

1 In the above-entitled action, plaintiff Paul Wozniak and defendants Raley's and H.
2 E. Butt Grocery Company, having agreed through their respective counsel that Judgment
3 be entered pursuant to the terms of their settlement agreement in the form of a Consent
4 Judgment, and following this Court's issuance of an Order approving this Proposition 65
5 settlement and Consent Judgment:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure
8 § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment
9 attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain
10 jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

11

12 **IT IS SO ORDERED.**

13

14

Dated: 4/7/16



JUDGE OF THE SUPERIOR COURT

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

1 Josh Voorhees, State Bar No. 241436
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff
9 PAUL WOZNIAK

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13 PAUL WOZNIAK,

14 Plaintiff,

15 v.

16 H. E. BUTT GROCERY COMPANY, *et al.*

17 Defendants.

Case No. RG15766662

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”),
4 and defendants Raley’s and H. E. Butt Grocery Company (“H. E. Butt”), with Wozniak, Raley’s and
5 H. E. Butt each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Wozniak is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Raley’s and H. E. Butt**

11 Raley’s and H. E. Butt each employ ten or more individuals and are each a “person in the
12 course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of
13 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Raley’s and H. E. Butt manufacture, import, sell or distribute for sale in
16 California nylon cooking utensils that contain 4,4’-methylenedianiline (“4,4’-MDA”) without first
17 providing the exposure warning required by Proposition 65. 4,4’-MDA is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are nylon cooking utensils containing 4,4’-
21 MDA that are manufactured, imported, sold or distributed for sale in California by Raley’s and H. E.
22 Butt including, but not limited to, the *ChefStyle Ladle*, #30884, UPC #0 01569 00009 8, hereinafter
23 the “Products”.

24 **1.6 Notice of Violation**

25 On or about January 23, 2015, Wozniak served retailer Raley’s, manufacturer H. E. Butt, and
26 certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”)
27 alleging that Raley’s and H. E. Butt violated Proposition 65 by failing to warn consumers in
28 California that the Products expose users to 4,4’-MDA. To the best of the Parties’ knowledge, no

1 public enforcer, including the California Attorney General, has either commenced or has prosecuted
2 any action relating to the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On April 16, 2015, Wozniak filed litigation (the "Complaint") naming Raley's and H. E. Butt
5 as defendants for the alleged violations of Health and Safety Code section 25249.6 that are the
6 subject of the Notice.

7 **1.8 No Admission**

8 Raley's and H. E. Butt deny the material, factual, and legal allegations contained in the Notice
9 and the Complaint, and maintain that all of the products they have sold and distributed for sale in
10 California, if any, have been, and are, in compliance with all applicable state and federal laws. H.E.
11 Butt denies that it sells any products in the State of California, whatsoever. Nothing in this Consent
12 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
13 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
14 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
15 not, however, diminish or otherwise affect the Parties' obligations, responsibilities, and duties under
16 this Consent Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Raley's and H. E. Butt as to the allegations in the Complaint, that venue is proper in
20 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date, and continuing thereafter, Raley's and H. E. Butt shall
28 only manufacture, sell or distribute the Products for sale in California (if any Products are sold in

1 California) that are "Reformulated Products." For purposes of this Consent Judgment, Reformulated
2 Products shall be the Products that:

- 3 i. contain less than or equal to 200 parts per million ("ppm") 4,4'-MDA by weight using
4 validated preparation and analytical methods used to detect the presence of 4,4'-MDA in a
5 solid substance; and
- 6 ii. produce a leach result of 10 ug/L or less 4,4'-MDA by digesting the food contact end of the
7 product into 100 ml of 3% acetic acid de-ionized water for 2 hours at 100°C, replenishing the
8 acetic acid solution as needed to maintain 100 ml, and analyzing the leachate using a
9 validated method to detect the presence of 4,4'-MDA in a liquid.

10 Any testing to confirm that a Product is a Reformulated Product required by this Consent
11 Judgment shall only be on the Products as defined herein and shall be conducted in an accredited
12 laboratory with qualified personnel. All analytical reports must contain quality control data that
13 verify the laboratory's performance for the results in each analytical report. On or before July 29,
14 2016, Raley's and H. E. Butt shall demonstrate their compliance with this Section by one or more of
15 the following methods: 1) by providing Wozniak with written certification that (as of such date) all of
16 the Products they manufacture, sell, or distribute for sale in California, if any, are Reformulated
17 Products and that only Reformulated Products will be sold or distributed for sale in California in the
18 future, subject to the conditions set forth below; Raley's and H. E. Butt shall ensure any such
19 compliance by at least one of the following methods (at their option) (a) testing the Products, (b)
20 requiring a third party to test the Products, and/or (c) requiring a third party to certify that the
21 Products supplied to Raley's and/or H. E. Butt meet the standards established herein; 2) certifying
22 that Raley's and/or H.E. Butt no longer sell any nylon cooking utensils containing 4,4'-MDA in
23 California; and/or 3) for any Product manufactured prior to the Effective Date, Raley's and H.E. Butt
24 may affix a Proposition 65 warning label to the Product(s) that provides as follows:

25 "This Product Contains a Chemical Known To The State Of California To Cause Cancer."
26
27
28

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
4 this Consent Judgment, Raley's and H. E. Butt shall collectively pay \$8,500 in civil penalties. The
5 civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)
6 and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental
7 Health Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to
8 Wozniak. Raley's and H. E. Butt shall provide their payment in two checks for the following
9 amounts made payable to: (a) "OEHHA" in the amount of \$6,375; and (b) "Paul Wozniak, Client
10 Trust Account" in the amount of \$2,125, following the procedures forth in Sections 3.3 and 3.4.

11 **3.2 Reimbursement of Attorney's Fees and Costs**

12 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
14 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
15 other settlement terms had been finalized, Raley's and H. E. Butt expressed a desire to resolve
16 Wozniak's fees and costs. The Parties then attempted to (and did) reach an accord on the
17 compensation due to Wozniak and his counsel under general contract principles and the private
18 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
19 performed through the mutual execution of this Consent Judgment. Raley's and H. E. Butt shall
20 collectively pay \$33,500 by check to "The Chanler Group" for the fees and costs incurred by
21 Wozniak investigating, bringing this matter to Raley's and H. E. Butt's attention, litigating and
22 negotiating a settlement in the public interest. Payment shall be made following the procedure set
23 forth in sections 3.3 and 3.4.

24 **3.3 Payments Held in Trust**

25 All payments due under this Consent Judgment shall be held in trust until such time as the
26 Court approves the Parties' settlement. All payments due under this agreement shall be delivered
27 within five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held
28 in trust by counsel for Raley's and H. E. Butt until the Court grants the motion for approval of this

1 Consent Judgment contemplated by Section 5. Within two business days of the Court's approval of
2 this Consent Judgment, counsel for Raley's and H. E. Butt shall tender the civil penalty payments
3 and attorneys' fee and costs reimbursements required by Sections 3.1 and 3.2.

4 **3.4 Payment Address**

5 All payments required by this Consent Judgment shall be delivered to:

6 The Chanler Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Wozniak's Public Release of Proposition 65 Claims**

13 Wozniak, acting on his own behalf and in the public interest, releases Raley's and H. E.
14 Butt, and their supplier Bradshaw International, and each of their parents, subsidiaries, affiliated
15 entities under common ownership, directors, officers, employees, and attorneys ("Releasees"), and
16 each entity to whom they directly or indirectly distribute or sell the Products, including, but not
17 limited to, their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative
18 members, licensors and licensees ("Downstream Releasees"), for any violations arising under
19 Proposition 65 for unwarned exposures to 4,4'-MDA from Products sold by and/or through Raley's
20 or H. E. Butt prior to the Effective Date, as set forth in the Notice. This release shall not extend
21 upstream to cover any Products except those supplied by Bradshaw International to Raley's and/or
22 H.E. Butt. Compliance with the terms of this Consent Judgment, specifically Section 2.1,
23 constitutes compliance with Proposition 65 with respect to exposures to failures to warn about 4,4'-
24 MDA from the Products, if any, sold by Raley's and H. E. Butt after the Effective Date, as set forth
25 in the Notice.

26 **4.2 Wozniak's Individual Release of Claims**

27 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
28 a release to Raley's, H. E. Butt, Releasees, and Downstream Releasees that 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

1 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
2 alleged or actual exposures to 4,4'-MDA in the Products sold or distributed for sale by and/or
3 through Raley's and H. E. Butt before the Effective Date. This release shall not extend upstream to
4 cover any other Products except those supplied by Bradshaw International to Raley's and/or H.E.
5 Butt.

6 **4.3 Raley's and H. E. Butt's Release of Wozniak**

7 Raley's and H. E. Butt, individually, on their own behalf, and on behalf of their past and
8 current agents, representatives, attorneys, successors, and assignees, hereby waive any and all
9 claims against Wozniak, in his individual capacity and not in his representative capacity, and his
10 attorneys and other representatives in their individual capacities, for any and all actions taken or
11 statements made by Wozniak and his attorneys and other representatives, whether in the course of
12 investigating claims, otherwise seeking to enforce Proposition 65 against them in this matter, or
13 with respect to the Products.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and shall
16 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
17 has been fully executed by the Parties.

18 **6. SEVERABILITY**

19 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
20 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
21 adversely affected.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
25 modified or is otherwise rendered inapplicable to the Products for any reason, then Raley's and H. E.
26 Butt may provide written notice to Wozniak of any asserted change in the law, and shall have no
27 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
28 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Raley's or

1 H. E. Butt from any obligation to comply with any pertinent state or federal toxics control laws or to
2 impose on Raley's or H.E. Butt any obligation beyond those required by pertinent state or federal
3 toxics control laws..

4 **8. NOTICE**

5 Unless specified herein, all correspondence and notice required by this Consent Judgment
6 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
7 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

8 **H. E. Butt**

9 Craig Boyan, President
10 H. E. Butt Grocery Company
11 646 South Main Avenue
12 San Antonio, TX 78204

12 **Raley's**

13 Michael Teel, Chief Executive Officer
14 Raley's
15 500 West Capitol Avenue
16 West Sacramento, CA 95605

17 Matthew Covington, Esq.
18 Archer Norris
19 One Embarcadero Center, Suite 360
20 San Francisco, CA 94111

21 **Wozniak**

22 Proposition 65 Coordinator
23 The Chanler Group
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710-2565

27 Any Party may, from time to time, specify in writing to the other, a change of address to which all
28 notices and other communications shall be sent.

29 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

30 This Consent Judgment may be executed in counterparts and by facsimile or portable
31 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
32 taken together, shall constitute one and the same document.

33 **10. POST EXECUTION ACTIVITIES**

34 Wozniak agrees to comply with the reporting form requirements referenced in Health and
35 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
36 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In

1 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
2 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
3 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
4 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
5 supporting the motion, and appearing at the hearing before the Court.

6 **11. MODIFICATION**

7 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
8 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
9 Party, and the entry of a modified consent judgment by the Court.

10 ///

11 ///

12 ///

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

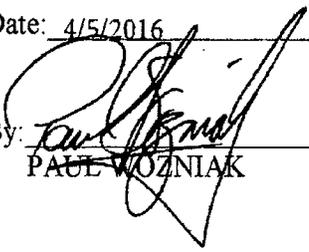
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: 4/5/2016

By: 
PAUL WOZNIAK

AGREED TO:

Date: _____

By: _____
H. E. BUTT GROCERY COMPANY

AGREED TO:

Date: _____

By: _____
RALEY'S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: _____

By: _____
PAUL WOZNIAK

AGREED TO:

Date: 4/7/16

By: Bill Ande
H. E. BUTT GROCERY COMPANY

AGREED TO:

Date: _____

By: _____
RALEY'S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: _____

By: _____
PAUL WOZNAK

AGREED TO:

Date: _____

By: _____
H. E. BUTT GROCERY COMPANY

AGREED TO:

Date: 4-6-16

By: 
RALEY'S

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number : RG15766662

Case name: Wozniak vs H.E. Butt Grocery Company

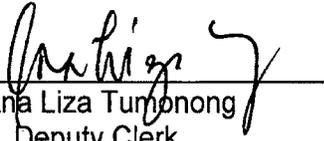
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document, **JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT** filed on April 7, 2016 was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 8, 2016.

Chad Finke, Executive Officer/Clerk of the Superior Court

By: _____


Ana Liza Turmonong
Deputy Clerk

Josh Voorhees, Esq.
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

Zachary Young, Esq.
Archer Norris
One Embarcadero Center, Suite 360
San Francisco, CA 94111