

1 Clifford A. Chanler, State Bar No. 135534
Brian C. Johnson, State Bar No. 235965
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 PAUL WOZNIAK

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 PAUL WOZNIAK,
13 Plaintiff,
14 v.
15 PERFECT TIMING, INC.; *et al.*,
16 Defendants.
17

Case No. 115CV288973

[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 (“Plaintiff”),
4 and Defendant The Lang Companies, Inc., formerly doing business as Perfect Timing, Inc.
5 (“Defendant”), with Plaintiff and Defendant each individually referred to as a “Party” and
6 collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Plaintiff is an individual residing in California who seeks to promote awareness of exposures
9 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Plaintiff alleges that Defendant has manufactured, imported, sold, or distributed mugs with
17 exterior designs containing lead without the requisite Proposition 65 warnings. Lead is listed under
18 Proposition 65 as a chemical known to the State of California to cause birth defects or other
19 reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are mugs with exterior designs containing
22 lead that are manufactured, imported, sold, and/or distributed for sale in California by Defendant
23 (“Products”), including, but not limited to, the *Botanical Gardens 14 oz. Ceramic Mug, #5021034,*
24 *UPC #7 39744 13507 4.*

25 **1.6 Notice of Violation**

26 On December 22, 2014, Plaintiff served Defendant, and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Defendant violated Proposition
28 65 by failing to warn consumers in California that the Products expose users to Lead. To the best of

1 the parties' knowledge, no public enforcer has commenced and is diligently prosecuting the
2 allegations set forth in the Notice.

3 **1.7 Complaint**

4 On December 14, 2015, Plaintiff filed the instant action ("Complaint") against Defendant for
5 the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

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

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall be the date the motion
22 for approval of this Consent Judgment is granted by the Court.

23 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

24 **2.1 Commitment to Provide Reformulated Products or Warnings**

25 Commencing on the Effective Date and continuing thereafter, Defendant shall only purchase
26 for sale or manufacture for sale in California, (a) "Reformulated Products as defined by Section 2.2;"
27 or (b) Products sold with a clear and reasonable warning in California in accordance with Section 2.3.
28

1 **2.2 Reformulated Products Defined**

2 For purposes of this Consent Judgment, Reformulated Products are defined as Products that
3 (a) contain Lead in concentrations of no more than 90 parts per million ("ppm") (0.09%) in any
4 exterior decorations when analyzed pursuant to U.S. Environmental Protection Agency ("EPA")
5 testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal
6 agencies to determine lead content in a solid substance; (b) yield a result of no more than 1.0
7 microgram ("µg") of lead when a wipe is applied to all surfaces according to NIOSH 9100 protocol;
8 and (c) a Reformulated Product shall yield a result of Non-detect (defined as no more than 25 ppm
9 Lead content for any decorations located in the upper 20 centimeters of a Product, ie., the "Lip-and-
10 Rim" area of the vessel, or the decorative materials located on the interior surface of the Product (i.e.,
11 the beverage-containing portion) when analyzed pursuant to EPA testing methodologies 3050B and
12 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in a
13 solid substance.

14 **2.3 Clear and Reasonable Warnings**

15 Commencing on or before the Effective Date and continuing thereafter, for any Products sold
16 or distributed for sale in California by Defendant that are not Reformulated Products, Defendant will
17 only offer such Products for sale with a clear and reasonable warning in accordance with this Section.
18 Defendant further agrees that any warning used will be prominently placed in relation to the Product
19 with such conspicuousness when compared with other words, statements, designs, or devices as to
20 render it likely to be read and understood by an ordinary individual under customary conditions of
21 purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the
22 Products satisfying these criteria shall consist of a warning affixed directly to a Product or its
23 accompanying labeling or packaging sold in California containing the following statement:

24 **WARNING:** This product contains Lead, a chemical known
25 to the State of California to cause birth defects
26 or other reproductive harm.

26 In the event that Defendant sells Products via an internet website to customers located in California,
27 the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a)
28 on the same web page on which a Product is displayed and/or described; (b) on the same web page as

1 the order form for a Product; or (c) on the same page as the price for a Product; or (d) on one or more
2 web pages displayed to a purchaser during the checkout process. The following warning statement
3 shall be used and shall appear in any of the above instances adjacent to or immediately following the
4 display, description, or price of the Product for which it is given in the same type size or larger than
5 the Product description text:

6 **WARNING:** This product contains Lead, a chemical known
7 to the State of California to cause birth defects
 or other reproductive harm.

8 Alternatively, a designated symbol may appear adjacent to or immediately following the display,
9 description, or price for which a warning is being given, provided that the following warning
10 statement also appears elsewhere on the same web page.

11 **WARNING:** This product contains Lead, a chemical known
12 to the State of California to cause birth defects
13 or other reproductive harm.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Civil Penalty Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

16 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a
17 total of \$30,000 in civil penalties in accordance with this Section. Each civil penalty payment will be
18 allocated in accordance with Health and Safety Code § 25249.12(c)(1) & (d), with seventy-five
19 percent (75%) of the penalty remitted to the California Office of Environmental Health Hazard
20 Assessment (“OEHHA”) by Plaintiff, and the remaining twenty-five percent (25%) of the penalty
21 retained by Plaintiff.

22 **3.1.1 Initial Civil Penalty**

23 Defendant shall pay an initial civil penalty payment of \$7,000 within five (5) days of
24 the Effective Date. Defendant shall issue a check payable to “Paul Wozniak, Client Trust Account.”

25 **3.1.2 Final Civil Penalty**

26 On or before February 1, 2017, Defendant shall make a final civil penalty payment of
27 \$23,000. The final civil penalty shall be waived in its entirety, however, if, on or before January 15,
28 2017, an officer of Defendant provides Plaintiff with a signed declaration certifying that, as of the

1 date of such declaration and continuing into the future all Products manufactured, imported,
2 distributed, sold and offered for sale in California by, or on behalf of, Defendant are Reformulated
3 Products. Alternatively, Defendant may certify that it is not currently manufacturing, importing,
4 distributing or selling Products in California but, should it recommence sales in California in the
5 future, it will only offer Reformulated Products. The option to provide a declaration under this
6 Section in lieu of making the final civil penalty payment is a material term, and time is of the essence.

7 **3.2 Reimbursement of Attorney’s Fees and Costs**

8 The parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
10 be resolved after the material terms of the agreement had been settled. Defendant then expressed a
11 desire to resolve Plaintiff’s fees and costs. The Parties then attempted to (and did) reach an accord on
12 the compensation due to Plaintiff and his counsel under general contract principles and the private
13 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
14 performed through the mutual execution of this Consent Judgment. Within five (5) days of the
15 Effective Date, Defendant shall pay \$31,000 for the fees and costs incurred by Plaintiff investigating,
16 bringing this matter to Defendant’s attention, litigating and negotiating a settlement in the public
17 interest.

18 **3.4 Payment Address**

19 All payments required by this Consent Judgment shall be delivered to:

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

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Plaintiff’s Public Release of Proposition 65 Claims**

25 Plaintiff, on his own behalf and in the public interest, releases Defendant and its parents,
26 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
27 attorneys (“Releasees”) and each entity to whom Defendant directly or indirectly distributes or sells
28 the Products including, but not limited to, it’s downstream distributors, wholesalers, customers,

1 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
2 any violations arising under Proposition 65 for unwarned exposures to lead from Products sold by
3 Defendant prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
4 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
5 exposures to lead from the Products.

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

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

14 **4.3 Defendant’s Release of Plaintiff**

15 Defendant, 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 Plaintiff and his
17 attorneys and other representatives, for any and all actions taken or statements made by Plaintiff and
18 his attorneys and other representatives, whether in the course of investigating claims, otherwise
19 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

20 **5. COURT APPROVAL**

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

24 **6. SEVERABILITY**

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

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 Defendant
5 may provide written notice to Plaintiff 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.

8 **8. NOTICE**

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

12 For Defendant:

13 John Corrigan, CFO
14 The LANG Companies
15 20825 Swenson Drive
16 Suite 100
17 PO Box 1605
18 Waukesha, WI 53186

19 With a copy to:

20 Jennifer L. Naeger, Esq.
21 Reinhart Boerner Van Deuren s.c.
22 1000 North Water Street,
23 Suite 1700
24 Milwaukee, WI 53202

25 And

26 Celeste M. Brecht, Esq.
27 Jennifer Levin, Esq.
28 VENABLE LLP
 2049 Century Park East, Suite 2100
 Los Angeles, CA 90067

1 For Plaintiff:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Plaintiff agrees to comply with the reporting form requirements referenced in Health and
15 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
16 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
17 which motion Plaintiff shall draft and file. In furtherance of obtaining such approval, the Parties
18 agree to mutually employ their best efforts, and those of their counsel, to support the entry of this
19 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
20 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for
21 approval, responding to any objection to the settlement, and appearing at the hearing before the
22 Court, if so requested.

23 **11. MODIFICATION**

24 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
25 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
26 Party, and the entry of a modified consent judgment by the Court.
27
28

1 **12. AUTHORIZATION**

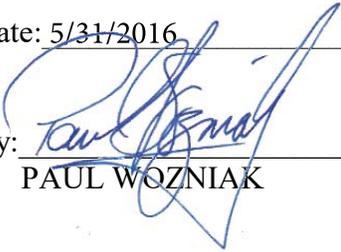
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions contained herein

4 **AGREED TO:**

AGREED TO:

5 Date: 5/31/2016

5 Date: May 27, 2016

6
7 By: 
8 PAUL WOZNIAK

7 By: 
8 John Corrigan, CFO
9 THE LANG COMPANIES, INC. (formerly
10 doing business as PERFECT TIMING, INC.)

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