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Laralei Paras, State Bar No. 203319
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
PAUL WOZNIAK

FILED
ALAMEDA COUNTY

OCT 19 2017

CLERK OF THE SUPERIOR COURT

By

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

CHAPIN MANUFACTURING, INC.,

Defendant.

Case No. RG17863655

**~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: October 19, 2017

Time: 3:00 p.m.

Courtroom: 22

Judge: Hon. Robert McGuiness

Reservation No.: 1884798

1 Plaintiff Paul Wozniak and Defendant Chapin Manufacturing, Inc., having agreed
2 through their respective counsel that judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a consent judgment, and following this Court's
4 issuance of an order approving their Proposition 65 settlement and Consent Judgment on
5 October 19, 2017,

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 1**. By stipulation of the parties, the Court will retain jurisdiction
10 to enforce the settlement pursuant to Code of Civil Procedure § 664.6.

11
12 **IT IS SO ORDERED.**

13
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15 Dated: 10/19/17



JUDGE OF THE SUPERIOR COURT

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18 Robert D. McBurney
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5 Attorneys for Plaintiff
6 PAUL WOZNIAK

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 PAUL WOZNIAK

13 Plaintiff,

14 v.

15 CHAPIN MANUFACTURING, INC., and
16 DOES 1-150, inclusive,

17 Defendants.
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Case No. RG17863655

[PROPOSED] CONSENT JUDGMENT

Cal. Health & Safety Code § 25249.6 et seq. and
Cal. Code Civ. Proc. § 664.6

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”)
4 and defendant Chapin Manufacturing, Inc. (“Chapin”), with Wozniak and Chapin each individually
5 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 Defendant**

11 Wozniak contends, and Chapin disputes, that Chapin employs ten or more individuals and is a
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Chapin manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC Shoulder Strap Pads that contain lead and di(2-ethylhexyl) phthalate (“DEHP”) without
17 first providing the exposure warning required by Proposition 65. Lead and DEHP are listed pursuant
18 to Proposition 65 as chemicals known to the State of California to cause birth defects or other
19 reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are defined as vinyl/PVC Shoulder Strap
22 Pads containing lead and DEHP that are manufactured, imported, sold, or distributed for sale in
23 California by Chapin including, but not limited to, the *Chapin Shoulder Style Strap with Pad, #6-*
24 *3337, UPC #0 23883 63337 0*, hereinafter the “Products.”

25 **1.6 Notice of Violation**

26 On March 30, 2017, Wozniak served Chapin and the requisite public enforcement agencies
27 with a 60-Day Notice of Violation (“Notice”) that provided the recipients with notice that Chapin
28 violated California Health & Safety Code § 25249.6 when it failed to warn its customers and

1 consumers in California that its Products expose users to lead and DEHP. No public enforcer has
2 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On June 12, 2017, Wozniak filed the instant action ("Complaint"), naming Chapin as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Chapin denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
10 California, including the Products, have been and are in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission by Chapin of any fact, finding, conclusion of
12 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
13 be construed as an admission by Chapin of any fact, finding, conclusion of law, issue of law, or
14 violation of law. This Section shall not, however, diminish or otherwise affect Chapin's obligations,
15 responsibilities, and duties under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Court approves this Consent Judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date and continuing thereafter, Chapin shall only manufacture
27 for sale, purchase for sale, or import for sale in California, "Reformulated Products." Reformulated
28 Products are Products that contain (i) DEHP in concentrations less than 0.1 percent (1,000 parts per

1 million) when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing
2 methodologies 3580A and 8270C or other methodology utilized by federal or state government
3 agencies for the purpose of determining DEHP content in a solid substance and (ii) lead in
4 concentrations less than 90 parts per million of lead by weight in any accessible component (i.e., any
5 component that can be touched or handled during reasonably a foreseeable use) when analyzed
6 pursuant to EPA testing methodologies 3050B and/or 6010B, and that yield a result of less than 1.0
7 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payment**

10 Pursuant to Health & Safety Code section 25249.7(b), in settlement of all the claims referred
11 to in this Consent Judgment, Chapin shall pay \$2,000 in civil penalties. The civil penalty payment
12 will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d),
13 with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
14 Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Wozniak. Within 5
15 days of the Effective Date, Chapin shall provide its payment in two checks for the following amounts
16 made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Paul Wozniak, Client Trust
17 Account" in the amount of \$500.

18 **3.2 Reimbursement of Attorney's Fees and Costs**

19 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, Chapin expressed a desire to resolve Wozniak's fees and
23 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak
24 and his counsel under general contract principles and the private attorney general doctrine codified at
25 California Code of Civil Procedure section 1021.5 for all work performed through court approval of
26 this Consent Judgment. Within five days of the Effective Date, Chapin shall issue a check to "The
27 Chanler Group" in the amount of \$25,000.

28

1 **3.3 Payment Address**

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

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Wozniak's Public Release of Proposition 65 Claims**

10 Wozniak, acting on his own behalf and in the public interest, releases Chapin and its parents,
11 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
12 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
13 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
14 franchisers, resellers, cooperative members, licensors and licensees ("Downstream Releasees") for
15 any violations arising under Proposition 65 for unwarned exposures to lead and DEHP from Products
16 manufactured, distributed, or sold by Chapin prior to the Effective Date, as set forth in the Notice.

17 **4.2 Wozniak's Individual Release of Claims**

18 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
19 a release to Chapin, Releasees, and Downstream Releasees which shall be effective as a full and final
20 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
21 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
22 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
23 exposures to lead and DEHP in the Products manufactured, distributed, or sold by Chapin before the
24 Effective Date.

25 **4.3 Chapin's Release of Wozniak**

26 Chapin, on its own behalf, and on behalf of its past and current agents, representatives,
27 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
28 attorneys and other representatives, for any and all actions taken or statements made by Wozniak and
29 his attorneys and other representatives, whether in the course of investigating claims, otherwise
30 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the state of California
11 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
12 rendered inapplicable by reason of law generally, or as to the Products, then Chapin may provide
13 written notice to Wozniak of any asserted change in the law, and shall have no further injunctive
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
15 so affected.

16 **8. NOTICE**

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

20 For Chapin:

21 James Campbell
22 President/CEO
23 Chapin Int'l, Inc.
24 700 Ellicott Street
25 P.O. Box 549
26 Batavia, NY 14021-0549

For Wozniak:

 The Chanler Group
 Attention: Prop 65 Coordinator
 2560 Ninth Street
 Parker Plaza Suite 214
 Berkeley CA, 94710

25 with a copy to:

26 Jeffrey Margulies
27 Norton Rose Fulbright US LLP
28 555 South Flower Street, 41st Floor
 Los Angeles, CA 90071

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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment 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.

10. POST EXECUTION ACTIVITIES

Wozniak agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. Wozniak and Chapin agree to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner.

11. MODIFICATION

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

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and acknowledge that they have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: 8/23/17

By:

PAUL WOZNIAK

AGREED TO:

Date: _____

CHAPIN MANUFACTURING, INC.

By: _____

James Campbell, President/CEO

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AGREED TO:

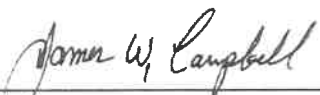
Date: _____

By: _____
PAUL WOZNIAK

AGREED TO:

Date: 08/23/2017

CHAPIN MANUFACTURING, INC.

By: 
James Campbell, President/CEO