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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 CERTIFIED INTERNATIONAL CORP.; *et*)
16 *al.*,)

17 Defendants.)
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Case No. RG15775498

[PROPOSED] CONSENT JUDGMENT

Action Filed: June 25, 2015

1 **1. INTRODUCTION**

2 **1.1 Paul Wozniak and Certified International Corp.**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”
4 or “Plaintiff”) and defendant Certified International Corp. (“Certified” or “Defendant”) with
5 Plaintiff and Defendant collectively referred to as the “parties.”

6 **1.2 Paul Wozniak**

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

10 **1.3 Certified International Corp.**

11 Wozniak alleges that Defendant employs ten or more persons and are each a person in the
12 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
13 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Certified manufactured, imported, distributed and/or sold in the State
16 of California mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65
17 as a chemical known to the State of California to cause birth defects and other reproductive harm.

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are defined as mugs with exterior
20 designs containing lead including, but not limited to, *World’s Best Mom 15 oz. Ceramic Mug, Item*
21 *#24047, UPC #7 30384 24047 0*, which are manufactured, imported, distributed, sold and/or offered
22 for sale by Certified in the State of California, hereinafter the “Products.”

23 **1.6 Notices of Violation**

24 On December 22, 2014, Wozniak served Certified and various public enforcement agencies
25 with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that
26 Certified was in violation of California Health & Safety Code § 25249.6 for failing to warn
27 consumers that their mugs with exterior decorations exposed users in California to lead.

1 **1.7 Complaint**

2 On June 25, 2015, Wozniak filed a complaint in the Superior Court in and for the County of
3 Alameda against Certified and Does 1 through 150, *Wozniak v. Certified International Corp., et al.*,
4 Case No. RG15775498 (the “Action”), alleging violations of California Health & Safety Code
5 § 25249.6, based on the alleged exposures to lead contained in certain mugs with exterior designs
6 sold by Defendant in the State of California.

7 **1.8 No Admission**

8 Certified denies the material, factual and legal allegations contained in Wozniak’s Notice
9 and Complaint and maintains that all products that they have sold, manufactured, imported and/or
10 distributed in California, including the Products, have been and are in compliance with all laws.
11 Nothing in this Consent Judgment shall be construed as an admission by Certified of any fact,
12 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute
13 or be construed as an admission by Certified of any fact, finding, conclusion, issue of law or
14 violation of law. However, this section shall not diminish or otherwise affect Certified’s
15 obligations, responsibilities and duties under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the parties stipulate that this Court has
18 jurisdiction over Certified as to the allegations contained in the Complaint, that venue is proper in
19 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date which
23 the Court approves this Consent Judgment, including any unopposed tentative rulings.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulation Standards and Commitment**

26 As of April 30, 2016, all Products manufactured for sale and/or purchased for sale in the
27 State of California by Certified shall be Products that qualify as “Reformulated Products.” For
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1 purposes of this Consent Judgment, Reformulated Products are Products that comply with the Lead
2 Reformulation Standards set forth in Section 2.2.

3 **2.2 Lead Reformulation Standards**

4 Reformulated Products shall yield a maximum result of 1.0 microgram (“µg”) residual lead
5 content by weight on any surface, with exterior decorations sampled pursuant to the NIOSH 9100
6 sampling protocol *and* analyzed pursuant to EPA Analytical Methods 3050B and/or 6010B, and that
7 contain a maximum of 100 parts per million (“ppm”) (0.01%) lead by weight as measured either
8 before or after the material is fired onto (or otherwise affixed to) the Product.¹

9 **3. MONETARY PAYMENTS**

10 **3.1 Civil Penalty Payments**

11 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a
12 total of \$21,500 in civil penalties in accordance with this Section. Each penalty payment will be
13 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
14 the funds remitted to the California Office of Environmental Health Hazard Assessment
15 (“OEHHA”) by Wozniak.

16 **3.1.1 Initial Civil Penalty**

17 Defendant shall pay an initial civil penalty in the amount of \$6,500 within five (5)
18 days of the Effective Date. Defendant shall issue a check payable to “Paul Wozniak, Client Trust
19 Account” to the address found in Section 3.3.1 below.

20 **3.1.2 Final Civil Penalty**

21 Certified shall pay a final civil penalty of \$15,000 on or before November 30, 2016.
22 The final civil penalty shall be waived in its entirety, however, if, no later than sixty (60) days of the
23 Effective Date, an officer of Certified provides Wozniak with written certification that, as of the
24 date of such certification and continuing into the future, all Products manufactured, imported,
25 distributed, sold and offered for sale in California by, or on behalf of, Certified are Reformulated

26 _____
27 ¹ If the exterior decoration is tested after it is affixed to the Product, the percentage of lead by weight must relate only to
28 the decorating material and must not include any quantity attributable to any non-non-decorating material (e.g., the ceramicware substrate).

1 Products. Wozniak must receive any such certification within sixty (60) days of the Effective Date.
2 The certification in lieu of a final civil penalty payment provided by this Section is a material term,
3 and time is of the essence. Defendant shall issue a check for its final civil penalty payments to:
4 “Paul Wozniak, Client Trust Account” in the amount of \$15,000.

5 **3.2 Reimbursement of Fees and Costs**

6 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 this fee issue to be resolved after the material terms of the agreement had been settled. Wozniak
9 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
10 been finalized. 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
12 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through
13 the mutual execution of this agreement. Certified shall pay \$36,500 for fees and costs incurred as a
14 result of investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in
15 the public interest. Within five (5) days of the Effective Date, Certified shall issue a check payable
16 to “The Chanler Group” to the address found in Section 3.3.1. below.

17 **3.3 Payment Procedures**

18 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

19 All payments owed to Wozniak and his counsel, pursuant to Sections 3.1
20 through 3.2, shall be delivered to the following payment address:

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

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

28 Wozniak, acting on his own behalf and in the public interest, releases Certified and their
parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,

1 and attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
2 Products including, but not limited to, their downstream distributors, wholesalers, customers,
3 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
4 any violations arising under Proposition 65 for unwarned exposures to lead from the Products sold
5 by Certified prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
6 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead
7 from the Products.

8 **4.2 Wozniak’s Individual Release of Claims**

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

16 **4.3 Certified’s Release of Wozniak**

17 Certified, on behalf of themselves, their past and current agents, representatives, attorneys,
18 successors and/or assignees, hereby waive any and all claims against Wozniak, his attorneys and
19 other representatives, for any and all actions taken or statements made (or those that could have
20 been taken or made) by Wozniak and his attorneys and other representatives, whether in the course
21 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
22 respect to the Products.

23 **5. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and
25 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
26 after it has been fully executed by all parties.
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1 **6. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
4 remaining 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 if any of the provisions of this
9 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
10 preemption or rendered inapplicable by reason of law generally as to the Products, then Certified
11 shall provide written notice to Wozniak of any asserted change in the law, and shall have no further
12 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
13 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Certified from any
14 obligation to comply with any pertinent state or federal toxics control law.

15 **8. NOTICES**

16 Unless specified herein, all correspondence and notices required to be provided pursuant to
17 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
18 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
19 other party at the following addresses:

20 To Certified:

21 Andrew Santulli
22 Certified International Corp
23 36 Vanderbilt Avenue
24 Pleasantville, NY 10570

25 With a copy to:

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

 To Paul Wozniak:

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

1 Any party, from time to time, may specify in writing to the other party a change of address
2 to 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 pdf signature,
5 each of which shall be deemed an original, and all of which, when taken together, shall constitute
6 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

10 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Wozniak and Certified agree to mutually employ their best efforts to support the entry of
12 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in
13 a timely manner, but the Parties agree that a hearing to approve this Consent Judgment will be
14 requested no earlier than sixty (60) days from the date this Consent Judgment is executed. The
15 parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion
16 is required to obtain judicial approval of this Consent Judgment, which
17 Wozniak shall draft and file. Certified shall support entry of this Consent Judgment.

18 **13. MODIFICATION**

19 This Consent Judgment may be modified only: (1) by written agreement of the parties and
20 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
21 of any party and entry of a modified Consent Judgment by the Court.

22 **14. OTHER TERMS**

23 This Consent Judgment contains the sole and entire agreement and understanding of the
24 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all
25 prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed
26 merged. There are no warranties, representations, or other agreements between the Parties except as
27 expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or
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1 implied, other than those specifically referred to in this Consent Judgment have been made by any
2 Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral
3 or otherwise, shall be deemed to exist or to bind any of the Parties. No waiver of any of the
4 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
5 provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

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

15 **15. AUTHORIZATION**

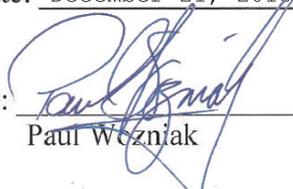
16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective parties and have read, understood and agree to all of the terms and conditions of this
18 Consent Judgment.

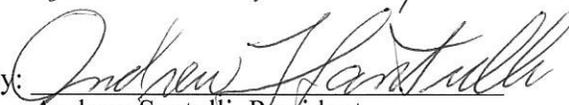
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20 AGREED TO:

AGREED TO:

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22 Date: December 21, 2015

Date: December 21, 2015

23
24 By: 
Paul Wozniak

By: 
Andrew Santulli, President
Certified International Corp.