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9 PAUL WOZNIAK

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

13
14 PAUL WOZNIAK,
15 Plaintiff,
16
17 v.
18 A-LIST, INC.; and DOES 1-150, inclusive,
19 Defendants.

Case No.: RG14732578
[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 Paul Wozniak (“Wozniak”) and A-
4 List, Inc. (“A-List”), with Wozniak and A-List each individually referred to as a “Party” and
5 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 A-List employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that A-List manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC cosmetic cases that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing
17 the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC cosmetic cases containing
21 DEHP that are manufactured, imported, sold, or distributed for sale in California by A-List including,
22 but not limited to, *Kitson Red Glitter Cosmetic Case, KLA-03, SKU: 38717* (collectively,
23 “Products”).

24 **1.6 Notice of Violation**

25 On or about March 26, 2014, Wozniak served A-List and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that A-List violated Proposition 65
27 by failing to warn its customers and consumers in California that the Products expose users to DEHP.
28

1 **1.7 Complaint**

2 On July 11, 2014, Wozniak filed the instant action (“Complaint”) naming A-List as a
3 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
4 the Notice.

5 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over A-List as to the allegations in the Complaint, that venue is proper in Alameda
17 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
18 Judgment.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
21 Motion for Approval of the Consent Judgment is granted by the Court.

22
23 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

24 **2.1 Reformulated Products**

25 Commencing on the Effective Date, and continuing thereafter, A-List shall only purchase for
26 sale, or manufacture for sale in California, “Reformulated Products.” For purposes of this Consent
27 Judgment, Reformulated Products are products that contain a maximum of 1,000 parts per million
28 DEHP by weight in any accessible component (i.e., any part or feature of a Product that may be

1 touched during use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or
2 equivalent methodologies utilized by state and federal agencies to determine DEHP content in a solid
3 substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
7 this Consent Judgment, A-List shall pay \$11,900 in civil penalties. Each civil penalty payment shall
8 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
9 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
10 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Wozniak.

11 **3.1.1 Initial Civil Penalty**

12 Within 5 days of the date the Motion for Approval of the Consent Judgment is
13 granted, A-List shall make an initial civil penalty payment of \$2,900. A-List shall provide its
14 payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of
15 \$2175; and (b) “Paul Wozniak, Client Trust Account” in the amount of \$725.

16 **3.1.2 Final Civil Penalty**

17 Within thirty days of the Effective Date, A-List shall make a final civil penalty
18 payment of \$9,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Wozniak
19 agrees that the final civil penalty payment shall be waived in its entirety if, within fifteen days of the
20 Effective Date, an officer of A-List provides Wozniak with written certification that all of the
21 Products it is selling or distributing for sale in California as of the date of such certification are
22 Reformulated Products as defined by Section 2.1, and that A-List will continue to offer only
23 Reformulated Products in California in the future. The option to certify reformulation in lieu of
24 making the final civil penalty payment required by this Section is a material term, and with regard to
25 such term, time is of the essence.

26 **3.2 Reimbursement of Fees and Costs**

27 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
28 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to

1 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
2 other settlement terms had been finalized, A-List expressed a desire to resolve Wozniak's fees and
3 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak
4 and his counsel under general contract principles and the private attorney general doctrine codified at
5 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
6 execution of this Consent Judgment. According to the Payment Schedule set forth in section 3.3.3.A-
7 List shall pay \$28,500 for the fees and costs incurred by Wozniak investigating, bringing this matter
8 to A-List' attention, litigating and negotiating a settlement in the public interest.

9 **3.3 Payment Procedures**

10 All payments due under this Consent Judgment shall be paid and delivered according to the
11 following subsections.

12 **3.3.1 Payment Addresses**

13 (a) All payments and tax documentation for Wozniak and his counsel shall be
14 delivered to:

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

20 (b) All payments and tax documentation for OEHHA shall be delivered directly
21 to OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
22 appropriate:

23 For United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010
28 Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

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3.3.2 Proof of Payment to OEHHA

A-List shall provide Wozniak’s counsel with a copy of the check(s) sent to OEHHA enclosed with the penalty payment(s) to Wozniak.

3.3.3 Payment Schedule for Wozniak’s Attorney’ Fees and Costs

A-List’s Reimbursement of Wozniak’s fees and costs under this Settlement Agreement shall be paid in six installments of \$4,750 each, made payable to “The Chanler Group” to be delivered on the 15th of each month from December 2014 through May 2015.

3.3.4 Acceleration of Payments

In the event that A-List fails to make any payment under this Settlement within 10 days of the date that the obligation is due and owing, all sums payable under this Settlement, including any civil penalty and/or attorneys’ fee and cost reimbursement amounts, shall become immediately due.

3.3.5 Payments Held in Trust

All payments required by this Consent Judgment shall be tendered when due, and be held in trust by A-List’s counsel until such time as the Court approves the Parties’ settlement. Within five days of the Court’s approval of this Consent Judgment, A-Lists’ counsel shall deliver the initial civil penalty payments and any installments toward the attorney’s fee and costs reimbursement required by Section 3.2. that A-List has paid.

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak’s Public Release of Proposition 65 Claims

Wozniak, acting on his own behalf and in the public interest, releases A-List and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,

1 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
2 violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by A-
3 List prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
4 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to failures
5 to warn about DEHP from the Products sold by A-List before the Effective Date, as set forth in the
6 Notice.

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

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

14 **4.3 A-List’ Release of Wozniak**

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

21 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then A-List may
5 provide written notice to Wozniak of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected. Nothing in this Consent Judgment shall be interpreted to relieve A-List from any
8 obligation to comply with any pertinent state or federal toxics control laws.

9 **8. NOTICE**

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

13
14 For A-List:

15 Christopher Lee, Chief Executive
16 A-List, Inc.
17 101 S. Robertson Blvd.
18 Suite 209
19 Los Angeles, CA 90048

20 with a copy to:

21 Rebecca Couch Barnhardt, Esq.
22 Jeffer Mangels Butler & Mitchell
23 1900 Avenue of the Stars
24 7th Floor
25 Los Angeles, CA 90067

26 For Wozniak:

27 The Chanler Group
28 Attn: Proposition 65 Coordinator
29 2560 Ninth Street
30 Parker Plaza, Suite 214
31 Berkeley, CA 94710-2565

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Wozniak agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
8 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
9 furtherance of obtaining such approval, Wozniak and A-List agree to mutually employ their best
10 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
11 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
12 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
13 supporting the motion, and appearing at the hearing before the Court.

14 **12. MODIFICATION**

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

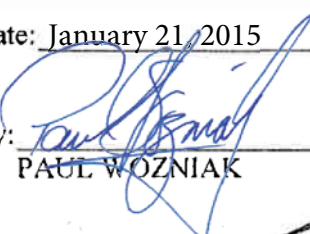
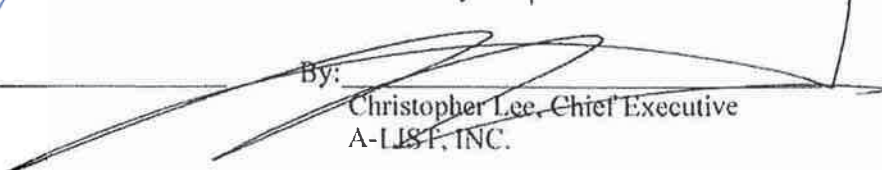
18 **13. AUTHORIZATION**

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

21 **AGREED TO:** **AGREED TO:**

22

23 Date: January 21, 2015 Date: 1/15/2015

24 By:  By: 

25 PAUL WOZNIAK Christopher Lee, Chief Executive

26 A-LIST, INC.

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