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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 PAUL WOZNIAK,

13 Plaintiff,

14 v.

15 NEWELL RUBBERMAID INC.;
16 CALPHALON CORPORATION; THE TJX
COMPANIES, INC.; IRWIN INDUSTRIAL
17 TOOL COMPANY; SANFORD, L.P.; and
DOES 1-150, inclusive,

18 Defendants.
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Case No. RG14744066

[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”) on the one
4 hand and Newell Rubbermaid Inc., Calphalon Corporation, Irwin Industrial Tool Company, and
5 Sanford, L.P. (collectively, “Newell”), with Wozniak and Newell each individually referred to as a
6 “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Wozniak is an individual residing in California who seeks to promote awareness of exposures
9 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Defendant**

12 Newell employs ten or more individuals and is a “person in the course of doing business” for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
14 section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Wozniak alleges that Newell manufactures, imports, sells, or distributes for sale in California,
17 nylon cooking utensils that contain 4,4'-methylenedianiline (“4,4’-MDA”) without first providing
18 the exposure warning required by Proposition 65. 4,4’-MDA is listed pursuant to Proposition 65 as a
19 chemical known to the State of California to cause cancer. Wozniak also alleges that Newell
20 manufactures, imports, sells, or distributes for sale in California, vinyl/PVC tape and vinyl/PVC
21 journal covers that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure
22 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
23 to the State of California to cause birth defects or other reproductive harm.

24 **1.5 Product Description**

25 The products covered by this Consent Judgment are: (a) nylon cooking utensils containing
26 4,4’-MDA that are manufactured, imported, sold, or distributed for sale in California by Newell
27 including, but not limited to, the *Calphalon Nylon Spoon, #1751971, (UPC No. 0 16853 04062 9)*;
28 (b) vinyl/PVC tape containing DEHP that is manufactured, imported, sold, or distributed for sale in

1 California by Newell including, but not limited to, the *Irwin Strait-Line*, #65604, (UPC No. 0 24721
2 71005 5) (“the Tape Products”); and (c) vinyl/PVC journal covers containing DEHP that are
3 manufactured, imported, sold, or distributed for sale in California by Newell including, but not
4 limited to, *Rolodex Journal*, USLV1173080, (UPC No. 0 30402 63717 7). The nylon cooking
5 utensils, vinyl/PVC tape and vinyl/PVC journal covers described herein are collectively referred to as
6 “Products.”

7 **1.6 Notice of Violation**

8 On May 21, 2014, Wozniak served Newell and certain requisite public enforcement agencies
9 with a “60-Day Notice of Violation” (“Notice”) alleging that Newell violated Proposition 65 by
10 failing to warn its customers and consumers in California that its nylon cooking utensils expose users
11 to 4,4’-MDA. On September 12, 2014, Wozniak served Newell and certain requisite public
12 enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”)
13 alleging that Newell violated Proposition 65 when it failed to warn its customers and consumers in
14 California that its vinyl/PVC tape and vinyl PVC journal covers expose users to DEHP. The Initial
15 Notice and Supplemental Notice together are referred to collectively as the “Notices.” To the best of
16 the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
17 allegations set forth in the Notices.

18 **1.7 Complaint**

19 On October 10, 2014, Wozniak filed the instant action. Thereafter, on December 10, 2014,
20 Wozniak filed a First Amended Complaint, the operative pleading in this action (“Complaint”),
21 naming Newell as a defendant for the alleged violations of Health and Safety Code section 25249.6
22 that are the subject of the Notices

23 **1.8 No Admission**

24 Newell denies the material, factual, and legal allegations contained in the Notices and
25 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
26 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
27 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
28 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed

1 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
2 Section shall not, however, diminish or otherwise affect Newell’s obligations, responsibilities, and
3 duties under this Consent Judgment.

4 **1.9 Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over Newell as to the allegations in the Complaint, that venue is proper in Alameda
7 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
8 Judgment.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term “Effective Date” means March 15, 2015.

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

12 **2.1 Reformulated Products**

13 Commencing on the Effective Date, and continuing thereafter, and with the exception of the
14 Tape Products, Newell shall only purchase for sale, or manufacture for sale in California,
15 “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products are
16 Products that contain a maximum of 200 parts per million 4,4’-MDA by weight, utilizing European
17 Standard EN-14362, or other equivalent methodologies used to detect 4,4’-MDA in a solid substance,
18 and analyzed using gas chromatography with mass spectrometer detection (GC-MS) to determine
19 4,4’-MDA content by weight in a solid substance.

20 For the purposes of this Consent Judgment and as to Products containing DEHP, with the
21 exception of the Tape Products, Reformulated Products are products that contain a maximum of
22 1,000 parts per million DEHP by weight in any accessible component (i.e., any part or feature of a
23 Product that may be touched during use) when analyzed pursuant to Environmental Protection
24 Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and
25 federal agencies to determine DEHP content in a solid substance.

26 **2.2 Clear and Reasonable Warnings for Tape Products**

27 Commencing on August 15, 2015, and continuing thereafter, for all Tape Products that are not
28 Reformulated Products, Newell agrees that it will only sell or distribute such Tape Products for sale

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 the
5 other settlement terms had been finalized, Newell expressed a desire to resolve Wozniak's fees and
6 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak
7 and his counsel under general contract principles and the private attorney general doctrine codified
8 at California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution
9 of this Consent Judgment. Newell shall pay \$46,000 for fees and costs incurred by Wozniak
10 investigating, bringing this matter to Newell's attention, litigating and negotiating a settlement in the
11 public interest. Newell's payment shall be delivered as set forth Section 3.4 in the form of a check
12 payable to "The Chanler Group."

13 **3.3 Payments Held In Trust**

14 All payments due under this Consent Judgment shall be held in trust until such time as the
15 Court approves the Parties' settlement. All payments due under this agreement shall be paid within
16 fifteen (15) days of the date this Consent Judgment is fully executed by the Parties, and shall be held
17 in trust by Newell's counsel until the Court grants the motion for approval of this Consent Judgment
18 contemplated by Section 5. Within two days of the Court's approval of this Consent Judgment,
19 Newell's counsel shall tender the civil penalty payment and attorneys' fees and costs
20 reimbursements required by Sections 3.1 and 3.2 to Wozniak's counsel at the address in Section 3.4
21 below.

22 **3.4 Payment Address**

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

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

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

3 Wozniak, acting on his own behalf and in the public interest, releases Newell and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
6 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
7 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
8 violations arising under Proposition 65 for unwarned exposures to 4,4’-MDA and DEHP from
9 Products sold by Newell prior to the Effective Date, as set forth in the Notice. Compliance with the
10 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to alleged
11 or actual exposures to and failures to warn about 4,4’-MDA and DEHP from the Products sold by
12 Newell before the Effective Date, as set forth in the Notice.

13 **4.2 Wozniak’s Individual Release of Claims**

14 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
15 a release to Newell, Releasees, and Downstream Releasees which shall be effective as a full and final
16 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
17 attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
18 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
19 exposures to and failures to warn about 4,4’-MDA and DEHP in the Products sold or distributed for
20 sale by Newell before the Effective Date.

21 **4.3 Newell’s Release of Wozniak**

22 Newell, on its own behalf, and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
24 attorneys and other representatives(or those that could have been taken or made), for any and all
25 actions taken or statements made by Wozniak and his attorneys and other representatives, whether
26 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
27 matter, or with respect to the Products.
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1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

6 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
7 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
8 adversely affected unless the unenforceable provision(s) render(s) one or more of the remaining
9 provisions a nullity or void.

10 **7. GOVERNING LAW**

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

18 **8. NOTICE**

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

22 **Newell Rubbermaid Inc.**

23 Michael Polk, President
24 Newell Rubbermaid Inc.
25 3 Glenlake Parkway
Atlanta, GA 30328

Kevin C. Mayer, Esq.
Crowell & Moring LLP
515 S Flower St., 40th Floor
Los Angeles, CA 90071

26 **Paul Wozniak**

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

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

3 **9. COUNTERPARTS; FACSIMILE 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. POST EXECUTION ACTIVITIES**

8 Wozniak agrees to comply with the reporting form requirements referenced in Health and
9 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
10 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
11 furtherance of obtaining such approval, Wozniak and Newell agree to mutually employ their best
12 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
13 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
14 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
15 supporting the motion, and appearing at the hearing before the Court.

16 **11. MODIFICATION**

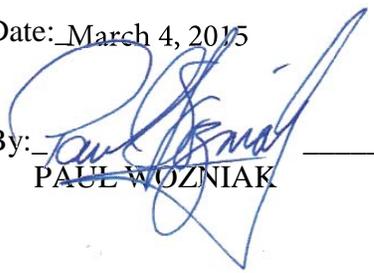
17 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
18 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
19 Party, and the entry of a modified consent judgment by the Court.

20 **12. AUTHORIZATION**

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

23 AGREED TO:

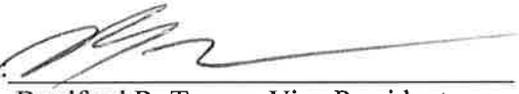
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25 Date: March 4, 2015 _____

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27 By:  _____
28 PAUL WOZNIAK

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AGREED TO:

Date: 3/5/15

By: 

Bradford R. Turner, Vice President
and Deputy General Counsel
NEWELL RUBBERMAID INC.