred to as the “Parties.” Ferreiro is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Ferreiro alleges that Kwik Tek is a company who allegedly employs ten or more persons and is in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Ferreiro alleges that Kwik Tek has exposed individuals in the state of California to the chemical di(2-ethylhexyl) phthalate (DEHP) from its sales of Kwik Tek waterproof dry bags/cases/duffels without first providing users and consumers of the product(s) with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are Kwik Tek waterproof dry bags/cases/duffels (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Kwik Tek as well as those Products offered for sale to or in California through American Sports Licensing, LLC dba Dick’s Sporting Goods.

1.4 Notice of Violation. On June 25, 2018, Ferreiro served Kwik Tek, American Sports Licensing, LLC, LLC, American Sports Licensing, Inc. (collectively, “Dick’s Sporting Goods”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Kwik Tek and such others, including public enforcers, with notice that alleged that Kwik Tek was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DEHP. No public enforcer has diligently prosecuted the

allegations set forth in the Notice within sixty days plus service time after service of the Notice to them by Ferreiro.

1.5 No Admission. Kwik Tek denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been 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 Kwik Tek 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 Kwik Tek of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Kwik Tek. However, Section 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Kwik Tek maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Kwik Tek directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of

determining the phthalate content in a solid substance. Kwik Tek may comply with the above requirements by relying on information obtained from its suppliers regarding the content from which the Products are made, provided such reliance is in good faith. Obtaining test results showing that .1% (1,000 parts per million (ppm)) of DEHP shall be deemed to establish good faith reliance

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Kwik Tek manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Kwik Tek to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date or that were manufactured prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

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

(b) **Alternative Warning:** Kwik Tek may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

2.4 A Warning or Alternative Warning provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of

the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

2.5 Compliance with Warning Regulations. Kwik Tek shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to the Products, and in settlement of all the claims referred to in this Settlement Agreement, Kwik Tek shall pay \$1,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the penalty remitted to Ferreiro. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Kwik Tek shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. Within ten (10) days of the Effective Date, Kwik Tek shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$250.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Ferreiro, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses:

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 Non-United States Postal Service Delivery:

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

(b) Copy of Payments to OEHHA. Kwik Tek agrees to provide Ferreiro’s counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Ferreiro, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) Tax Documentation. Kwik Tek agrees to provide a completed IRS 1099 for its payments to, and Ferreiro agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Anthony Ferreiro” whose address and tax identification number shall be provided contemporaneously with his execution of this Settlement Agreements;

(ii) “Brodsky & Smith, LLC” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Ferreiro and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Ferreiro and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, Kwik Tek shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to Kwik Tek's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Kwik Tek shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$10,000.00 for delivery to the address identified in § 3.2(a)(i), above. Other than the payments required hereunder, each party shall bear its own attorneys' fees and costs.

5. RELEASE OF ALL CLAIMS

5.1 Release of Kwik Tek and Upstream and Downstream Customers, Manufacturers, Distributors and Entities. This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Kwik Tek, of any violation of Proposition 65 that was or could have been asserted by Ferreiro or on behalf of his past, future and current agents, representatives, attorneys, successors, heirs, grantees, devisees, trustees, community estate, executors, spluse, insurers, related persons, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP contained in the Products, and Releasers hereby release any such claims against Kwik Tek and its past, present and future parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, representatives, members, accountants, insurers, and each entity to whom Kwik Tek directly or indirectly manufactures, distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Dick's Sporting Goods Electronics, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, shareholders, marketplaces, directors, officers, agents,

employees, attorneys, successors and assignees, representatives, accountants, insurers, (collectively, the “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on their alleged failure to warn about alleged exposure to the chemical DEHP that is contained in the Products, and that were manufactured, distributed, sold and/or offered for sale by Kwik Tek to customers and consumers in the State of California.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ferreiro, on behalf of himself, and the Releasers hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that the Releasers may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Products.

5.2 Kwik Tek’s Release of Ferreiro. Kwik Tek, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ferreiro and/or his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Ferreiro on behalf of himself only, on one hand, and Kwik Tek, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive

California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.

Ferreiro and Kwik Tek each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. Compliance by Kwik Tek with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP in the Products.

5.5. Public Benefit. It is Kwik Tek's understanding that the commitments it has agreed to herein, and actions to be taken by Kwik Tek under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Kwik Tek that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Kwik Tek failure to provide a warning concerning exposure to DEHP prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Kwik Tek is in material compliance with this Settlement Agreement.

6. 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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, Kwik Tek shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. NOTICES

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

For Kwik Tek:

Kwik Tek, Inc.
c/o Colbey Arden, Director
1200 E. 45th Ave., #104
Denver, CO 80239

with a courtesy copy to

Jonathan C. Sandler
Brownstein Hyatt Farber Schreck, LLP
2049 Century Park East
Los Angeles, CA 90067-3217

For Ferreiro:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

Either 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.

9. COUNTERPARTS: 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.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Ferreiro agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement. The Parties represent and warrant that: (i) they own the claims being released in this Agreement; (ii) no other person or entity has any interest in such clms; (iii) they have not sold, assigned, conveyed or otherwise transferred any such claims or demand against any of the Releasees; and (iv) they have the sole right to settle and release such released claims

14. WARRANTIES AND REPRESENTATIONS REGARDING OTHER POTENTIAL CLAIMS

Ferreiro and his attorneys, Bordsky & Smith, LLP, represent and warrant that neither of them is aware of any other actual or potential action, violation, or claim against Kwik Tek. Ferreiro agrees, represents and warrants that he will not file a notice of violation of Proposition 65 or pursue

a claim against Kwik Tek for an alleged violation of Proposition 65 for a period of one (1) year from the Effective Date herein.

15. CONSTRUCTION AND JOINT PREPARATION

Each Party hereto has cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the same shall not be construed against any Party on the ground that said Party drafted this Agreement. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California, in effect as of the date of the Agreement. This Agreement shall be deemed to have been drafted jointly by the Parties. No law or rule requiring the interpretation of uncertainties against a drafting Party shall apply.

16. INCORPORATION OF RECITALS

The Parties agree to incorporate the Recitals above by this reference.

By signing this Settlement Agreement, the Parties hereby acknowledges and warrants that said Settlement Agreement was first carefully read in its entirety, or fully explained, and it is known and understood to be a full and complete compensation, settlement, release, accord, satisfaction and discharge of all claims, actions, causes of action or suits as above stated. Furthermore, that said Settlement Agreement was signed and executed voluntarily and without reliance upon any statement or representation of or by the Parties or their attorneys or insurers.

AGREED TO:

AGREED TO:

Date: 10/30/18

Date: 10/9/18

By: Anthony Ferreira
Anthony Ferreira

By: Cobey Arden
Cobey Arden on behalf of Kwik Tek, Inc.