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FILED
ALAMEDA COUNTY

MAR 16 2018

CLERK OF THE SUPERIOR COURT
By *C. W. J.* Deputy

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Attorneys for Plaintiff
PAUL WOZNAK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PAUL WOZNAK,

Plaintiff,

v.

EMERGENCY ESSENTIALS, LLC; *et al.*,

Defendants.

Case No. RG17864516

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

Date: January 16, 2018
Time: 9:00 a.m.
Dept.: 16
Judge: Hon. Stephen Pulido

Reservation No.: R-1911505

1 In the above entitled action, plaintiff Paul Wozniak and Defendant Emergency
2 Essentials, LLC, having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a [Proposed] consent
4 judgment ("Consent Judgment"), and following this Court's issuance of an order
5 approving their Proposition 65 settlement and Consent Judgment on March 16, 2018

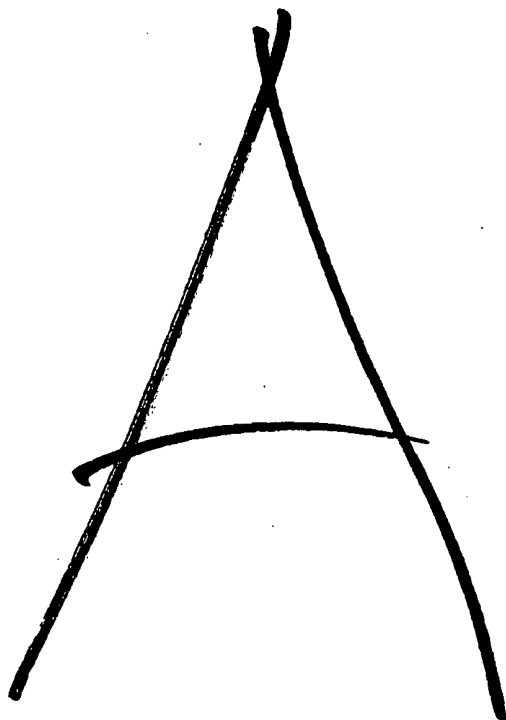
6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 Health and Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, Judgment is
8 hereby entered in accordance with the terms of the Consent Judgment attached hereto as
9 Exhibit A. By stipulation of the parties, the Court will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

11 **IT IS SO ORDERED.**

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14 Dated: March 16, 2018

Harold J. O'Connell
JUDGE OF THE SUPERIOR COURT

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6 Attorneys for Plaintiff
7 PAUL WOZNIAK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

11
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13 PAUL WOZNIAK;

14 Plaintiff,

15 v.

16 EMERGENCY ESSENTIALS, LLC; and
DOES 1-150, inclusive,

17 Defendants.
18

Case No. RG17864516

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 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 Emergency Essentials, LLC ("Emergency Essentials"), with Wozniak and
5 Emergency Essentials each referred to individually as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Wozniak is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Emergency Essentials employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Wozniak alleges that Emergency Essentials manufactures, imports, sells and/or distributes
16 for sale in California, products containing di(2-ethylhexyl)phthalate ("DEHP"), and that it does so
17 without providing the health hazard warning that Wozniak alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are flashlights with vinyl/PVC components
20 that contain DEHP, including, but not limited to, *Emergency Essentials Emergency L.E.D.*
21 *Flashlight, CL-L330, UPC #7 96959 01646 8*, that are manufactured, imported, distributed, sold
22 and/or offered for sale in California by Emergency Essentials ("Products").

23 **1.6 Notice of Violation**

24 On March 30, 2017, Wozniak served Emergency Essentials and the requisite public
25 enforcement agencies with a 60-Day Notice of Violation (the "Notice"), alleging that Emergency
26 Essentials violated Proposition 65 when it failed to warn its customers and consumers in California
27 that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer
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1 has commenced and is diligently prosecuting an action to enforce the allegations set forth in the
2 Notice.

3 **1.7 Complaint**

4 On June 19, 2017, Wozniak commenced the instant action, naming Emergency Essentials as
5 one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
24 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
25 including any unopposed tentative ruling.
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1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 **2.1 Reformulation Standards**

3 "Reformulated Products" are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
6 federal or state government agencies for the purpose of determining DEHP content in a solid
7 substance.

8 **2.2 Reformulation Commitment**


9 As of the Effective Date, and subject to Section 2.4 below, all Products distributed, sold
10 and/or offered for sale in the State of California by Emergency Essentials shall be Products that
11 qualify as Reformulated Products as defined in Section 2.1 above or carry the Proposition 65
12 warnings as set forth in Section 2.3 below.

13 **2.3 Product Warnings**

14 Commencing on or before the Effective Date, Emergency Essentials shall provide clear and
15 reasonable warnings, as set forth in subsections 2.3(a) and (b), for all Products that are
16 manufactured or imported for sale in the State of California after the Effective Date and do not
17 qualify as Reformulated Products. Each warning shall be prominently placed with such
18 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
19 to be read and understood by an ordinary individual under customary conditions before purchase or
20 use. Each warning shall be provided in a manner such that the consumer or user understands to
21 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.


22 **(a) Retail Store Sales.**

23 **(i) Product Labeling.** Emergency Essentials shall affix a warning to the
24 packaging, labeling, or directly on each Product provided for sale in retail outlets in California that
25 states:
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1  **WARNING:** This product can expose you to Di(2-ethylhexyl)phthalate
2 ["DEHP"], which is known to the State of California to
3 cause cancer and birth defects or other reproductive harm.
4 For more information go to www.P65Warnings.ca.gov.

5 (b) **Mail Order Catalog and Internet Sales.** In the event that Emergency Essentials
6 sells Products via mail order catalog and/or the internet, to customers located in California, after the
7 Effective Date, that are not Reformulated Products, Emergency Essentials shall provide warnings
8 for such Products sold via mail order catalog or the internet to California residents. Warnings given
9 in the mail order catalog or on the internet shall identify the *specific* Product to which the warning
10 applies as further specified in Sections 2.3(b)(i) and (ii).

11 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
12 catalog shall be in the same type size or larger than the Product description text within the catalog.
13 The following warning shall be provided on the same page and in the same location as the display
14 and/or description of the Product:

15  **WARNING:** This product can expose you to Di(2-ethylhexyl)phthalate
16 ["DEHP"], which is known to the State of California to
17 cause cancer and birth defects or other reproductive harm.
18 For more information go to www.P65Warnings.ca.gov.


19 Where it is impracticable to provide the warning on the same page and in the same location
20 as the display and/or description of the Product, Emergency Essentials may utilize a designated
21 symbol to cross reference the applicable warning and shall define the term "designated symbol"
22 with the following language on the inside of the front cover of the catalog or on the same page as
23 any order form for the Product(s):

24  **WARNING:** Certain products identified with this symbol  and offered
25 for sale in this catalog can expose you to Di(2-
26 ethylhexyl)phthalate ["DEHP"], which is known to the
27 State of California to cause cancer and birth defects or
28 other reproductive harm. For more information go to
 www.P65Warnings.ca.gov.



 The designated symbol must appear on the same page and in close proximity to the display
 and/or description of the Product. On each page where the designated symbol appears, Emergency

1 Essentials must provide a header or footer directing the consumer to the warning language and
2 definition of the designated symbol.

3 (ii) **Internet Website Warning.** A warning shall be given in conjunction with
4 the sale of the Products via the internet, which warning shall appear either: (a) on the same web
5 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
6 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
7 purchaser during the checkout process. The following warning statement shall be used and shall
8 appear in any of the above instances adjacent to or immediately following the display, description,
9 or price of the Product for which it is given in the same type size or larger than the Product
10 description text:

11  **WARNING:** This product can expose you Di(2-ethylhexyl)phthalate
12 ["DEHP"], which is known to the State of California to
13 cause cancer and birth defects or other reproductive harm.
14 For more information go to www.P65Warnings.ca.gov.

15 Alternatively, where it is impracticable to provide the warning on the same page and in the
16 same location as the display and/or description of the Product, Emergency Essentials may utilize a
17 designated symbol to cross reference the applicable warning with a "designated symbol" which
18 may appear adjacent to or immediately following the display, description, or price of the Product
19 for which a warning is being given, provided that the following warning statement also appears
20 elsewhere on the same web page, as follows:

21  **WARNING:** Certain products identified with this symbol  and offered
22 for sale in this website can expose you to Di(2-
23 ethylhexyl)phthalate ["DEHP"], which is known to the
24 State of California to cause cancer and birth defects or
25 other reproductive harm. For more information go to
26 www.P65Warnings.ca.gov.

1 **2.4 Previously Labelled Products and Existing Inventory** Emergency Essentials
2 has represented that subsequent to being served with the summons and complaint in this matter it
3 began labeling existing inventory of Products in its possession, and distributed or sold in the State
4 of California, with warnings that are substantially similar to the warnings provided in Section
5 2.3(a). Notwithstanding these efforts, the Parties acknowledge and agree that the injunctive
6 requirements of Section 2 shall not apply to Products that are already in the stream of commerce as
7 of the Effective Date, which Products are expressly subject to the releases provided in Section 4 and
8 have been considered with regard to the civil penalty provided in Section 3.1.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

11 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
12 claims referred to in this Consent Judgment, Emergency Essentials shall pay civil penalties in the
13 amount of \$3,500. The penalty payments shall be allocated according to Health and Safety Code
14 section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of
15 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid
16 to Wozniak. On or before November 21, 2017, Emergency Essentials shall issue two checks
17 payable to its counsel's law firm, one in the amount of \$875, representing the civil penalty due to
18 Wozniak, and one in the amount of \$2,625, representing the civil penalty due OEHHA, to be held
19 in trust by its counsel. Counsel for Emergency Essentials shall provide The Chanler Group with
20 written confirmation within three days of receipt that the funds have been deposited into a trust
21 account. Within two business days of the Effective Date counsel for Emergency Essentials shall
22 send a check in the amount of \$875 written to "Paul Wozniak, Client Trust Account," and a check
23 in the amount of \$2,625 to "OEHHA," to the address provided in Section 3.3 below.

24 **3.2 Reimbursement of Attorneys' Fees and Costs**

25 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute
26 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
27 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
28 the other settlement terms had been finalized, Emergency Essentials expressed a desire to resolve

1 Wozniak's fees and costs. The Parties then negotiated a resolution of the compensation due to
2 Wozniak and his counsel under general contract principles and the private attorney general
3 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through
4 the mutual execution of this agreement and the Court's approval of the same, but exclusive of fees
5 and costs on appeal, if any, Emergency Essentials shall reimburse Wozniak and his counsel
6 \$28,000. Emergency Essentials shall, on or before November 21, 2017, issue a check payable to
7 its counsel's law firm in the amount of \$28,000, to be held in trust by its counsel. Counsel for
8 Emergency Essentials shall provide The Chanler Group with written confirmation within three
9 days of receipt that the funds have been deposited in a trust account. Within two business days
10 of the Effective Date, counsel shall issue a check to "The Chanler Group" in the amount of
11 \$28,000, and shall deliver it to the address listed in Section 3.3 below. The reimbursement shall
12 cover all fees and costs incurred by Wozniak investigating, bringing this matter to Emergency
13 Essentials' attention, litigating, and negotiating a settlement of the matter in the public interest.

14 **3.3 Payment Address**

15 All payments required by this Consent Judgment shall be delivered to the following
16 address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Wozniak's Release of Proposition 65 Claims**

24 Wozniak, acting on his own behalf and in the public interest, releases Emergency Essentials
25 and its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
26 employees, attorneys, and Anji International (U.S.) LLC ("Releasees") and each entity to whom
27 Emergency Essentials directly or indirectly distributes or sells the Products including, but not
28 limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative
members, licensors and licensees ("Downstream Releasees") for any violations arising under

1 Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported,
2 distributed or sold by Emergency Essentials prior to the Effective Date, as set forth in the Notice.

3 Compliance with the terms of this Consent Judgment constitute compliance with
4 Proposition 65 by Releasees with regard to the alleged or actual failure to warn about exposures to
5 DEHP from the Products manufactured, sold or distributed for sale in California either before or
6 after the Effective Date.

7 **4.2 Wozniak's Individual Release of Claims**

8 Wozniak, in his individual capacity only and *not* in his representative capacity, also
9 provides a release to Emergency Essentials, Releasees, and Downstream Releasees which shall be
10 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
11 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
12 Wozniak of any nature, character or kind, whether known or unknown, suspected or unsuspected,
13 arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed
14 or sold by Emergency Essentials before the Effective Date.

15 **4.3 Emergency Essentials' Release of Wozniak**

16 Emergency Essentials, on its own behalf and on behalf of its past and current agents,
17 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
18 Wozniak and his attorneys and other representatives, for any and all actions taken or statements
19 made (or those that could have been taken or made) by Wozniak and his attorneys and other
20 representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in
21 this matter, or with respect to the Products.

22 **4.4 California Civil Code Section 1542**

23 It is possible that other claims not known to the Parties arising out of the facts alleged in
24 the Notice or the Complaint and relating to the Products will develop or be discovered. Wozniak
25 on behalf of himself only, on one hand, and Emergency Essentials on behalf of itself only, on the
26 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
27 such claims up through the Effective Date. The Parties acknowledge that the claims released in
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1 Section 4 may include unknown claims, and nevertheless waive California Civil Code section
2 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

3 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
4 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
5 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
6 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
7 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
8 **HER SETTLEMENT WITH THE DEBTOR.**

6 **5. COURT APPROVAL**

7 This Consent Judgment is not effective until it is approved and entered by the Court and
8 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
9 after it has been fully executed by all Parties. Wozniak and Emergency Essentials agree to support
10 the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
11 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
12 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
13 which motion Wozniak shall draft and file and Emergency Essentials shall support, appearing at the
14 hearing if so requested. If any third-party objection to the motion is filed, Wozniak and Emergency
15 Essentials agree to work together to file a reply and appear at any hearing. This provision is a
16 material component of the Consent Judgment and shall be treated as such in the event of a breach.

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

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

1 relieve Emergency Essentials from its obligation to comply with any pertinent state or federal law
2 or regulation.

3 **8. NOTICE**

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

8 To Emergency Essentials:

9 Levi W. Heath, Esq.
10 Barnes & Thornburg LLP
11 2029 Century Park East
12 Suite 300
Los Angeles, CA 90067

To Wozniak:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

15 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

20 Wozniak and his counsel agree to comply with the reporting form requirements referenced
21 in California Health and Safety Code section 25249.7(f).

22 **11. MODIFICATION**

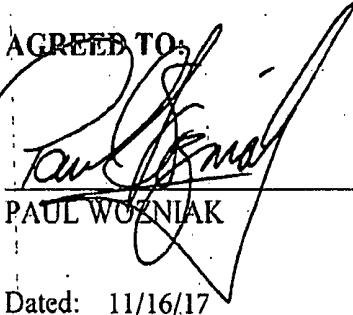
23 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
24 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
25 any party and the entry of a modified Consent Judgment by the Court thereon.

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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

7 
8 _____
9 PAUL WOZNIAK

10 Dated: 11/16/17

AGREED TO:



EMERGENCY ESSENTIALS, LLC

By: Scott Wood
(Print Name)

Its: CFO
(Title)

Dated: 15 Nov 2017

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