

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak, (“Wozniak”) and SZY Holdings, LLC, (SZY) with Wozniak and SZY 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. SZY 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 SZY had manufactured, sold, and/or distributed for sale in California, stethoscopes with vinyl/PVC tubing that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”), which chemical is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Wozniak alleges that SZY failed to provide individuals in California with the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl PVC tubing of its stethoscopes sold in California. SZY has represented that it does not “target” any items for sale in California but has instead sold the items in question online through Amazon.com.

### 1.3 Product Description

The products covered by this Settlement Agreement are stethoscopes with vinyl/PVC tubing containing DEHP, that are sold, directly or indirectly, in California by SZY, which include, but are not limited to, the *Everdixie USA Dual-Head Stethoscope, #143212, (UPC No. 6 10708 61056 4)* (collectively, “Products”).

#### **1.4 Notice of Violation**

On March 26, 2014, Wozniak served SZY and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that SZY 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. Upon receipt of the Notice and the subsequent retention of Burriss, Schoenberg & Walden, LLP, SZY’s counsel, counsel notified Wozniak’s counsel that SZY began the process of sourcing vinyl/PVC components for the Products that are virtually DEHP-free and do not require a warning under Proposition 65.

#### **1.5 No Admission**

SZY 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 SZY 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 SZY of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by SZY. This Section shall not, however, diminish or otherwise affect SZY’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 October 15, 2014.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing thereafter, SZY shall only purchase for sale or manufacture for sale in California, “Reformulated Products.” 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.

### **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, SZY agrees to pay \$8,000 in civil penalties, subject to reduction as set forth in paragraph 3.1.2. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (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.

**3.1.1 Initial Civil Penalty.** Within ten (10) days of the Effective Date, SZY shall pay an initial civil penalty of \$2,000 SZY will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Paul Wozniak Client Trust Account” in the amount of \$500.

**3.1.2 Contingent Final Civil Penalty Subject to Waiver.** On December 1, 2014, SZY shall become obligated to pay a final civil penalty of \$6,000. The final civil penalty shall be waived in its entirety if, no later than November 15, 2014, an officer of SZY 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, 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 Settlement 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 ten (10) days of the Effective Date, SZY agrees to pay \$17,500 in the form of a check made payable to "The Chanler Group" covering all fees and costs incurred investigating, bringing this matter to the attention of SZY's management, and negotiating a settlement in the public interest.

### **3.3 Payment Procedures**

#### **3.3.1 Payment Addresses.** Payments shall be delivered as follows:

(a) All payments and tax documentation required for Wozniak and his counsel 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

(b) All payments and tax forms required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses as appropriate:

#### For United States Postal Service Delivery:

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

For Courier or Othis Non-U.S. Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**3.3.2 Proof of Payment to OEHHA.** SZY agrees to provide Wozniak with a copy of each penalty check sent to OEHHA, enclosed with SZY's penalty payment(s) to Wozniak.

**4. CLAIMS COVERED AND RELEASED**

**4.1 Wozniak's Release of SZY**

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

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/or 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 the failure to warn about exposures to

DEHP from Products sold or distributed for sale by SZY 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 SZY's Release of Wozniak**

SZY 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **4.3 Mutual CCP Section 1542 Waiver**

Wozniak, in his individual capacity only and not in the public interest, and SZY, each on his/its own behalf, and on behalf of his/its agents, attorneys, representatives, successors and assigns, also provides a general release which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak or SZY of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products, as set forth in the Notice, or as to those matters released by SZY in Section 4.3. Wozniak and SZY each acknowledge that he/it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Wozniak and SZY each expressly acknowledge and waive the provisions of Section 1542 of the California Civil Code.

**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 remaining enforceable 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 SZY 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 SZY:

Michael Perl, President  
SZY Holdings, LLC  
10101 Foster Avenue  
Brooklyn, NY 11236

with a copy to:

Donald S. Burris, Esq.  
Burris, Schoenberg & Walden, LLP  
12121 Wilshire Boulevard, Suite 800  
Los Angeles, CA 90025

For Wozniak:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
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. LIMITATION ON MODIFICATION**

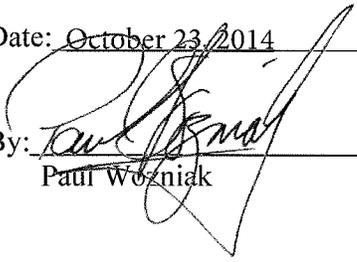
This Settlement Agreement may be modified only by written agreement of the Parties.

**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: October 23, 2014

By:   
Paul Wozniak

**AGREED TO:**

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

By: \_\_\_\_\_  
Michael Perl, President  
SZY Holdings, LLC

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. **LIMITATION ON 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.

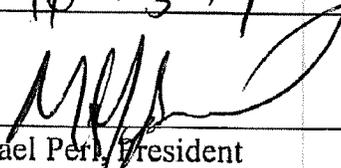
**AGREED TO:**

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

By: \_\_\_\_\_  
Paul Wozniak

**AGREED TO:**

Date: 10-23-14

By:   
Michael Perl, President  
SZY Holdings, LLC