

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”) and Diamond Star Corporation (“Diamond Star”), with Wozniak and Diamond Star each individually referred to as a “Party” and collectively as the “Parties.” Wozniak is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Wozniak alleges that Diamond Star 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 § 25249.6 et seq. (“Proposition 65”).

### 1.2 General Allegations

Wozniak alleges that Diamond Star sells and/or distributes for sale in California glass containers with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer, birth defects, and/or other reproductive harm. Wozniak alleges that Diamond Star failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to lead from its glass containers with exterior designs.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are glass containers with exterior designs containing lead including, but not limited to, *Glass Cylinder, Branches Design # 64063, UPC #8 72602 03587 8*, sold or distributed for sale in California by Diamond Star (“Products”).

### 1.4 Notice of Violation

On or about December 22, 2014 Wozniak served Diamond Star and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”),

which alleges that Diamond Star violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Diamond Star denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has distributed, sold, and/or offered for sale in California, including the Products, have been and are in compliance with all applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Diamond Star of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Diamond Star of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Diamond Star. However, this Section shall not diminish or otherwise affect Diamond Star's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 15, 2016.

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

### **2.1 Reformulated Products**

For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products that contain no more than 90 parts per million ("ppm") of lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and/or 6010B or equivalent methodologies utilized by federal or state government agencies for the purpose of determining lead content in a solid substance; and yield no more than 1.0 microgram ("ug") of lead when a wipe is applied to all surfaces according to NIOSH Test Method No. 9100.

## **2.2 Reformulation Commitment**

As of the Effective Date, all Products manufactured, distributed, sold and/or offered for sale in the State of California by Diamond Star, shall be Products that qualify as Reformulated Products as defined in Section 2.1 above. Diamond Star represents that upon receipt of the Notice, Diamond Star took measures to reformulate its Products, and that as of the Effective Date of this Settlement Agreement, all Products manufactured, sold, or offered for sale in California meet the reformulation standard set forth in Section 2.1.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Diamond Star agrees to pay \$ 5,000 in civil penalties. The civil penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Wozniak. On or before the Effective Date, Diamond Star shall provide its civil penalty payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,750; and (b) “Paul Wozniak, Client Trust Account” in the amount of \$1,250. Wozniak’s counsel shall be responsible for remitting Diamond Star’s penalty payment to OEHHA under this Settlement Agreement.

### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Diamond Star agrees to pay \$24,000 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention

of Diamond Star's management, and negotiating a settlement in the public interest. Diamond Star's payment shall be due on or before the Effective Date, and delivered to the address in Section 3.3 in the form of a check made payable to "The Chanler Group."

### **3.3 Payment Address**

All payments owed to OEHHA, Wozniak, and his counsel as required by this Settlement Agreement shall be delivered to the following address:

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

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## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Wozniak's Release of Diamond Star**

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and *not* on behalf of the public, and Diamond Star, of any violation of Proposition 65 that was or could have been asserted by Wozniak, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against Diamond Star, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Diamond Star directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to lead contained in Products distributed, sold or offered for sale by Diamond Star in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Wozniak, on his own behalf and *not* on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposures to lead resulting from Products distributed, sold and/or offered for sale by Diamond Star before the Effective Date.

#### **4.2 Diamond Star's Release of Wozniak**

Diamond Star, on its own behalf, and on behalf of 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.

#### **4.3 Deemed Compliance with Proposition 65**

Compliance by Diamond Star with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the Products.

#### **4.4 Public Benefit**

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Diamond Star under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Diamond Star's intent by entering into this Agreement that to the extent any other private party initiates an action against Diamond Star alleging a violation of Proposition 65 with respect to failure to provide a warning concerning exposure to lead from Products distributed, sold or offered for sale by Diamond Star in California, and subject to Diamond Star's material compliance with this Settlement Agreement, such action by

another private party would not confer a significant benefit on the general public as to those Products addressed under this Agreement.

**5. REPRESENTATION REGARDING SALES**

Diamond Star represents that the sales information it provided to Wozniak is truthful to its knowledge and acknowledges it is a material factor upon which Wozniak relied to determine the amount of civil penalties assessed under this Settlement Agreement in accordance with California Health & Safety Code section 25249.7(b).

**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 to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to, the intent of the Parties.

**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 otherwise rendered inapplicable by reason of law generally, as to Diamond Star specifically as a result of a statutory exemption, or as to the Products, then Diamond Star may provide written notice to Wozniak of any asserted change in the law, or its applicability to Diamond Star or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Diamond Star or the Products are so affected.

**8. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a

recognized overnight courier on any Party by the other at the following addresses:

For Diamond Star:

Jim Ross  
General Manager  
Diamond Star Corporation  
1010 East Belmont Street  
Ontario, CA 91761

with a copy to:

Joshua A. Bloom, Esq.  
Meyers Nave  
555 12th Street, Suite 1500  
Oakland, CA 94607

For Wozniak:

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

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

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (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 and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

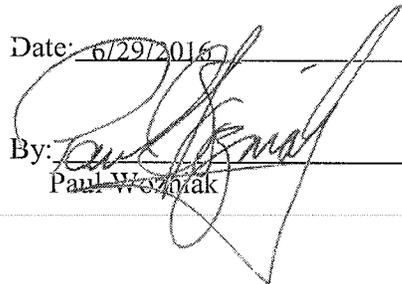
This Settlement Agreement may be modified only by written agreement of the Parties.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 6/29/2016

By:   
Paul Wozniak

**AGREED TO:**

Date: 7/8/16

By:   
Jim Ross  
General Manager  
Diamond Star Corporation

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