

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”), and defendant Fox Run USA, LLC (“Fox Run”), with Wozniak and Fox Run 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 Fox Run 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 Fox Run manufactures, sells, and/or distributes for sale in California, nylon cooking utensils containing 4,4'-methylenedianiline (“4,4'-MDA”), and glass dressing shaker bottles with exterior designs containing lead. 4,4'-MDA is listed pursuant to Proposition 65 as a chemical known to cause cancer, and lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Wozniak alleges that Fox Run failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to 4,4'-MDA from nylon cooking utensils, and to lead from the exterior designs on its glass dressing shaker bottles.

1.3 Product Description

The products that are covered by this Settlement Agreement are: (i) nylon cooking utensils containing 4,4'-MDA, including but not limited to the *Fox Run Culinary Tools for Every Kitchen Spoon, #6194, UPC#0 30734 06194 7*; and (ii) glass shaker bottles with exterior designs containing lead including, but not limited to the *Fox Run Culinary*

Tools for Every Kitchen Drizzler Bottle, #5631, UPC #0 30734 05631 8; manufactured, sold or distributed for sale in California by Fox Run (“Products”).

1.4 Notice of Violation

On or about December 22, 2014, Wozniak served Fox Run and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Fox Run violated Proposition 65 when it failed to warn its customers and consumers in California that its nylon cooking utensils expose users to 4,4’-MDA, and its glass dressing shaker bottles with exterior designs 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

Fox Run denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Fox Run 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 Fox Run of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fox Run. However, this Section shall not diminish or otherwise affect Fox Run’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 December 28, 2015.

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2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before April 13, 2016 and continuing thereafter, Fox Run agrees to only manufacture for sale or purchase for sale in or into California, “Reformulated Products”.

With respect to lead, “Reformulated Products” shall: (i) contain no more than to 100 parts per million (“ppm”) lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (ii) 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;

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

The testing shall be conducted in an accredited laboratory with qualified personnel. All analytical reports must contain quality control data that verify the laboratory’s performance for the results in each analytical report.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

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, Fox Run agrees to pay \$ 2,000 in civil penalties. The 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 amount paid to Wozniak.

3.1.1 Civil Penalty. On or before the Effective Date, Fox Run shall pay a civil penalty in the amount of \$2,000. Fox Run will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Paul Wozniak, Client Trust Account” in the amount of \$500.

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, Fox Run agrees to pay \$20,000 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Fox Run’s management, and negotiating a settlement in the public interest. Fox Run’s payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.”

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak’s Release of Fox Run

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and not on behalf of the public, and Fox Run, 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 Fox Run, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fox Run 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 manufactured, distributed, sold or offered for sale by Fox Run in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Wozniak, on his own behalf, 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 lead and 4,4’-MDA in Products manufactured, distributed, sold and/or offered for sale by Fox Run before the date that this Settlement Agreement is fully executed by the Parties.

4.2 Fox Run’s Release of Wozniak

Fox Run, 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.

5. 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.

6. 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 Fox Run specifically as a result of a statutory exemption, or as to the Products, then Fox Run may provide written notice to Wozniak of any asserted change in the law, or its applicability to Fox Run or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Fox Run or the Products are so affected.

7. 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:

Fox Run

Sean Leonard, President
Fox Run USA, LLC
1907 Stout Drive
Ivyland, PA 18974

Paul Wozniak

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

Thomas J. Herten, Esq.
Archer & Greiner P.C.
Court Plaza South, West Wing
21 Main Street, Suite 353
Hackensack, NJ 0760
Fox Run USA, LLC

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.

8. 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.

9. 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).

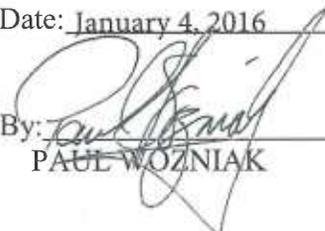
10. MODIFICATION

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

11. 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: January 4, 2016
By: 
PAUL WOZNIAK

AGREED TO:

Date: 1/4/16
By: 
Sean Leonard, President
FOX RUN USA, LLC