

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”) and B&B Acquisition, Inc. d.b.a. Candle Warmers Etc. (“B&B”), with Wozniak and B&B each individually referred to as a “Party,” and collectively as the “Parties.” Wozniak is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Wozniak alleges that B&B employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Wozniak alleges that B&B manufactures, sells, and/or distributes for sale in California, candle warmers with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer, birth defects and other reproductive harm. Wozniak alleges that B&B failed to provide the required Proposition 65 warning for exposures to lead from the exterior designs on its candle warmer products.

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are candle warmers with exterior designs containing lead including, but not limited to, the *Ceramic Candle Warmer Crock, Item: CCLLL, #314193, UPC #8 33245 02608 1*, manufactured, sold or distributed for sale in California by B&B (the “Products”).

#### 1.4 Notice of Violation

On or about March 26, 2014, Wozniak served B&B and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that B&B violated Proposition 65 when it failed to warn its customers in California that its Products

with exterior designs expose users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

B&B denies the material factual and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by B&B of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by B&B of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by B&B. However, this Section shall not diminish or otherwise affect B&B' obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 31, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATION & INTERIM WARNINGS**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, B&B shall only manufacture or import for sale in California, "Reformulated Products" or Products bearing the clear and reasonable warning set forth in Section 2.2.

For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum of 90 parts per million (ppm) lead by weight in any exterior decorations when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or a wipe test result of 1.0 ug of lead or less as applied to all of the decorated portions of the exterior surfaces of the Product performed as outlined in NIOSH method no. 9100.

## 2.2 Clear and Reasonable Warnings for Non-Reformulated Products

For all Products other than Reformulated Products, B&B agrees that it will only sell or distribute such Products for sale in California with a clear and reasonable warning in accordance with this Section. B&B further agrees to affix the warning directly to the Product, or on the Product packaging, cord, or labeling, if any. The warning shall be placed with such conspicuousness when compared to other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase. The warning shall further be provided in such a manner that the consumer or user understands to which *specific* Product the warning applies, so as to limit the risk of any consumer confusion.

The warning provided under this Settlement Agreement shall contain one of the following statements, which is agreed to by Candle Warmers for purposes of this Settlement Agreement only (language in brackets optional):

**WARNING:** This product contains [a] chemical[s] known to the State of California to cause cancer, and birth defects and other reproductive harm. [Wash hands after handling].

Or

**WARNING:** This product contains [a] chemical[s] known to the State of California to cause cancer, and birth defects (and other reproductive harm). [Wash hands after handling].

B&B shall use the word "chemicals" when it has reason to believe more than one listed chemical is contained in the Products.

## 3. MONETARY SETTLEMENT TERMS

### 3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, B&B agrees to

pay \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Wozniak. Accordingly, on or before the March 20, 2015, B&B will provide its civil penalty payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Paul Wozniak, Client Trust Account" in the amount of \$625. Wozniak shall have full responsibility for transmitting the OEHHA check to OEHHA. These two settlement checks shall be delivered to the address specified in Section 3.3.

### **3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, B&B agrees to pay \$21,500 to Wozniak and his counsel for any and all fees and costs incurred investigating, bringing this matter to the attention of B&B's management, and negotiating a settlement in the public interest. B&B's payment shall be due on or before the March 20, 2015, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Wozniak's Release of B&B**

This Settlement Agreement is a full, final and binding resolution between Wozniak as an individual and not on behalf of the public, and B&B, of any violation or alleged violation of Proposition 65 that was or could have been asserted by Wozniak, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any and all such claims against B&B, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom B&B directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including but not limited to Sears), franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about actual or alleged exposures to lead contained in Products manufactured, imported, distributed, sold or offered for sale by B&B in California through the Effective Date of this Settlement Agreement. The penalties, reformulation commitment, warnings, and attorneys' fees paid by B&B in connection with this Settlement Agreement are intended to resolve all issues concerning any alleged violations of Proposition 65 concerning alleged lead in the Products. Releasers agree that compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to alleged lead in the Products.

In further consideration of the promises and agreements herein contained, Releasers hereby covenant not to sue and waive any right to institute or participate in, directly or indirectly, any form of legal action and release all claims they may have against B&B or the Releasees, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to lead or

alleged lead in Products manufactured, imported, distributed, sold and/or offered for sale by B&B through the Effective Date of this Settlement Agreement.

**4.2 B&B's Release of Wozniak**

B&B, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Wozniak and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Wozniak and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to alleged lead in the Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, as to B&B specifically as a result of a statutory exemption, or as to the Products, then B&B may provide written notice to Wozniak of any asserted change in the law, or its applicability to B&B or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, B&B or the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For B&B:

Chris Barnes, President  
B&B Acquisition, Inc. d.b.a. Candle Warmers Etc.  
1948 West 2425 South, Suite 2  
Woods Cross, UT 84087

With copy to:

James Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
Robert Dollar Building  
311 California Street, 10th Floor  
San Francisco, CA 94104

For Wozniak:

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

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.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement 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.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: March 11, 2015

By:   
PAUL WOZNIAK

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chris Barnes, President  
B&B ACQUISITION, INC. DBA CANDLE  
WARMERS ETC.



**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

PAUL WOZNIAK

**AGREED TO:**

Date: 3/16/15

By:  \_\_\_\_\_

Chris Barnes, President  
B&B ACQUISITION, INC. DBA CANDLE  
WARMERS ETC.