

**RYAN SORRELLS  
NEVILLE & KAREN VENTOR  
MARCH 11, 2010  
CONTRACT DRAFTING—SECTION 1**

# COMPROMISE AND SETTLEMENT AGREEMENT

This **Compromise and Settlement Agreement**, dated March 11, 2010, is between Neville Ventor (“Neville”) and Karen Ventor (“Karen”) (collectively, the “Ventors”), and QED Manufacturing & Distributing, L.L.C., a Texas limited liability corporation (“QED Manufacturing”), and Arthur Pryor (“Pryor”) (collectively, “Defendants”).

## CLAIMS OF THE PARTIES

Neville filed the Action (defined below)<sup>1</sup> against QED Manufacturing and Pryor. Specifically, Neville asserted that QED Manufacturing breached the parties’ employment agreement by firing Neville. Neville further sought both a declaratory judgment and constructive trust based on the sale of Lawn Solutions of Texas, Inc. Neville’s claim against Pryor was based on an alter ego theory.<sup>2</sup>

Defendants denied Neville’s allegations and sought a declaratory judgment. Defendants specifically alleged that Neville had substantially contributed to QED Manufacturing’s loss of business and that Neville’s termination was therefore just. Defendants also counterclaimed statutory fraud against Neville based on the sale of Lawn Solutions of Texas, Inc.

Under the employment and purchase agreements between the parties, Plaintiff requested that the Action be mediated. During mediation, the parties agreed to release all claims against each other arising out of and relating to the Action.

Accordingly, the parties agree that:

## ARTICLE 1 DEFINITIONS

**1.1 Definitions.** In this Compromise and Settlement Agreement, the following terms have the meanings assigned to them.

- (a) “**Action**” means the case styled Ventor v. QED Manufacturing and Distributing, L.L.C. and Arthur Pryor, Cause No. 496-300157-10 filed in the 496th District Court of Texas, Tarrant County.
- (b) “**Patent**” means the Ventors’ patent of Stout-Turf’s formula.
- (c) “**Released Claims**” means all matters relating to or arising out of the claims which were made, or which could have been made, in the Action.
- (d) “**Released Parties**” means Neville, Karen, Pryor, and QED Manufacturing.

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<sup>1</sup> Although Stark advises against using defined terms in the recitals, using “Action” seemed inevitable in this case. Defining “Action” in context in resulted in a choppy, convoluted opening to the contract.

<sup>2</sup> The recitals attempt to be short enough to keep the readers’ attention, but long enough to cover the pertinent points. Based on the overall context of this contract, a major goal was to establish that the parties had a prior history of dealing. Another important goal was to establish the parties’ intent to release the claims based on the mediation.

- (e) “**Stout-Turf**” means the organic fertilizer invented by the Ventors.
- (f) “**Territory**” means the United States of America.

## **ARTICLE 2** **RELEASE AND INDEMNITY**

**2.1 SCOPE OF RELEASE.** As a part of the settlement, the Released Parties mutually agree to fully, finally, and forever release, relinquish, and discharge the Released Claims.<sup>3</sup>

**2.2 FULL RELEASE.** The Released Parties mutually agree to dispose of all claims arising from and relating to the Action, including claims that may exist in the future. The Released Parties recognize that there may be claims or injuries arising out of the Action that are unknown at the time of this Compromise and Settlement Agreement; however, the Released Parties have negotiated this Compromise and Settlement Agreement in full knowledge of the possibility of additional claims or injuries, and intend this Compromise and Settlement Agreement to settle and finally dispose of all claims or injuries arising out of the Action, whether known or unknown.

**2.3 INDEMNITY.** QED Manufacturing shall release the Ventors from and shall fully protect, indemnify and defend.<sup>4</sup>

- (a) all claims relating to, arising out of, or connected, directly or indirectly, with the ownership or operation of the Patent, pertaining to the Term of this Compromise and Settlement Agreement; and
- (b) all claims relating to injury or death of any person, and/or damage to or loss of any property or resource, as a result of the Patent, pertaining to the Term of this Compromise and Settlement Agreement.

**2.4 EXPRESS NEGLIGENCE.** The indemnification, release and assumption provisions of this article shall be applicable whether or not the losses, costs, expenses and damages in question arose solely or in part from the gross, active, passive or concurrent negligence, or other fault, of the Ventors. QED Manufacturing acknowledges that this statement is intended to comply with the express negligence rule and is conspicuous.

**2.5 Dismissal of Pending Action.** Within 10 days of the signing of this Compromise and Settlement Agreement, Karan Ventor shall file a plea in intervention requesting that she be included in the Action as a necessary party; and once Karen is a party to the Action, the Released Parties shall cause to be completed, executed, and filed with the applicable court a stipulated dismissal with prejudice of the Action consistent with this Compromise and Settlement Agreement<sup>5</sup>

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<sup>3</sup> The release and indemnity provisions of this contract are conspicuous per Texas law. The provisions are conspicuous because they are different than the other provisions in the contract and because a reasonable person would take note of the differences. These provisions are placed towards the beginning of the contract to accentuate their importance.

<sup>4</sup> I chose this type of indemnity and defend provision because it is likely that the Ventors would want QED Manufacturing to be responsible for these types of claims, especially because QED Manufacturing is granted an exclusive license later in this agreement.

<sup>5</sup> This clause attempts to condition the dismissal of the Action on Karen Ventor becoming a party to the Action.

## **ARTICLE 3** **STOUT-TURF LICENSE**

**3.1    Grant of License.** Subject to the terms and provisions in this Compromise and Settlement Agreement, the Ventors shall grant QED Manufacturing an exclusive license to manufacture and distribute Stout-Turf throughout the Territory.<sup>6</sup>

**3.2    QED Manufacturing's Obligation.** QED Manufacturing shall use its best efforts to manufacture and distribute Stout-Turf throughout the Territory. The Ventors shall have the right to terminate the license if QED Manufacturing fails to use its best efforts to manufacture and distribute Stout-Turf.<sup>7</sup>

**3.3    Term and Termination.** The license's term begins on the day that the covenant in Section 2.5 is completed and ends 5 years later (the “**Term**”), unless sooner terminated in accordance with the provisions of this Compromise and Settlement Agreement.

**3.4    Patent Purchase Option.** If QED Manufacturing uses its best efforts to manufacture and distribute Stout-Turf, then it may purchase the Patent from the Ventors at the end of the Term for a mutually agreed-upon price. If the parties cannot agree to a price, then the arbitrating provisions in Article 7 will be used to determine a fair market price based on evidence presented by the parties.<sup>8</sup>

## **Article 4** **Representations and Warranties**

**4.1    QED Manufacturing's Representations and Warranties.** QED Manufacturing represents and warrants that:

- (a)    QED Manufacturing has the full power to enter into this Compromise and Settlement Agreement and to perform its obligations;
- (b)    QED Manufacturing is not a party to any claim except for the Action; and<sup>9</sup>
- (c)    QED Manufacturing is not, and has not, a party to a bankruptcy hearing.

**4.2    The Ventors' Representations and Warranties.** The Ventors represent and warrant that:

- (a)    the Ventors have the full power to enter into this Compromise and Settlement Agreement and to perform its obligations;

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<sup>6</sup> I considered parsing the license provisions onto a separate License Agreement but ultimately concluded that one document would be safer and easier to consummate.

<sup>7</sup> This covenant is designed to protect the Ventors from QED Manufacturing not diligently manufacturing and distributing Stout-Turf. I chose “best efforts” as opposed to “reasonable” efforts or “good faith: efforts in attempt to set a higher standard for QED Manufacturing.

<sup>8</sup> This is drafted as a condition to discretionary authority to establish another hurdle that QED Manufacturing must overcome before it may purchase the Patent.

<sup>9</sup> This representation and warranty is drafted “flat” to allocate more risk to QED Manufacturing.

- (b) the Ventors own the entire right, title, and interest in and to the Patent;
- (c) the Ventors have the authority to enter into this Compromise and Settlement Agreement and grant the license without the need for any consents or approvals; and
- (d) all previous grants of the Patent have been terminated, and no rights in the Patent are inconsistent with the license granted to QED Manufacturing

## ARTICLE 5

### COVENANT NOT TO COMPETE

**5.1 Noncompetition.** During the Term of this Compromise and Settlement Agreement, the Ventors shall not manufacture or distribute Stout-Turf in the Territory or grant a license to any person or to any competitive business that would compete directly or indirectly with QED Manufacturing's business without prior consent of QED Manufacturing.<sup>10</sup>

**5.2 Scope of Noncompetition.** The Ventors agree that the covenants, agreements and restrictions (this “**Covenant**”) are necessary to protect the business goodwill, business interests and proprietary rights of QED Manufacturing and that the parties have independently discussed, reviewed and had the opportunity of legal counsel to consider this Compromise and Settlement Agreement and now agree and stipulate to the following:<sup>11</sup>

- (a) this Covenant is an integral part of this Compromise and Settlement Agreement and was made at the time this Compromise and Settlement Agreement was consummated by the parties; and
- (b) this Covenant is fair and reasonable in its:
  - (i) geographical area;
  - (ii) length of time; and
  - (iii) scope of activity being restrained.<sup>12</sup>

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<sup>10</sup> This provision seeks to establish the limitations on the scope, area, and time of the Covenant as required by Texas Law.

<sup>11</sup> This section attempts to show the parties’ intent with regard to the noncompetition clause.

<sup>12</sup> Subsection B reemphasizes that the parties agree to the Covenant.

## **ARTICLE 6** **SETTLEMENT PAYMENTS AND ROYALTIES**

**6.1 Settlement Payment.** As part of settling the Action, QED Manufacturing shall pay to the Ventors an initial payment of \$50,000 (the “**Initial Payment**”), payable in certified funds before June 3, 2010. Notwithstanding anything in this Agreement, the Ventors’ receipt of the Initial Payment shall be a condition precedent to the effectiveness of the grant of the license and other rights set forth in Section 3.1 and the dismissal obligations and releases set forth in Article 2.<sup>13</sup>

**6.2 Royalties.** QED Manufacturing shall also pay royalties to the Ventors equal to 5% of QED Manufacturing’s annual revenue from Stout-Turf sales. QED Manufacturing shall provide the Ventors with its annual financial statements.<sup>14</sup>

## **ARTICLE 7** **CLOSING**

**7.1 Closing Date.** Closing shall take place no later than 30 days after Section 2.5 is satisfied.

**7.2 Location of Closing.** Closing shall take place at a mutually agreed upon location.

**7.3 Closing Deliveries.** QED Manufacturing shall deliver to the Ventors:

- (a) all lawn-care equipment that it acquired in the purchase of Lawn Care Solutions of Texas, Inc.
- (b) the irrevocable right to use the name “Lawn Solutions of Texas, Inc.”

## **ARTICLE 8** **ARBITRATION**

**8.1 Scope of Arbitration.** All matters arising under or relating to this Compromise and Settlement Agreement are to be resolved by arbitration.<sup>15</sup>

**8.2 Administration of Arbitration.** The arbitration is to be administered by the American Arbitration Association and it is to be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**8.3 Appointment of Arbitrators.** The arbitration is to be held before a panel of three arbitrators, each of whom must be independent of the parties. No later than 20 days after the arbitration begins, each party shall select an arbitrator, and request that the two selected arbitrators select a third neutral arbitrator. Before beginning the hearings, each arbitrator must take an oath of impartiality.

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<sup>13</sup> Thinking that the Ventors would prefer the \$50,000 upfront, this provision conditions the release and license portions of this agreement on the Ventors actually receiving the settlement money.

<sup>14</sup> Starting with 5% of QED Manufacturing’s revenue seemed to favor the Ventors.

<sup>15</sup> Considering that the Ventors have already been through formal litigation and mediation, this arbitration provision sets forth an efficient, practical method to dispose of any claims that may arise from this agreement.

**8.4 Time Limitation.** Any arbitration proceedings under this Compromise and Settlement Agreement must be commenced not later than one year after the claim arose. Failure to timely commence arbitration constitutes an absolute bar to the commencement of any arbitration proceedings with respect to the claim, and is a waiver of the claim.

**8.5 Choice of Law.** The arbitrators are to interpret all matters relating to this Agreement in accordance with the laws of Texas, without regard to its conflict of law principles.<sup>16</sup>

**8.6 Venue.** The arbitration is to be conducted in Fort Worth, Texas.

**8.7 Enforceability.** Any award, order, or judgment pursuant to arbitration is final and may be entered and enforced in any court with jurisdiction.

## **ARTICLE 9** **GENERAL**

**9.1 MERGER.** This Compromise and Settlement Agreement constitutes the final agreement between the parties. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Compromise and Settlement Agreement are expressly merged into and superseded by this agreement.<sup>17</sup>

**9.2 Amendments.** The parties may amend this Compromise and Settlement Agreement only by written agreement.<sup>18</sup>

**9.3 Counterparts.** The parties may execute this Compromise and Settlement Agreement in one or more counterparts, each of which is original, and all of which constitute only one agreement between the parties.

**9.4 Captions.** The descriptive headings of the Articles, Sections and subsections of this Compromise and Settlement Agreement are for convenience only, do not constitute a part of this Compromise and Settlement Agreement, and do not affect this Compromise and Settlement Agreement's construction or interpretation.

**9.5 Assignment, Delegation, and Sublicense.** No part of this Compromise and Settlement Agreement shall be assigned, delegated, or sublicensed by the parties.<sup>19</sup>

**9.6 Severability.** If any provision of this Compromise and Settlement Agreement is illegal or unenforceable, that provision is severed and all other provisions remain in force.

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<sup>16</sup> Because the parties all reside in Texas, the Choice of Law and Venue provisions provide that Texas law governs and that arbitration will occur in Texas.

<sup>17</sup> Based on Stark's book on boilerplate provisions (Tina L. Stark, Negotiating and Drafting Contract Boilerplate 567 (2003)), this merger clause is conspicuous in attempt to distinguish it from a typical boilerplate provision and aids in establishing intent.

<sup>18</sup> In attempt to save a few words, I chose an active clause here rather than the common passive clause "This Compromise and Settlement Agreement may not be amended, except by written agreement" of the parties."

<sup>19</sup> This negative covenant prevents QED Manufacturing from sublicensing the Patent.

**9.7 Further Assurances.** Each party shall refrain forever from commencing or prosecuting any lawsuit, action, or other proceeding against any of the Released Parties arising out of or relating to any of the Released Claims. The parties shall cooperate fully and execute all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to this Compromise and Settlement Agreement.

**9.8 Transaction Costs.** Each party shall pay its own fees and expenses (including attorney fees) incurred in connection with this Compromise and Settlement Agreement, except that:

- (a) the Ventors shall reimburse QED Manufacturing \$900 for the mediation fees.

To evidence the parties' agreement to this Compromise and Settlement Agreement, they have executed and delivered it on the date set forth in the preamble.

**QED MANUFACTURING & DISTRIBUTING,  
L.L.C., a limited liability corporation**

By: \_\_\_\_\_  
Arthur Pryor, Managing President

By: \_\_\_\_\_  
Arthur Pryor

By: \_\_\_\_\_  
Karen Ventor

By: \_\_\_\_\_  
Neville Ventor

**APPROVED AS TO FORM ONLY:**

By: \_\_\_\_\_  
Priscilla Leigh, Attorney for the Ventors

**APPROVED AS TO FORM ONLY:**

By: \_\_\_\_\_  
Harold Lather, Attorney for the Defendants