

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”), on the one hand, and Sportsman’s Warehouse, Inc., a Utah Corporation, and King’s Camo, L.C., a Utah limited liability company (collectively, “Sportsman’s and King’s”), on the other hand, with Ferreiro and Sportsman’s and King’s each individually referred to as a “Party” and collectively as the “Parties.” King’s is the successor in interest to Nelson Outdoor Marketing Associates, LLC, an expired Utah limited liability company. Ferreiro is an individual residing in the State of California. Sportsman’s and King’s employ ten or more individuals and are persons 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

Ferreiro alleges that Sportsman’s and King’s manufactured, sold, and distributed for sale in California, a hip wader that allegedly contained Di(2-ethylhexyl) phthalate (“DEHP”) and that allegedly, for a limited period of time, Sportsman’s and King’s did so without first providing a compliant health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

#### 1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, the Sportsman’s and King’s hip wader that allegedly contains DEHP (“Product”), as identified in Ferreiro’s Notices (defined below).

#### 1.4 Notices of Violation

On October 9, 2018, Ferreiro served Sportsman’s Warehouse, Inc., the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation, alleging that, for a limited period of time, Sportsman’s violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Product.

On May 2, 2019, Ferreiro served Sportsman’s Warehouse, Inc. and Nelson Outdoor Marketing Associates, LLC (King’s Camo, L.C. is its successor in interest), the California Attorney General, and other requisite public enforcers with another 60-Day Notice of Violation (collectively, “Notices”), alleging that, for a limited period of time, Sportsman’s and King’s violated Proposition 65 when they failed to warn their customers and consumers in California of the health risks associated with exposures to DEHP from the Product. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notices.

### **1.5 No Admission**

Sportsman’s and King’s deny the material, factual, and legal allegations in the Notices and maintain that all of their products that they have sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement is an admission by Sportsman’s and King’s of any fact, finding, conclusion, issue of law or violation of law, nor is compliance with this Settlement Agreement an admission by Sportsman’s and King’s of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Sportsman’s and King’s. This Section does not diminish or otherwise affect Sportsman’s and King’s obligations, responsibilities and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” means ninety (90) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**

**2.1 Reformulation of Product.** As of the Effective Date, and continuing thereafter, any Product that Sportsman’s and King’s directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be a Reformulated Product pursuant to Section 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to Sections 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 Section 2.2, below. The warning requirement set forth in Sections 2.3 and 2.4 does not apply to any Reformulated Product.

**2.2 Reformulation Standard.** “Reformulated Product” means any Product that contains concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to United States 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.

**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 Section 2.3 and Section 2.4 must be provided for any Product that Sportsman’s and King’s manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There is no obligation for Sportsman’s and King’s to provide an exposure warning for any Product that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in this Section 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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Sportsman’s and King’s may, but is not required to, use the alternative short-form warning as set forth in this Section 2.3(b) (“**Alternative Warning**”) as follows:

**⚠ WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**2.4** A **Warning** or **Alternative Warning** provided pursuant to Section 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 any Product 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.

If Sportsman's and King's sells any Product via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the Product to which the warning applies.

**2.5 Compliance with Warning Regulations.** The Parties agree that Sportsman's and King's will be in compliance with this Settlement Agreement by either adhering to Sections 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. To the extent that the terms of this Settlement Agreement conflict with Proposition 65 and corresponding regulations, Proposition 65 and the corresponding regulations control.

**2.6 Grace Period for Existing Inventory of Products**

The injunctive requirements of this **Section 2** do not apply to any Product that is already in the stream of commerce as of the Effective Date; each such Product is expressly subject to the releases provided in **Section 4.1** hereof.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, Sportsman's and King's agree to pay \$2,500.00 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the

California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Ferreiro. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Sportsman’s and King’s shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of \$1,875.00 and (b) Ferreiro, payable to the Brodsky Smith Client Trust Account, in the amount of \$625.00.

All payments owed to OEHHA pursuant to this Section 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

All penalty payments owed to Ferreiro shall be sent to:

Evan Smith  
Brodsky Smith  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

### **3.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to Ferreiro and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, Sportsman’s and King’s agrees to pay \$22,500.00 to Ferreiro and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Sportsman’s and King’s and negotiating a settlement. Sportsman’s and King’s payment shall be delivered in the form of one check for \$22,500.00 payable to “Brodsky Smith.”

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

Evan Smith  
Brodsky Smith  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

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

### **4.1 Ferreiro's Release of Sportsman's and King's**

This Settlement Agreement is a full, final, and binding resolution between Ferreiro, on his own behalf and not on behalf of the public, and Sportsman's and King's, and each of them of any violation of Proposition 65 that was or could have been asserted by Ferreiro, on his own behalf, on behalf of her past and current agents, representatives, attorneys, successors and assignees; against Sportsman's and King's, each of them, and each of their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys; each upstream entity within the stream of commerce for the Product; and each entity to whom Sportsman's and King's directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively "Sportsman's and King's Releasees"), based on the failure to warn about exposures to DEHP in the Product before the Effective Date.

In further consideration of the promises and agreements herein contained, Ferreiro on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Sportsman's and King's Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in the Product sold by Sportsman's and King's to third parties for distribution for sale in California or offered for sale by Sportsman's and King's, before the Effective Date.

#### **4.2 Sportsman's and King's Release of Ferreiro**

Sportsman's and King's, on their own behalf and on behalf of their past and current agents, representatives, attorneys, parents, affiliates, successors, and assignees, hereby waive any and all claims against Ferreiro and his attorneys and other representatives, for any and all actions taken or statements made by Ferreiro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against them in this matter, or with respect to the Product.

#### **4.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Product will develop or be discovered. Ferreiro on behalf of himself only, on the one hand, and Sportsman's and King's on behalf of only themselves and Sportsman's and King's Releasees, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in **Section 4.1** and **Section 4.2** hereof may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions remain in effect and are enforceable by the Parties.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement are governed by the laws of the State of California and apply within the State of California.

#### **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 recognized overnight courier on any Party by the other at the following addresses:

For Sportsman's Warehouse, Inc.:

Bradley R. Cahoon  
Durham Jones & Pinegar  
111 S. Main St. STE 2400  
Salt Lake City, UT 84111

Todd Kinney  
Kutak Rock LLP  
650 Farnam Street  
Omaha, NE 681102

For King's Camo, LLC:

Bradley R. Cahoon  
Durham Jones & Pinegar  
111 S. Main St. STE 2400  
Salt Lake City, UT 84111

Todd Kinney  
Kutak Rock LLP  
650 Farnam Street  
Omaha, NE 681102

For Ferreiro:

Evan Smith  
Brodsky Smith  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

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 portable document format (PDF) signature, each of which is an original, and all of which, when taken together, are one and the same document.

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

Ferreiro 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, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 8/15/19

By: Anthony Ferreira  
ANTHONY FERREIRO

**AGREED TO:**

Date: 8-17-2019

**SPORTSMAN'S WAREHOUSE, INC.**

By: [Signature]  
Its: CEO

**AGREED TO:**

Date: 8-14-2019

**KING'S CAMO, L.C.**

By: Fred Nda  
Its: Managing Partner