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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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14 PAUL WOZNIAK,

15 Plaintiff,

16 v.

17 TAILOR MADE PRODUCTS, INC.;
18 WAL-MART STORES, INC.; FAMILY
DOLLAR STORES, INC.; FAMILY
19 DOLLAR SERVICES, INC. and DOES 1-150,
inclusive,

20 Defendants.
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Case No.: RG14731486

[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 Tailor
4 Made Products, Inc. (“Tailor Made”), with Wozniak and Tailor Made each individually referred to as
5 a “Party” and 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 Tailor Made employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Tailor Made manufactures, imports, sells, or distributes for sale in
16 California, nylon cooking utensils that contain 4,4’-Methylenedianiline (“4,4’-MDA”) without first
17 providing the exposure warning allegedly required by Proposition 65. 4,4’-MDA is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are nylon cooking utensils containing 4,4’-
21 MDA that are manufactured, imported, sold, or distributed for sale in California by Tailor Made
22 including, but not limited to, the *Mainstays Nylon Utensil Set 8 pieces, Black-MS19-041-200-42,*
23 *(UPC No. 0 16346 38083 6)* and the *Family Chef Nylon Basting Spoon, TFD130103, SKU 0621073,*
24 *(UPC No. 0 32251 00222 9)* (collectively, “Products”).

25 **1.6 Notice of Violation**

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

1 Products expose users to 4,4'-MDA. On or about July 30, 2014, Wozniak served Family Dollar
2 Stores, Inc. ("Family Dollar Stores"), Family Dollar Services, Inc. ("Family Dollar Services") and
3 certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("July Notice")
4 alleging that Family Dollar Stores and Family Dollar Services violated Proposition 65 by failing to
5 warn their customers and consumers in California that the Products expose users to 4,4'-MDA. The
6 March Notice and July Notice are collectively referred to as the "Notices." Tailor Made represents
7 that it is the manufacturer or importer of the exemplar products identified in the Notices.

8 **1.7 Complaint**

9 On July 2, 2014, Wozniak filed the instant action ("Complaint") naming Tailor Made and
10 Wal-Mart Stores, Inc. as defendants for the alleged violations of Health and Safety Code section
11 25249.6 that are the subject of the March Notice. On December 22, 2014, Wozniak filed an
12 Amendment to the Complaint, now the operative pleading in this action, adding Family Dollar Stores,
13 Inc. and Family Dollar Services, Inc as doe defendants 101 and 102, for the alleged violations of
14 Health and Safety Code section 25249.6 that are the subject of the Notices. To the best of the Parties'
15 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the
16 violations alleged in the Notices.

17 **1.8 No Admission**

18 Tailor Made denies the material, factual, and legal allegations contained in the Notices,
19 Complaint and Amended Complaint, and it maintains that all of the products that it has sold and
20 distributed for sale in California, including the Products, have been, and are, in compliance with all
21 laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
22 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
23 constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or
24 violation of law. This section shall not, however, diminish or otherwise affect Tailor Made's
25 obligations, responsibilities, and duties under this Consent Judgment.

26 **1.9 Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over Tailor Made as to the allegations in the Complaint and Amended Complaint, that

1 venue is proper in Alameda County, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment pursuant to California Code of Civil Procedure, Section 664.6

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date that the
5 Court signs an order granting the motion for approval of this Consent Judgment contemplated by
6 Section 5.

7 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

8 **2.1 Reformulated Products**

9 Commencing on the Effective Date, and continuing thereafter, Tailor Made shall use its “best
10 efforts¹” to purchase for sale, or import or manufacture for sale in California, “Reformulated
11 Products.” For purposes of this Consent Judgment, Reformulated Products are Products that contain
12 a maximum of 200 parts per million 4,4’-MDA by weight, utilizing European Standard EN-14362, or
13 other equivalent methodologies used to detect 4,4’-MDA in a solid substance, and analyzed using gas
14 chromatography with mass spectrometer detection (GC-MS) to determine 4,4’-MDA content by
15 weight in a solid substance. Products in the stream of commerce which Tailor Made has sold or
16 distributed for sale in California prior to the Effective Date, for which a civil penalty has been
17 assessed in Section 3.1 of this Consent Judgment, may be sold without further alleged violation,
18 although Tailor Made represents there are very few, if any, such Products in the stream of commerce
19 as of the Effective Date.

20 ¹ “Best efforts shall mean and require Tailor Made to manufacture, import, distribute for sale or sell Reformulated
21 Products where such Reformulated Products or the nylon feedstock used to manufacture Products are “reasonably
22 commercially available.” Reasonable commercial availability shall include consideration of the following factors:
23 availability, quality and supply of nylon feedstocks used to manufacture Products that meet the Reformulation Standard;
24 cost of the Product or feedstock that results in Products meeting the Reformulation Standard; performance characteristics
25 of the Product or feedstock that meet the Reformulation Standard, including but not limited to performance, safety,
26 durability and stability. Within 30 days of a written request, Tailor Made shall produce to plaintiff records demonstrating
27 that a Product that did not meet the Reformulation Standard, or the feedstock used in the manufacturer thereof, did not
28 meet the Reformulation Standard because the nylon feedstock used in the manufacture thereof was not reasonably
commercially available. Tailor Made shall cooperate as reasonably necessary with plaintiff to provide additional
information or representations necessary to demonstrate that a Product, or feedstock thereof, that does not comply with
the Reformulation Standard, does not comply because the nylon feedstock used to manufacture such Product was not
reasonably commercially available. Plaintiff may tender a request for information no more than once, absent good cause
therefor, and the request must be made prior to December 31, 2016. If Tailor Made is obligated hereunder to tender the
Final Civil Penalty set forth in Section 3.1.2, and the Final Civil Penalty is duly paid, then Plaintiff shall not be entitled to
request documentation so long as Tailor Made is providing warnings in compliance with Section 2.2.

1 **2.2 Clear and Reasonable Warnings**

2 On or before April 15, 2015, Tailor Made shall add the following warning to all non-
3 Reformulated Products Tailor Made imports, manufactures, or distributes for sale in California. The
4 warning shall be placed directly on the Product or packaging.

5 **[CALIFORNIA] [PROPOSITION 65] WARNING:** This product contains a chemical
6 known to the State of California to cause cancer.

7 The text in [brackets] is optional in Tailor Made’s sole discretion. The warning shall be
8 provided on the packaging of the Products, or on the Products, with such conspicuousness as to be
9 likely to be seen by a typical consumer under ordinary conditions of use.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Civil Penalty Payments**

12 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
13 to in this Consent Judgment, Tailor Made has been assessed \$82,500 in civil penalties. Each civil
14 penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and
15 (d) with seventy-five percent (75%) of the penalty paid to the California Office of Environmental
16 Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) paid to Wozniak.

17 **3.1.1 Initial Civil Penalty**

18 Within three business days of the Effective Date, Tailor Made shall make an initial
19 civil penalty payment of \$37,500. Tailor Made shall provide its payment in two checks for the
20 following amounts made payable to: (a) “OEHHA” in the amount of \$28,125; and (b) “Paul
21 Wozniak, Client Trust Account” in the amount of \$9,375.

22 **3.1.2 Final Civil Penalty**

23 Within eighteen months of the Effective Date, Tailor Made shall make a final civil
24 penalty payment of \$45,000. Pursuant to title 11 California Code of Regulations, section 3203(c),
25 Wozniak agrees that the final civil penalty payment shall be waived in its entirety if, within eighteen
26 months of the Effective Date, an officer of Tailor Made provides Wozniak with written certification
27 that all of the Products it is selling or distributing for sale in California as of the date of its
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1 certification are Reformulated Products as defined by Section 2.1, and that Tailor Made will continue
2 to offer only Reformulated Products in California in the future. The option to certify reformulation in
3 lieu of making the final civil penalty payment required by this Section is a material term, and time is
4 of the essence.

5 **3.2 Reimbursement of Fees and Costs**

6 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
8 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
9 other settlement terms had been finalized, Tailor Made expressed a desire to resolve Wozniak's fees
10 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
11 Wozniak and his counsel under general contract principles and the private attorney general doctrine
12 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
13 mutual execution of this Consent Judgment. Within three business days of the Effective Date, Tailor
14 Made shall pay \$55,000 in the form of a check made payable to "The Chanler Group" for the fees
15 and costs incurred by Wozniak investigating, bringing this matter to Tailor Made's attention,
16 litigating and negotiating a settlement in the public interest.

17 **3.3 Payment Procedures**

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

20 **3.3.1 Payment Address**

21 All payments and tax documentation shall be delivered to:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 **3.3.2 Required Tax Documentation**

28 Tailor Made agrees to provide an IRS 1099 form for its payments under this Consent
Judgment to each of the following payees: (a) "Office of Environmental Health Hazard
Assessment"; (b) "Paul Wozniak"; and (c) "The Chanler Group". Addresses and tax identification

1 numbers for each of the above payees shall be furnished after this Consent Judgment is fully
2 executed by the Parties.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Wozniak's Public Release of Proposition 65 Claims**

5 Wozniak, acting on his own behalf and in the public interest, waives all claims against and
6 releases Tailor Made and its parents, subsidiaries, affiliated entities under common ownership,
7 directors, officers, employees, and attorneys ("Releasees") and each entity to whom it directly or
8 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,
9 wholesalers, customers (such as Wal-Mart Stores, Inc. and Family Dollar Stores, Inc. (erroneously
10 sued as Family Dollar Stores and Family Dollar Services)), retailers, franchisers, cooperative
11 members, licensors and licensees ("Downstream Releasees") for any violations arising under
12 Proposition 65 for unwarned exposures to 4,4'-MDA from Products manufactured, imported, sold
13 or distributed for sale in California by Tailor Made prior to the Effective Date, as set forth in the
14 Notices, Complaint and Amended Complaint. Compliance with the terms of this Consent Judgment
15 constitutes compliance with Proposition 65 with respect to the failure to warn about exposures to
16 4,4'-MDA from the Products manufactured, imported, sold, or distributed for sale in California by
17 Tailor Made.

18 **4.2 Wozniak's Individual Release of Claims**

19 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
20 a release to Tailor Made, Releasees, and Downstream Releasees which shall be effective as a full and
21 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
22 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
23 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
24 exposures to 4,4'-MDA in the Products manufactured, imported, sold or distributed for sale in
25 California by Tailor Made before the Effective Date.

26 **4.3 Tailor Made's Release of Wozniak**

27 Tailor Made, on its own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his

1 attorneys and other representatives(or those that could have been taken or made), for any and all
2 actions taken or statements made by Wozniak and his attorneys and other representatives, whether
3 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
4 matter, or with respect to the Products up through the Effective Date.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the state of California
15 and apply within the state of California. This Consent Judgment shall not govern sales of Products to
16 consumers outside the State of California. In the event that Proposition 65 is repealed, preempted, or
17 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Tailor Made
18 may provide written notice to Wozniak of any asserted change in the law, and shall have no further
19 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
20 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Tailor Made from any
21 obligation to comply with any applicable state or federal toxics control laws.

22 **8. NOTICE**

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

26 For Tailor Made:

27 Larry Glass, President
28 Tailor Made Products, Inc.
101 Juneau Street
Elroy, WI 53929

1 with a copy to:

2 Judith Praitis, Esq.
3 Sidney Austin LLP
4 555 West Faith Street, Suite 4000
5 Los Angeles, CA 90013

6 For Wozniak:

7 The Chanler Group
8 Attn: Proposition 65 Coordinator
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

18 **10. POST EXECUTION ACTIVITIES**

19 Wozniak agrees to comply with the reporting form requirements referenced in Health and
20 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
21 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
22 which Wozniak shall file. In furtherance of obtaining such approval, Wozniak and Tailor Made agree
23 to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement
24 in a timely manner.

25 **11. MODIFICATION**

26 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
27 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
28 Party, and the entry of a modified consent judgment by the Court. Any motion to modify this
Consent Judgment shall be served on the Office of the Attorney General.

1 **12. AUTHORIZATION**

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


4 **AGREED TO:**

AGREED TO:

5
6 Date: January 28, 2015

Date: JANUARY 29, 2015

7
8 By: 
PAUL WYZNIAK

By: 
Larry Glass, President
TAILOR MADE PRODUCTS, INC.

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