

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”) and Attwood Corporation (“Attwood”), with Wozniak and Attwood 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. Attwood 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 Attwood manufactures, sells, and/or distributes for sale in California, boat hooks with vinyl/PVC grips containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Wozniak alleges that Attwood failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the boat hook grips.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are boat hooks with vinyl/PVC grips containing DEHP manufactured, sold and/or distributed for sale in California by Attwood, including, but not limited to, the *Attwood Expandable Boat Hook, #11510-5, UPC #0 22697 11510 2* (collectively, “Products”).

### 1.4 Notice of Violation

On March 26, 2014, Wozniak served Attwood and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that

Attwood violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. 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**

Attwood 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. Nothing in this Settlement Agreement shall be construed as an admission by Attwood 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 Attwood of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Attwood. This Section shall not, however, diminish or otherwise affect Attwood's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 10, 2015.

## **2. REFORMULATED PRODUCTS AND WARNINGS**

### **2.1 Reformulated Products**

Commencing on the Effective Date, and continuing thereafter, Attwood shall only sell, offer for sale, or distribute for sale in California, Reformulated Products, or Products that contain a clear and reasonable warning pursuant to Section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

Commencing on the Effective Date for all Products that are not reformulated Products, Attwood agrees that it will only offer such Products for sale or shipment in California with a clear and reasonable warning pursuant to this Section. Attwood further agrees that the warning will be prominently placed with such conspicuousness as compared with 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 or use. For purposes of this Settlement Agreement, a clear and reasonable warning shall consist of a warning affixed to the packaging, label, tag, or directly to the Product, containing one of the following statements:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.

For Products Attwood knows contain a Proposition 65-listed carcinogen the following warning statement may be used:

**WARNING:** This product contains a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Attwood agrees to pay \$12,000 in civil penalties. Each 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. Wozniak’s counsel shall be responsible for remitting OEHHA’s portion of the penalty

payment(s) to OEHHA.

**3.1.1 Initial Civil Penalty.** Within five days of the Effective Date, Attwood shall pay an initial civil penalty of \$3,000. Attwood will provide its payment in a single check made payable to: "Paul Wozniak, Client Trust Account" in the amount of \$3,000.

**3.1.2 Final Civil Penalty.** On August 15, 2015, Attwood shall pay a final civil penalty of \$9,000. The final civil penalty shall be waived in its entirety if, no later than August 1, 2015, an officer of Attwood provides Wozniak's counsel with written certification that, as of the date of its certification, all of the Products it ships or distributes for sale in California are Reformulated Products as defined by Section 2.1, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Agreement is a material term, and time is of the essence.

### **3.2 Reimbursement of Wozniak's 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, within five days of the Effective Date, Attwood agrees to pay \$24,000 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Attwood's management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered to:

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 Attwood**

This Settlement Agreement is a full, final and binding resolution between Wozniak and Attwood, of any violation of Proposition 65 that was or could have been asserted by Wozniak on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, against Attwood, its parents (including, but not limited to, Brunswick Corporation), subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Attwood directly or indirectly distributes or sells the Products, including its downstream distributors, wholesalers, customers, retailers (including, but not limited to, Wal-Mart Stores, Inc. and its affiliates and subsidiaries), franchisees, cooperative members, licensors, and licensees (collectively, "Releasees") based on the alleged failure to warn about exposures to DEHP in Products Attwood sold or distributed for sale prior to the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Wozniak on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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 exclusively, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65, with respect to Products sold or distributed for sale by Attwood before the Effective Date. The releases provided by Wozniak under this Settlement Agreement are provided solely on Wozniak's behalf and are not releases on behalf of the public.

#### **4.2 Attwood's Release of Wozniak**

Attwood on behalf of itself, 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 by Wozniak and his attorneys and other representatives prior to the Effective Date, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Attwood may provide written notice to Wozniak of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

#### **7. NOTICE**

Unless specified herein, all correspondence and notices 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 Attwood:

Christopher F. Dekker,  
Vice President, General Counsel and Secretary  
Brunswick Corporation  
1 N. Field Ct.  
Lake Forest, IL 60045

For Wozniak:

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

with a copy to Attwood's counsel:

Daniel W. Fox, Esq.  
K&L Gates, LLP  
Four Embarcadero Center  
Suite 1200  
San Francisco, CA 94104

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: April 9, 2015

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

PAUL WOZNIAK

**AGREED TO:**

Date: April 9, 2015

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

Christopher F. Dekker