

1 Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
PAUL WOZNIAK
6
7

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

12 PAUL WOZNIAK,

13 Plaintiff,

14 v.

15 NORDSTROM, INC., *et al.*

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

Case No. CIV1502330

[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 plaintiff Paul Wozniak (“Wozniak”),
4 and Nordstrom, Inc. (“Nordstrom”), with Wozniak and Nordstrom each individually referred to as a
5 “Party” and collectively as 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 Nordstrom**

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

14 **1.4 General Allegations**

15 Wozniak alleges that Nordstrom manufactures, imports, sells, or distributes for sale in
16 California, drinking glasses with exterior designs that contain lead without first providing the
17 exposure warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical
18 known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are certain drinking glasses with exterior
21 designs containing lead that are manufactured, imported, sold, or distributed by SpitFire Girl, to
22 Nordstrom, for sale in California by Nordstrom, specifically: (i) *Good Ole Fire Water Drinking*
23 *Glass, #0732 0564 1191, G9-03, UPC #4 29584 61951* and (ii) *Knock One Back Drinking Glass G9-*
24 *06*; hereinafter the “Products”.

25 **1.6 Notice of Violation**

26 On or about December 22, 2014, Wozniak served Nordstrom, and certain requisite public
27 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Nordstrom
28 violated Proposition 65 by failing to warn it’s customers and consumers in California that the

1 Products expose users to lead. To the best of the Parties’ knowledge, no public enforcer has
2 commenced and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On June 23, 2015, Wozniak filed the instant action (“Complaint”) naming Nordstrom as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Nordstrom as to the allegations contained in the Complaint, that venue is proper in
19 the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the Motion for Approval of the Consent Judgment is granted by the Court.
24
25
26
27
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Nordstrom shall only
4 manufacture, sell, or distribute for sale in California, “Reformulated Products.” For purposes of this
5 Consent Judgment, Reformulated Products are Products that: (a) contain no more than to 90 parts per
6 million (“ppm”) lead when analyzed pursuant to U.S. Environmental Protection Agency testing
7 methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies
8 for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0
9 microgram (“ug”) of lead when a wipe is applied to all surfaces according to NIOSH Test Method
10 No. 9100.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Civil Penalty Payments**

13 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
14 this Consent Judgment, Nordstrom shall pay \$3,500 in civil penalties. The civil penalty payment
15 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-
16 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
17 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Wozniak.

18 Nordstrom shall make the civil penalty payment following the procedure set forth in section
19 3.3 and 3.4 below in two checks for the following amounts made payable to: (a) “OEHHA” in the
20 amount of \$2,625; and (b) “Paul Wozniak, Client Trust Account” in the amount of \$875.

21 **3.2 Reimbursement of Attorney’s Fees and Costs**

22 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
23 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
24 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
25 other settlement terms had been finalized, Nordstrom expressed a desire to resolve Wozniak’s fees
26 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
27 Wozniak and his counsel under general contract principles and the private attorney general doctrine
28 codified at California Code of Civil Procedure section 1021.5 for all work performed through the

1 mutual execution of this Consent Judgment. Nordstrom shall pay \$25,500 for the fees and costs
2 incurred by Wozniak investigating, bringing this matter to Nordstrom’s attention, litigating and
3 negotiating a settlement in the public interest.

4 **3.3 Payments**

5 All payments due under this agreement shall be delivered within five (5) days of the
6 Effective Date to the address found in Section 3.4 below.

7 **3.4 Payment Address**

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

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
Berkeley, CA 94710

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

16 Wozniak, acting on his own behalf and in the public interest, releases Nordstrom and it’s
17 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
18 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
19 Products including, but not limited to, it’s downstream distributors, wholesalers, customers,
20 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
21 any violations arising under Proposition 65 for unwarned exposures to lead from Products sold by
22 Nordstrom prior to the Effective Date, as set forth in the Notice.

23 **4.2 Wozniak’s Individual Release of Claims**

24 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
25 a release to Nordstrom, Releasees, and Downstream Releasees which shall be effective as a full and
26 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
27 attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
28

1 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
2 exposures to lead in the Products sold or distributed for sale by Nordstrom before the Effective Date.

3 **4.3 Nordstrom's Release of Wozniak**

4 Nordstrom, on its own behalf, and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
6 attorneys and other representatives, for any and all actions taken or statements made by Wozniak
7 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
8 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

9 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

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

25 **8. NOTICE**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Nordstrom

Julie Blume, Risk Management
Nordstrom, Inc.
1700 7thth Avenue
Seattle, WA 98101

Jeffrey Margulies, Esq.
Norton Rose Fulbright US LLP
555 South Flower Street, Forty-First Floor
Los Angeles, California 90071

Wozniak

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

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 Consent Judgment 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. POST EXECUTION ACTIVITIES

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

11. MODIFICATION

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

1 **12. AUTHORIZATION**

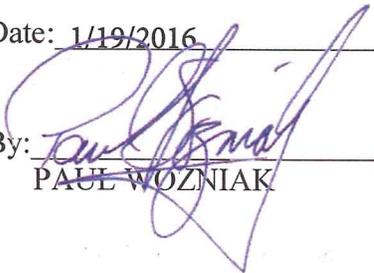
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions contained herein

4 **AGREED TO:**

AGREED TO:

5
6 Date: 1/19/2016

Date: 1-21-16

7
8 By: 
PAUL WOZNIAK

By: 
Julie Blume, Risk Management
NORDSTROM, INC.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28