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7
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 FLP, LLC, *et al.*,

16 Defendants.
17

Case No. RG14750997

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

14 **1.4 General Allegations**

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

23 **1.5 Product Description**

24 The products covered by this Consent Judgment are: (a) nylon cooking utensils containing
25 4,4’-MDA that are manufactured, imported, sold, or distributed for sale in California by FLP
26 including, but not limited to, *Cook’s Kitchen Basting Spoon, (UPC No. 7 40985 88248 1)*; and
27 (b) kitchen tools with vinyl/PVC grips containing DEHP that are manufactured, imported, sold, or
28 distributed for sale in California by FLP including, but not limited to, *Cook’s Kitchen Bottle Opener,*

1 #092612 (UPC No. 7 40985 88204 7). The nylon cooking utensils and kitchen tools with vinyl/PVC
2 grips described herein are collectively referred to as “Products”.

3 **1.6 Notice of Violation**

4 On or about September 30, 2014, Wozniak served FLP and certain requisite public
5 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that FLP violated
6 Proposition 65 by failing to warn its customers and consumers in California that the Products expose
7 users to 4,4’-MDA and DEHP. To the best of the Parties’ knowledge, no public enforcer has
8 commenced and is diligently prosecuting the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On December 10, 2014, Wozniak filed the instant action (“Complaint”) naming FLP as a
11 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
12 the Notice

13 **1.8 No Admission**

14 FLP denies the material, factual, and legal allegations contained in the Notice and Complaint,
15 and it maintains that all of the products that it has sold and distributed for sale in California, including
16 the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
17 shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
18 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
19 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,
20 however, diminish or otherwise affect FLP’s obligations, responsibilities, and duties under this
21 Consent Judgment.

22 **1.9 Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over FLP as to the allegations contained in the Complaint, that venue is proper in the
25 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
26 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.
27
28

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
3 the Consent Judgment is entered by the Court.

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

5 **2.1 Reformulated Products**

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

8 **2.1.1 4,4’-MDA**

9 With respect to 4,4’-MDA, Reformulated Products are products that:

- 10 *i.* contain less than or equal to 200 parts per million (“ppm”) 4,4’-MDA by
11 weight using validated preparation and analytical methods used to detect the
12 presence of 4,4’-MDA in a solid substance;
- 13 *ii.* and produce a leach result of 10 ug/L or less 4,4’-MDA by digesting the food
14 contact end of the product into 100 ml of 3% acetic acid de-ionized water for 2
15 hours at 100°C, replenishing the acetic acid solution as needed to maintain 100
16 ml, and analyzing the leachate using a validated method to detect the presence
17 of 4,4’-MDA in a liquid.

18 The testing shall be conducted in an accredited laboratory with qualified personnel.

19 All analytical reports must contain quality control data that verify the laboratory’s performance for
20 the results in each analytical report.

21 **2.1.2 DEHP**

22 With respect to DEHP, Reformulated Products are products that contain a maximum
23 of 1,000 parts per million DEHP by weight in any accessible component (i.e., any part or feature of a
24 Product that may be touched during use) when analyzed pursuant to Environmental Protection
25 Agency testing methodologies 3580A and 8270C, CPSC-WH-C1001-09.3, or equivalent
26 methodologies utilized by state and federal agencies to determine DEHP content in a solid substance.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
4 this Consent Judgment, FLP shall pay \$48,000 in civil penalties. Each civil penalty payment shall be
5 allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
6 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
7 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Wozniak.

8 **3.1.1 Initial Civil Penalty**

9 Within two business days after the Effective Date, FLP shall make an initial civil
10 penalty payment of \$8,000. FLP shall provide its payment in two checks for the following amounts
11 made payable to: (a) “OEHHA” in the amount of \$6,000; and (b) “Paul Wozniak, Client Trust
12 Account” in the amount of \$2,000.

13 **3.1.2 Final Civil Penalty**

14 On or before June 1, 2016, FLP shall make a final civil penalty payment of \$40,000.
15 Pursuant to title 11 California Code of Regulations, section 3203(c). Wozniak agrees that \$20,000 of
16 the civil penalty payment shall be waived if, on or before June 1, 2016, an officer of FLP provides
17 Wozniak with written certification that all of the Products it is selling or distributing for sale in
18 California as of the date of such certification meet the 4,4’-MDA standard set forth in Section 2.1.1,
19 and/or \$20,000 shall be waived if, on or before June 1, 2016, an officer of FLP provides Wozniak
20 with written certification that all of the Products it is selling or distributing for sale in California as of
21 the date of such certification meet the DEHP standard set forth in Section 2.1.2. The certification in
22 lieu of the final civil penalty is a material term, and with regard to such term, time is of the essence.
23 Certification shall be delivered to Wozniak at the address set forth in Section 8.

24 **3.2 Reimbursement of Attorney’s Fees and Costs**

25 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
28 other settlement terms had been finalized, FLP expressed a desire to resolve Wozniak’s fees and

1 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak
2 and his counsel under general contract principles and the private attorney general doctrine codified at
3 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
4 execution of this Consent Judgment. Within two business days the Effective Date, FLP shall pay
5 \$30,700 for the fees and costs incurred by Wozniak investigating, bringing this matter to FLP's
6 attention, litigating and negotiating a settlement in the public interest.

7 **3.3 Payments Held in Trust**

8 All payments due under this Consent Judgment shall be held in trust until such time as the
9 Court approves the Parties' settlement. Except the final civil penalty payment required by Section
10 3.1.2, all payments due under this agreement shall be delivered to FLP's counsel within five (5)
11 business days of the date that this Consent Judgment is fully executed by the Parties, and held in
12 trust by FLP's counsel until the Court grants the motion for approval of this Consent Judgment
13 contemplated by Section 5. Within two business days of the Court's approval of this Consent
14 Judgment, FLP's counsel shall tender the initial civil penalty payments and attorneys' fee and costs
15 reimbursements required by Sections 3.1 and 3.2.

16 **3.4 Payment Address**

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

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Wozniak's Public Release of Proposition 65 Claims**

26 Wozniak, acting on his own behalf and in the public interest, releases FLP and its parents,
27 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
28 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers
(including defendant Rite Aid Corporation), franchisees, cooperative members, licensors and

1 licensees (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned
2 exposures to 4,4’-MDA and DEHP from the Products sold by FLP prior to the Effective Date, as set
3 forth in the Notice and Complaint. Compliance with the terms of this Consent Judgment constitutes
4 compliance with Proposition 65 with respect to failures to warn about 4,4’-MDA and DEHP from
5 the Products sold by FLP before the Effective Date, as set forth in the Notice and Complaint.

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

7 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
8 a release to FLP, Releasees, and Downstream Releasees which shall be effective as a full and final
9 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
10 attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
11 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
12 exposures to 4,4’-MDA and DEHP in the Products sold or distributed for sale by FLP before the
13 Effective Date.

14 **4.3 FLP’s Release of Wozniak**

15 FLP, on its own behalf, and on behalf of its past and current agents, representatives,
16 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
17 attorneys and other representatives (or those that could have been taken or made), for any and all
18 actions taken or statements made by Wozniak and his attorneys and other representatives, whether
19 in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
20 matter, or with 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 shall
23 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
24 has been fully executed by the Parties.

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

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

9 **8. NOTICE**

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

13 For FLP:

14 Paul Croisdale, President
15 FLP, LLC
16 2405 South Roosevelt Street
17 Tempe, AZ 85282

17 with a copy to:

18 Peg Carew Toledo, Esq.
19 Toledo Don LLP
20 3001 Douglas Boulevard, Suite 340
21 Roseville, CA 95661

20 For Wozniak:

21 The Chanler Group
22 Attn: Proposition 65 Coordinator
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

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

14 **11. MODIFICATION**

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

18 **12. AUTHORIZATION**

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

21 **AGREED TO:**

AGREED TO:

22
23 Date: _____

Date: 6/11/2015

24
25 By: _____

PAUL WOZNIAK

By: Paul Croisdale _____

Paul Croisdale, President
FLP, LLC

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21 **AGREED TO:**

AGREED TO:

22
23 Date: June 9, 2015 _____

Date: _____

24
25 By:  _____
26 PAUL WOZNIAK

By: _____
Paul Croisdale, President
FLP, LLC