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10 PAUL WOZNIAK

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SANTA CLARA  
15 UNLIMITED CIVIL JURISDICTION  
16  
17

18 PAUL WOZNIAK,

19 Plaintiff,

20 v.

21 FRANKLIN FINANCIAL MANGEMENT,  
22 INC., *et al.*,

23 Defendants.  
24  
25  
26  
27  
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Case No. 16CV291146

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6 )

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”),  
4 and Franklin Financial Management, LLC dba Update International, erroneously sued herein as  
5 Franklin Financial Management, Inc. (“Franklin”), with Wozniak and Franklin each individually  
6 referred to as a “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

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

15 **1.4 General Allegations**

16 Wozniak alleges that Franklin imports, sells, or distributes for sale in California vinyl/PVC  
17 gloves that contain diisononyl phthalate (“DINP”) without first providing the warning required by  
18 Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment “Products” are defined as vinyl/PVC gloves  
21 containing DINP that are manufactured, sold, or distributed for sale in California by Franklin,  
22 including, but not limited to, the *Update International Disposable Powdered Vinyl Gloves, VLGP-M*  
23 (*UPC #755576032213*), *VLGP-L* (*UPC #755576032220*), *VLGNP-M* (*UPC # 755576032190*) and  
24 *VLGNP-L* (*UPC# 755576032206*).

25 **1.6 Notice of Violation**

26 On April 24, 2015, Wozniak served Franklin, and the requisite public enforcement agencies,  
27 with a 60-Day Notice of Violation (“Notice”) alleging that Franklin violated Proposition 65 by failing  
28

1 to warn individuals in California before exposing them to DINP in the Products. No public enforcer  
2 has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On February 3, 2016, Wozniak filed the instant action (“Complaint”), naming Franklin 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 Franklin 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. The Parties acknowledge  
11 that they have entered into this Consent Judgment solely for the purposes of settlement. Nothing in  
12 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
13 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
14 construed as an admission of any fact, finding, conclusion of law, issue of law, liability, wrongdoing,  
15 or violation of law, regulation, or order of any jurisdiction, the same being specifically denied by  
16 Franklin. This Section shall not, however, diminish or otherwise affect Franklin’s obligations,  
17 responsibilities, and duties under this Consent Judgment with respect to the Products.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over Franklin as to the allegations in the Complaint, that venue is proper in the Santa  
21 Clara County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent  
22 Judgment as a full and binding resolution of all claims that were or could have been raised in the  
23 Complaint against Franklin based on the facts alleged therein and in the Notice pursuant to  
24 Proposition 65 and Code of Civil Procedure section 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
27 the parties have notice that the Court granted the motion for approval of this Consent Judgment as  
28 contemplated by Section 5.

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3 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

4 **2.1 Commitment to Reformulate or Provide Warnings**

5 Commencing on the Effective Date, Franklin shall only sell or distribute for sale in California  
6 Products that are either: (1) Reformulated Products pursuant to Section 2.2; or (2) that have clear and  
7 reasonable warnings as set forth in subsection 2.3.

8 **2.2 Reformulated Products Defined**

9 For purposes of this Consent Judgment, Reformulated Products are defined as Products that  
10 contain DINP in a maximum concentration of 0.1 percent (1,000 parts per million) when analyzed  
11 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or  
12 equivalent methodologies used to determine DINP content in a solid substance.

13 **2.3 Clear and Reasonable Warnings**

14 Commencing on the Effective Date and continuing thereafter, for non-Reformulated Products,  
15 Franklin may sell or distribute such Products for sale in California with a clear and reasonable  
16 warning in accordance with this Section. Franklin further agrees that any warning utilized will be  
17 prominently placed in relation to the Product with such conspicuousness when compared to other  
18 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary  
19 individual under ordinary conditions. For purposes of this Consent Judgment a clear and reasonable  
20 warning shall consist of a warning that contains the following statement:

21 **WARNING:** This product contains DINP, a  
22 chemical known to the State of  
California to cause cancer.

23 If the Product contains a Proposition 65-listed chemical in addition to DINP that is known to  
24 cause birth defects or other reproductive harm:

25 **WARNING:** This product contains chemicals  
26 that are known to the State of  
California to cause cancer and birth  
27 defects or other reproductive harm.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims  
4 referred to in the Notice, Complaint, and this Consent Judgment, Franklin shall pay a total of \$3,000  
5 in civil penalties. Franklin's civil penalty payment shall be allocated according to Health and Safety  
6 Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the  
7 California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
8 twenty-five percent (25%) of the penalty retained by Wozniak. Franklin shall mail its payment in  
9 two checks made payable to: (a) "OEHHA" in the amount of \$2,250 and (b) "Paul Wozniak, Client  
10 Trust Account" in the amount of \$750. Wozniak's attorney(s) shall be responsible for delivering  
11 OEHHA's portion of the penalty payment made under this Consent Judgment.

12 **3.2 Reimbursement of Attorneys' Fees and Costs**

13 The parties acknowledge that Wozniak and his attorney(s) offered to resolve this dispute  
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the  
15 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after  
16 the other settlement terms had been finalized, the Parties negotiated the compensation and costs due  
17 to Wozniak and his attorney(s) as a separate and final term under general contract principles,  
18 California Code of Civil Procedure section 1032, Prop 65, the private attorney general doctrine  
19 codified at California Code of Civil Procedure section 1021.5 and other laws and sources for all work  
20 performed through the mutual execution of this Consent Judgment, and court approval of the same.  
21 Under these legal principles, Franklin shall pay \$27,000 in a check payable to "The Chanler Group"  
22 to cover all fees and costs incurred by Wozniak or his attorney(s) investigating, bringing this matter  
23 to Franklin's attention, litigating and negotiating a settlement in the public interest.

24 **3.3 Payment Timing; Enforcement of Payment Terms**

25 All payments required by this Consent Judgment shall be sent to Wozniak's counsel within  
26 five (5) days of the Effective Date in accordance with the Notice provision of Section 8 of this  
27 Consent Judgment. In the event that any payment is untimely, the Parties agree and acknowledge  
28 that (a) Franklin shall pay a 10% late payment penalty on any unpaid amount(s); (b) if a payment is

1 more than 15 days late, Wozniak may seek to enforce Franklin’s payment obligations under general  
2 contract principles and Code of Civil Procedure section 664.6; and (c) Wozniak shall be entitled to  
3 any fees incurred recovering unpaid or untimely payments pursuant to general contract principles  
4 and Code of Civil Procedure section 1021.5.

5 **4. CLAIMS COVERED AND RELEASED**

6 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

7 Wozniak, acting on his own behalf and in the public interest, releases Franklin, and its  
8 respective owners, parents, subsidiaries, affiliates, sister and related companies, employees,  
9 shareholders, members (including, but not limited to, Crown Brands, LLC), officers, directors,  
10 insurers, attorneys, predecessors (including, but not limited to, Franklin Financial Management, Inc.  
11 and Update International), successors, and assigns, and Franklin Financial Holdings, Inc.  
12 (collectively “Releasees”) and each entity to whom Franklin directly or indirectly provided,  
13 distributed, or sold the Products, including, but not limited to, customers, distributors, wholesalers,  
14 retailers, franchisees, cooperative members, licensees, and Peach Trader, Inc. (“Downstream  
15 Releasees”), from all claims for violations of Proposition 65 up through the Effective Date based on  
16 exposure(s) to DINP from the Products, as set forth in the Notice. Compliance with the terms of  
17 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the  
18 Products as set forth in the Notice.

19 **4.2 Wozniak’s Individual Release of Claims**

20 Wozniak, in his individual capacity only and *not* in any representative capacity, also provides  
21 a release to Releasees and Downstream Releasees, which shall be effective as a full and final accord  
22 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,  
23 damages, losses, claims, liabilities and demands of Wozniak’s of any nature, character or kind,  
24 whether known or unknown, suspected or unsuspected, arising out of the Products through the  
25 Effective Date.

26 **4.3 Franklin’s Release of Wozniak**

27 Franklin, on its own behalf, and on behalf of its past and current agents, representatives,  
28 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak, and his

1 attorneys and other representatives, for any and all actions taken or statements made by Wozniak,  
2 and his attorneys and other representatives, whether in the course of investigating claims, otherwise  
3 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products through  
4 the Effective Date.

#### 5 **4.4 Mutual Civil Code Section 1542 Waiver**

6 It is the intention of the Parties to this Consent Judgment that this Consent Judgment shall be  
7 effective as of the Effective Date as a full accord and satisfaction and release of the claims released  
8 by Wozniak pursuant to Section 4.2, and of the claims released by Franklin pursuant to Section 4.3.  
9 In furtherance of this intention, the Parties are familiar with California Civil Code § 1542, which  
10 provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
12 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
13 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
14 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
15 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

16 Franklin, on the one hand, and Wozniak, in his individual capacity only, and not in his  
17 representative capacity, on the other hand, hereby waive and relinquish all of the rights and benefits  
18 that the Parties have, or may have, under California Civil Code § 1542 (as well as any similar rights  
19 and benefits which they may have by virtue of any statute or rule of law in any other state or territory  
20 of the United States). The Parties hereby acknowledge that they may hereafter discover facts in  
21 addition to, or different from, those which they now know or believe to be true with respect to the  
22 subject of the Consent Judgment and the claims released pursuant to Sections 4.2 and 4.3 herein, but,  
23 notwithstanding the foregoing, it is the Parties' intention hereby to fully, finally, completely and  
24 forever settle and release each, every and all of the claims referenced in Sections 4.2 and 4.3 herein,  
25 and that in furtherance of such intention, the releases herein given shall be and remain in effect as full  
26 and complete releases, notwithstanding the discovery or existence of any such additional or different  
27 facts.  
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1     **5. COURT APPROVAL**

2             This Consent Judgment is not effective until it is approved and entered by the Court and shall  
3 be null and void if it is not approved and entered by the Court within one year after it has been fully  
4 executed by the Parties, or by such additional time as the Parties may agree in writing.

5     **6. SEVERABILITY**

6             If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
7 provision (or any portion of any provision) is held by a court to be illegal, invalid, or unenforceable,  
8 the validity and enforceability of the remaining provisions (or the balance of such provision(s)) shall  
9 not be adversely affected thereby.

10    **7. GOVERNING LAW**

11            The terms of this Consent Judgment shall be governed by the laws of the State of California  
12 and apply within the State of California. In the event that Proposition 65 is repealed, or is otherwise  
13 rendered inapplicable by reason of law generally or as to the Products, then Franklin may provide  
14 written notice to Wozniak of any asserted change in the law, and shall have no further injunctive  
15 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
16 so affected.

17    **8. NOTICE**

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

21    For Franklin:

22            Thomas Redmon, Esq.  
23            Wilke Fleury Hoffelt Gould & Birney, LLP  
24            400 Capitol Mall, 22nd Floor  
25            Sacramento, CA 95814

26    For Wozniak:

27            Proposition 65 Coordinator  
28            The Chanler Group  
29            2560 Ninth Street  
30            Parker Plaza, Suite 214  
31            Berkeley, CA 94710-2565



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

3 **9. COUNTERPARTS; FACSIMILE 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 one  
6 and the same document.

7 **10. POST EXECUTION ACTIVITIES**

8 Wozniak agrees to comply with the settlement and reporting form requirements referenced in  
9 Proposition 65, including Health and Safety Code section 25249.7(f). The Parties further  
10 acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is  
11 required to obtain judicial approval of the settlement, which motion Wozniak shall draft and file  
12 without any expense to Franklin. In furtherance of obtaining such approval, the Parties agree to  
13 mutually employ their best efforts, and those of their attorneys, to support the entry of this agreement  
14 as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of  
15 this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,  
16 responding to any objection that any third-party may file or lodge, and appearing at the hearing  
17 before the Court if so requested.

18 **11. COSTS AND EXPENSES**

19 Except as provided in Sections 3.1 and 3.2, above, the Parties agree that each Party shall be  
20 responsible for the payment of his or its own costs, attorneys’ fees, and all other expenses in  
21 connection with any matter released under this Consent Judgment and this Consent Judgment.

22 **12. MODIFICATION**

23 Except as provided as Sections 6 and 7, this Consent Judgment may be modified only by: (i) a  
24 written agreement of the Parties and entry of a modified consent judgment thereon by the Court; or  
25 (ii) a successful motion or application of any Party, and the entry of a modified consent judgment  
26 thereon by the Court.

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1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
3 have read, understand, and agree to all of the terms and conditions contained herein.

4 **AGREED TO:**

**AGREED TO:**

5  
6 Date: 7/26/2016

Date: 7/20/16

7  
8 By:  \_\_\_\_\_

By:  \_\_\_\_\_

9 PAUL WOZNIAK

Printed Name: MARTIN D. WILSON

Title: CFO

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12 FRANKLIN FINANCIAL MANAGEMENT, LLC  
13 dba UPDATE INTERNATIONAL  
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