

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Paul Wozniak and Prat/Paris, Inc.**

This Settlement Agreement is entered into by and between Paul Wozniak (Wozniak”) and Prat/Paris, Inc. (“Prat”), with Wozniak and Prat collectively referred to as the “Parties.”

Wozniak is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Wozniak alleges Prat 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 §§ 25249.5 *et seq.* (“Proposition 65”). Prat disputes that it employs ten or more persons, but nonetheless, Prat has requested to proceed with settlement.

### **1.2 General Allegations**

Wozniak alleges that Prat has manufactured, imported, distributed and/or sold in the State of California Art Portfolios with vinyl/PVC handles containing Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as Art Portfolios with vinyl/PVC handles containing DEHP including, but not limited to, the *Blick Portfolio Softside, #15090-2002, UPC #7 41389 07613 1* and the *Start by Prat Start 2 Presentation Case, S2-2111, UPC #7 01002 00523 8* which are manufactured, imported, distributed, sold and/or offered for sale by Prat in the State of California, hereinafter the “Products.”<sup>1</sup>

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<sup>1</sup> As to the *Start by Prat Start 2 Presentation Case, S2-2111, UPC #7 01002 00523 8*, based on further investigation, Wozniak alleges that this Product with vinyl/PVC handles containing Lead, is sold, manufactured, imported, distributed and/or offered for sale in California by Prat without the requisite Proposition 65 warning. (Hereinafter “Lead Products.”) While no 60-day notice was issued for Lead, the parties voluntarily wish to include said Product in this agreement.

**1.4 Notice of Violation**

On April 16, 2014, Wozniak served Prat and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Prat was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that the Product exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Prat denies the material, factual and legal allegations contained in Wozniak’s Notice and maintains that all 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 Prat of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Prat of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean August 15, 2014.

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

### **2.1 Reformulation Standards**

Reformulated Products are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.<sup>2</sup>

### **2.2 Reformulation Commitment**

As of the Effective Date, Prat shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or shall carry the Proposition 65 warnings specified in Section 2.3 below.

### **2.3 Product Warnings**

Prat shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that do not currently have warnings and that do not qualify as Reformulated Products. Each warning shall 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. The parties are informed and understand that Prat already began a warning program prior to the Effective Date, however, after Effective Date, Prat shall not order, produce, or cause to be ordered or produced, warnings that do not use the language contained in sections

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<sup>2</sup> As to the Lead Products, Reformulated Products are defined as those Products containing a maximum of 100 parts per million lead by weight in any accessible component (i.e., any component that can be touched or handled during reasonably a foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yield a result of less than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol. Prat denies the material, factual and legal allegations regarding lead and maintains that all products that it has sold and distributed in California, including the Lead Product, have been and are in compliance with all laws.

2.3(a) and 2.3(b) for any Products that are not Reformulated Products manufactured, imported, distributed, sold or offered for sale in the State of California.

**(a) Retail Store Sales.**

**(i) Product Labeling.** Prat shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

**(b) Mail Order Catalog and Internet Sales.** In the event that Prat sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Prat shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Prat may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Prat must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for the Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

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

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Prat shall pay a total of \$10,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Wozniak, as follows:

### **3.1 Initial Civil Penalty**

Prat shall pay an initial civil penalty in the amount of \$4,000 on or before the Effective Date. Prat shall issue two separate checks to: (a) "OEHHA" in the amount of \$3,000; and (b) "Paul Wozniak, Client Trust Account" in the amount of \$1,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

### **3.2 Final Civil Penalty**

Prat shall pay a final civil penalty of \$6,000 on or before November 30, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than September 15, 2014, an officer of Prat provides Wozniak with written certification that, as of the date of such certification and continuing into the future, Prat has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Prat are Reformulated Products. Wozniak must receive any such certification on or before September 15, 2014. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Prat shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$4,500; and (b) "Paul Wozniak, Client Trust Account" in the amount of \$1,500.

### **3.3 Payment Procedures**

**3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Wozniak, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA, pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

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 Non-United States Postal Service Delivery:

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

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Prat then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Prat shall pay \$25,000 for fees and costs incurred as a result of investigating, bringing this matter to Prat’s attention, and negotiating a settlement in the public interest. Prat shall make two payments of attorneys’ fees and costs.

The first payment shall be issued on or before the Effective Date in the amount of \$10,500. The second payment shall be issued and delivered on or before September 30, 2014, in the amount of \$14,500. Prat shall make the checks payable to “The Chanler Group” and shall deliver payment on or before the dates specified, the Effective Date and September 30, 2014, to the address listed in Section 3.3.1 above.

## **5. RELEASES**

### **5.1 Wozniak’s Release of Prat**

This Settlement Agreement is a full, final and binding resolution between Wozniak and Prat of any violation of Proposition 65 that was or could have been asserted by Wozniak on behalf of himself his past and current agents, representatives, attorneys, successors and/or assignees, against Prat, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Prat directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP and/or Lead contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Prat in California before the Effective Date. The release is provided in Wozniak’s individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, Wozniak on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP and/or Lead in the Products manufactured,

imported distributed, sold and/or offered for sale by Prat before the Effective Date (collectively “claims”), against Prat and Releasees.

**5.2 Prat’s Release of Wozniak**

Prat, on behalf of itself, 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 the Products.

**6. 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.

**7. 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Prat shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Prat from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-

class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Prat:

Ms. Katherine Sherman  
Wrobel Schatz & Fox LLP  
1040 Avenue of the Americas, 11th Floor  
New York, New York 10018-3703

For Wozniak:

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

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

**9. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

Wozniak agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

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

**13. AUTHORIZATION**

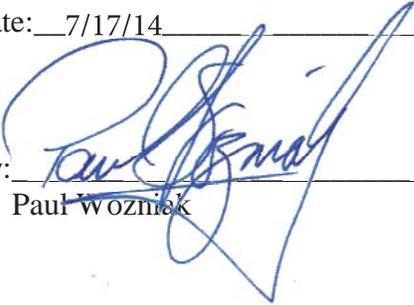
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 7/17/14

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

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

By: \_\_\_\_\_  
Prat/Paris, Inc.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

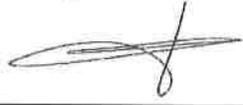
**AGREED TO:**

**AGREED TO:**

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

Date: 7/18/14

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

By:   
Marie Laurence-Dubray, President  
Prat/Paris, Inc.