

1 Josh Voorhees, State Bar No. 241436
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 PAUL WOZNIAK

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

12 PAUL WOZNIAK,
13
14 Plaintiff,
15 v.
16 TOYS “R” US; and DOES 1-150, inclusive,
17 Defendants.

Case No. 114CV269539
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”)
4 and defendant Toys “R” Us, Inc.. (“TRU”), with Wozniak and TRU each referred to individually as
5 a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Wozniak is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 TRU employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that TRU manufactures, imports, sells and/or distributes for sale in
16 California, headphones with vinyl/PVC cushions containing di(2-ethylhexyl)phthalate (“DEHP”),
17 and that it does so without providing the health hazard warning that Wozniak alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment is the *Tabeo Headset with Volume Control*,
21 #09182012, #5F604CE, UPC #8 03516 02892 2 (“Product”).

22 **1.6 Notice of Violation**

23 On March 26, 2014, Wozniak served TRU and the requisite public enforcement agencies
24 with a 60-Day Notice of Violation (“Notice”), alleging that TRU violated Proposition 65 when it
25 failed to warn its customers and consumers in California that the Product exposes users to DEHP.
26 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
27 prosecuting an action to enforce the allegations set forth in the Notice.
28

1 **1.7 Complaint**

2 On August 15, 2014, Wozniak commenced the instant action, naming TRU as a defendant
3 for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over TRU as to the allegations contained in the Complaint, that venue is proper in the
16 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
17 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

21 **2. INJUNCTIVE SETTLEMENT TERMS**

22 Commencing on the Effective Date, and continuing thereafter, TRU shall only import,
23 manufacture or purchase for sale in California, Reformulated Products. For purposes of this
24 Consent Judgment, “Reformulated Products” are defined as Products with a maximum DEHP
25 concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
26 Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by
27 state or federal agencies for the purpose of determining DEHP content in a solid substance.
28

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

3 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
4 claims referred to in this Consent Judgment, TRU shall pay \$12,200 in civil penalties in accordance
5 with this Section. Each penalty payment will be allocated in accordance with California Health &
6 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
7 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
8 remitted to Wozniak. Wozniak’s counsel shall be responsible for remitting TRU’s penalty
9 payment(s) under this Consent Judgment to OEHHA.

10 **3.1.1 Initial Civil Penalty.** Within 10 days of the Effective Date, TRU shall make
11 an initial civil penalty payment of \$3,200. TRU shall provide its payment in a single check made
12 payable to “Paul Wozniak, Client Trust Account” to be delivered to the address provided in Section
13 3.3, below.

14 **3.1.2 Final Civil Penalty.** On July 15, 2015, TRU shall make a final civil
15 penalty payment of \$9,000. Pursuant to title 11 California Code of Regulations, section
16 3203(c), Wozniak agrees that the final civil penalty payment shall be waived in its entirety if,
17 no later than June 30, 2015, an authorized representative of TRU provides Wozniak with
18 written certification that all of the Products it ships for sale or distributes for sale in California
19 as of the date if its certification are Reformulated Products, and that TRU will continue to offer
20 only Reformulated Products in California in the future. The option to certify reformulation in
21 lieu of making the final civil penalty payment otherwise required by this Section is a material
22 term, and time is of the essence. TRU shall deliver its certificate, if any, to Wozniak’s counsel
23 at the address provided in Section 3.3, below. In the event that TRU does not timely certify its
24 compliance or make the final civil penalty payment required by this Section, the Parties agree
25 that Wozniak may file a motion or application seeking an order compelling TRU’ compliance
26 with this Section. In the event the final civil penalty payment becomes due prior to the Effective
27 Date, then TRU shall deliver the final civil penalty payment to its attorney to be held in trust until,
28 and disbursed within two days after, the Effective Date.

1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
5 the other settlement terms had been finalized, TRU expressed a desire to resolve Wozniak’s fees
6 and costs. The Parties then negotiated a resolution of the compensation due to Wozniak and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
9 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs
10 on appeal, if any, TRU shall reimburse Wozniak and his counsel \$32,000. TRU’s payment shall
11 be due within seven calendar days of the Effective Date, and delivered to the address in Section 3.3
12 in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees
13 and costs incurred by Wozniak investigating, bringing this matter to TRU’s attention, litigating,
14 and negotiating a settlement of the matter in the public interest.

15 **3.3 Payment Address**

16 All payments required by this Consent Judgment shall be delivered to the following
17 address:

18 The Chanler Group
19 Attn: Proposition 65 Controller
20 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Wozniak’s Release of Proposition 65 Claims**

23 Wozniak, acting on his own behalf and in the public interest, releases TRU and its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
25 attorneys (“Releasees”) and each entity to whom TRU directly or indirectly distributes or sells the
26 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
27 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
28

1 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
2 manufactured, imported, distributed or sold by TRU prior to the Effective Date, as set forth in the
3 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 by TRU with respect to the alleged or actual failure to warn about exposures to
5 DEHP from Products manufactured, sold or distributed for sale by TRU after the Effective Date.

6 **4.2 Wozniak’s Individual Release of Claims**

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

14 **4.3 TRU’s Release of Wozniak**

15 TRU, on its own behalf and on behalf of its past and current agents, representatives,
16 attorneys, successors and/or assignees, hereby waives any and all claims against Wozniak and his
17 attorneys and other representatives, for any and all actions taken or statements made (or those that
18 could have been taken or made) by Wozniak and his attorneys and other representatives in the
19 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
20 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
23 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
24 after it has been fully executed by all Parties. Wozniak and TRU agree to support the entry of this
25 agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner.
26 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
27 noticed motion is required for judicial approval of this Consent Judgment, which motion Wozniak
28 shall draft and file and TRU shall support, appearing at the hearing if so requested.

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

13 **8. NOTICE**

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

18 To TRU:

19 Joel S. Tennenberg, Esq.
20 Vice President - Litigation & Regulatory
21 Counsel
22 Toys “R” Us, Inc.
23 1 Geoffrey Way
24 Wayne, NJ 07470

To Wozniak:

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

24 with a copy to:

25 Jeffrey B. Margulies, Esq.
26 Norton Rose Fulbright US LLP
27 555 South Flower Street, Forty-First Floor
28 Los Angeles, CA 90071

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

3 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

10 **11. MODIFICATION**

11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
12 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
13 any party and the entry of a modified Consent Judgment by the Court thereon.

14 **12. OTHER TERMS**

15 12.1 This Consent Judgment contains the sole and entire agreement and understanding of
16 the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and
17 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
18 deemed merged. There are no warranties, representations, or other agreements between the Parties
19 except as expressly set forth in this Consent Judgment. No representations, oral or otherwise,
20 express or implied, other than those specifically referred to in this Consent Judgment have been
21 made by any Party. No other agreements not specifically contained or referenced in this Consent
22 Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No
23 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
24 unless executed in writing by the Party to be bound. No waiver of any of the provisions of this
25 Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
26 whether or not similar, nor shall such waiver constitute a continuing waiver.
27 Nothing in this Consent Judgment shall release, or in any way affect any rights that TRU might
28 have against any other party.

1 12.2 The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
6 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
7 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
8 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
9 regard, the Parties hereby waive California Civil Code section 1654.

10 **13. AUTHORIZATION**


11 The undersigned are authorized to execute this Consent Judgment on behalf of their
12 respective Parties and have read, understood, and agree to all of the terms and conditions of this
13 Consent Judgment.

14
15 **AGREED TO:**

16 
17 _____
18 PAUL WOZNIAK

19 Dated: May 1, 2015

20 **AGREED TO:**

21 
22 _____
23 TOYS "R" US, INC.

24 By: Joel Tenenbaum
25 (Print Name)

26 Its: VP - Litigation & Regulatory Counsel
27 (Title)

28 Dated: April 14, 2015