

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Paul Wozniak and Alex Orthopedic, Inc.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Paul Wozniak (“Wozniak”) and Alex Orthopedic, Inc. (“Alex Orthopedic”) with Wozniak and Alex Orthopedic collectively referred to as the “Parties.” Wozniak is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Alex Orthopedic 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 sections 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Wozniak alleges that Alex Orthopedic manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Wozniak alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are wrist splints with vinyl/PVC components containing DEHP including, but not limited to, *Alex Orthopedic Wrist Splint*, #1320-RL, #1320-RM, UPC #6 12716 13208 3, #6 12716 13207 6 that are manufactured, imported, distributed, sold and/or offered for sale by Alex Orthopedic in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about February 23, 2017, Wozniak served Alex Orthopedic, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Alex

Orthopedic violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. 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

Alex Orthopedic denies the material, factual and legal allegations contained in the Notice and maintains that all 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 Alex Orthopedic of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Alex Orthopedic of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 30, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Alex Orthopedic shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products


pursuant to Section 2.1 above or carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings


Commencing on the Effective Date, Alex Orthopedic shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) for all Products that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) **Product Labeling.** Alex Orthopedic shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

 **WARNING:** Cancer and
Reproductive Harm-
www.P65Warnings.ca.gov.

(ii) **Point-of-Sale Warnings.** Alternatively, Alex Orthopedic may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Alex Orthopedic's customers shall be sent by certified mail, return receipt requested.

 **WARNING:** Cancer and
Reproductive Harm-
www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code Section 25249.7(b)(2)

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, Alex Orthopedic shall pay \$2,000 in civil

penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Wozniak. Wozniak’s counsel shall be responsible for remitting Alex Orthopedic’s penalty payment(s) under this Settlement Agreement to OEHHA. Within (2) business days of the Effective Date, Alex Orthopedic shall make the civil penalty payment of \$2,000. Alex Orthopedic shall provide its payment in a check made payable to “Paul Wozniak, Client Trust Account” in the amount of \$500 and a check made payable to “OEHHA” in the amount of \$1,500 to be delivered to the address provided in Section 3.3, below.

3.2 Reimbursement of Attorneys’ Fees and Costs

The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Alex Orthopedic expressed a desire to resolve Wozniak’s fees and costs. The Parties then negotiated a resolution of the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this agreement, Alex Orthopedic shall reimburse Wozniak and his counsel \$18,500 within two (2) business days of the Effective Date. Alex Orthopedic’s payment shall be delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to Alex Orthopedic’s attention and negotiating a settlement of the matter.

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 Proposition 65 Claims

Wozniak acting on his own behalf, and *not* on behalf of the public, releases Alex Orthopedic, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Alex Orthopedic directly or indirectly distributes or sells or has distributed or sold Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Alex Orthopedic.

4.2 Wozniak's Individual Releases of Claims

Wozniak, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Wozniak of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Alex Orthopedic prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to

Alex Orthopedic. Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Alex Orthopedic's Products.

4.3 Alex Orthopedic's Release of Wozniak

Alex Orthopedic, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 or otherwise seeking to enforce Proposition 65 against it in this matter 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 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Alex Orthopedic shall provide written notice to Wozniak of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Alex Orthopedic from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-

class (registered or certified mail) return receipt requested; (iii) sent by overnight courier, or (iv) sent by a clear pdf copy by email, to one party by the other party at the following addresses:

For Alex Orthopedic:

Ebrahim Lavi, President
Alex Orthopedic, Inc.
510 Fountain Parkway
Grand Prairie, TX 75050

With a Copy to:

Ivan Tether, Esq.
Tether Law
860 Via de la Paz
Suite E-3D
Pacific Palisades, CA 90272

For Wozniak:

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

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

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 SECTION 25249.7(f)

Wozniak agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 5/26/2017

Date: 5/26/2017

By: _____

Paul Wozniak

By: _____

Ebrahim Lavi, President
Alex Orthopedic, Inc.