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14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR MARIN COUNTY
17 UNLIMITED CIVIL JURISDICTION

18 PAUL WOZNIAK,
19 Plaintiff,
20 v.
21 SERVICE TOOL COMPANY, L.L.C.,
22 Defendants.
23

Case No. CIV1901325

CONSENT JUDGMENT

(Health & Safety Code § 25249.5 *et seq.*, and
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Paul Wozniak (Wozniak) and Service
4 Tool Company, L.L.C. (STC) with Wozniak and STC collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

10 STC employs ten or more persons and is a person in the course of doing business for purposes
11 of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
12 §§ 25249.5 *et seq.* (Proposition 65).

13 **1.4 General Allegations**

14 Wozniak alleges that STC manufactures, imports, sells and/or distributes for sale in
15 California, products containing di(2-ethylhexyl)phthalate (DEHP), diisononyl phthalate (DINP), di-n-
16 butyl phthalate (DBP), and/or Lead, and is required by Proposition 65 to provide a health hazard
17 warning that Wozniak alleges was not provided to consumers. DEHP, DBP, and Lead are listed
18 pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects and
19 other reproductive harm. DEHP, DINP and Lead are listed pursuant to Proposition 65 as chemicals
20 known to the State of California to cause cancer. DEHP, DINP, DBP and Lead are collectively
21 referred to herein as the “Listed Chemicals.”

22 **1.5 Products Defined**

23 The products allegedly manufactured, imported, distributed, sold, and/or offered for sale in
24 the State of California by STC that are covered by this Consent Judgment are: (i) electrical test kits
25 with vinyl/PVC wires containing DEHP and lead, including, but not limited to, *REGAL 3pc*
26 *Electrical Test Kit, #39850, UPC #0 82021 39850 2*; (ii) vinyl/PVC electrical tape containing DEHP,
27 including, but not limited to, the *Tool Cache Electrical Tape Set, 3PC, Model No. 19846, UPC #0*
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1 82021 19846 1; (iii) voltage testers with vinyl/PVC cords containing DEHP and Lead including, but
2 not limited to, *Tool Cache AC/DC Multi Tester, 51217, UPC #0 42374 89282 9*; and (iv) hand tools
3 with plastic handles/surfaces containing DEHP, DBP, DINP, and Lead including, but not limited to,
4 *REGAL 24 Oz Rubber Mallet, #39956* and *REGAL 7" Linesman Plier#39431* (collectively
5 hereinafter, the “Products”).

6 **1.6 Notices of Violation**

7 On or about February 23, 2017, Wozniak served STC, and certain requisite public
8 enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that STC violated
9 Proposition 65 when it failed to warn consumers in California that its electrical test kits with
10 vinyl/PVC wires and vinyl/PVC electrical tape products expose users to DEHP.

11 On or about April 9, 2018, Wozniak served STC, and certain requisite public enforcement
12 agencies with a Supplemental 60-Day Notice of Violation (Supplemental Notice), alleging that STC
13 violated Proposition 65 when it failed to warn its customers and consumers in California that its
14 (i) electrical test kits with vinyl/PVC wires containing DEHP; (ii) vinyl/PVC electrical tape
15 containing DEHP; and (iii) voltage testers with vinyl/PVC cords containing DEHP and lead expose
16 users to the Listed Chemicals.

17 On August 22, 2019, Wozniak served STC, and certain requisite public enforcement agencies
18 with a Second Supplemental 60-Day Notice of Violation (Second Supplemental Notice), alleging that
19 STC violated Proposition 65 when it failed to warn its customers and consumers in California that its
20 (i) electrical test kits with vinyl/PVC wires containing DEHP and lead; (ii) vinyl/PVC electrical tape
21 containing DEHP; (iii) voltage testers with vinyl/PVC cords containing DEHP and lead; and
22 (iv) hand tools with plastic handles/surfaces containing DEHP, DBP, DINP, and/or Lead expose
23 users to the Listed Chemicals. The Notice, Supplemental Notice, and Second Supplemental Notice
24 are collectively referred to herein as the “Notices.”

25 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
26 prosecuting the allegations set forth in the Notices.

1 **1.7 Complaint**

2 On April 5, 2019, Wozniak filed the instant action (“Complaint”), naming STC as a defendant
3 for the alleged violations that are the subject of the Notice and Supplemental Notice. As of the
4 Effective Date (as defined below), the Parties stipulate and agree that the Complaint shall be deemed
5 amended *nunc pro tunc* to include all Products and all claims and allegations that are the subject of
6 the Notices. The Parties further stipulate and agree that the Court has authority to take this action
7 based on the Second Supplemental Notice.

8 **1.8 No Admission**

9 STC denies the material, factual and legal allegations contained in the Notices and maintains
10 that all products that it has sold and distributed in California, including the Products, have been and
11 are in compliance with all laws. Notwithstanding such allegations, STC maintains that it has not
12 knowingly manufactured, or caused to be manufactured, the Products for sale in California in
13 violation of Proposition 65. Nothing in this Consent Judgment shall be construed as, nor shall
14 compliance with this Consent Judgment constitute or be construed as, an admission by STC of any
15 fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish
16 or otherwise affect the obligations, responsibilities and duties under this Consent Judgment.

17 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date Notice of
24 Entry of this Consent Judgment is served via email on STC’s counsel.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**


2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing (a) DEHP, diisononyl
4 phthalate (“DINP”), and di-n-butyl (“DBP”) each in concentrations of less than 0.1 percent (1,000
5 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing
6 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for
7 the purpose of determining the DEHP, DINP or DBP content in a solid substance; and (b) Lead in a
8 concentration not greater than 100 parts per million by weight in any Accessible Component when
9 analyzed pursuant to EPA testing methodologies 3050B and/or 6010B, and that yield a result of less
10 than 1.0 micrograms of Lead when analyzed pursuant to the NIOSH 9100 testing protocol.


11 **2.2** As of the Effective Date, STC shall not manufacture, import, distribute, sell or offer
12 the Products for sale in the State of California unless they are Reformulated Products, as defined by
13 Section 2.1, or a warning is provided in compliance with this Consent Judgment. Each warning shall
14 be prominently placed with such conspicuousness as compared with other words, statements, designs,
15 or devices as to render it likely to be read and understood by an ordinary individual under customary
16 conditions before purchase or use. Each warning shall be provided in a manner clearly associated
17 with the specific Product to which the warning applies, so as to reasonably minimize the risk of
18 consumer confusion.

19 **2.3** STC shall provide the following warning statement (consistent with applicable
20 regulations governing such warnings) on the unit packaging of such Product, on the Labeling (as
21 defined in 27 Cal. Code Reg. section 25600.1) of such Product, or affixed to the Product, as
22 applicable:


23 For products that contain DEHP, DBP and/or Lead:

24  **WARNING:** This product can expose you to chemicals including [name of one
25 or more chemicals], which is [are] known to the State of California
26 to cause [cancer and] birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov.


27 or

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

1 For products that only contain DINP:

2  **WARNING:** This product can expose you to chemicals including DINP, which
3 is known to the State of California to cause cancer. For more
4 information go to www.P65Warnings.ca.gov.

4 or

5  **WARNING:** Cancer - www.P65Warnings.ca.gov.

6 **2.4** In the event that STC sells Products via mail order catalog and/or the internet directly
7 to customers located in California after the Effective Date, warnings given in the mail order catalog
8 or on the internet shall be provided in a manner that is clearly associated with the *specific* Product in
9 compliance with applicable regulations governing such warnings.

10 (i) **Mail Order Catalog Warning.** In the event that, after the Effective
11 Date, STC prints new catalogs and sells Products via mail order through such catalogs to customers
12 located in California, STC shall provide a warning for each Product both on the Product label in
13 accordance with Section 2.3, and in the catalog in a manner that clearly associates the warning with
14 the specific Product being purchased. Any warning provided in a mail order catalog shall be in the
15 same type size or larger than other consumer information provided for the Product within the catalog
16 and shall be provided on the same page and in the same location as the display and/or description of
17 the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3
18 if the warning provided on the Product label also uses the Short-Form Warning content.

19 (ii) **Internet Website Warning.** A warning shall be given in conjunction
20 with STC's direct-to-consumer sales of the Products via the internet using a clearly marked hyperlink
21 using the word "**WARNING**" on the product display page, or otherwise prominently displayed to the
22 purchaser before the purchaser completes his or her purchase of the Product either: (a) on the same
23 web page on which a Product is displayed; (b) on the same web page as the order form for a Product;
24 (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a
25 purchaser during the checkout process. The warning statement shall appear in any of the above
26 instances in the same type size or larger than other warning text.

1 **2.5** For all warnings in Section 2 of this Consent Judgment, “cancer and” shall be included
2 in the warning if STC has reason to believe the Product at issue contains DEHP, DINP, and/or Lead
3 at levels that are likely to lead to an exposure requiring a cancer warning under Proposition 65.

4 Where a warning is provided for a potential exposure to a single chemical, the words “chemicals
5 including” may be deleted from the warning content in the warnings in Section 2 of this Consent
6 Judgment. Where the text on other labeling is printed in black and white, the yellow warning symbol
7 may also be printed in black and white.

8 **2.6** Notwithstanding any other provision of this Consent Judgment, any Products
9 manufactured or assembled prior to or within three months of the Effective Date that possess a pre-
10 existing warning that substantially complies with existing or prior regulations may continue to use
11 that warning and may continue to be sold or offered for sale in the State of California regardless of
12 whether that pre-existing warning complies with this Consent Judgment.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims
16 referred to in this Consent Judgment, STC shall pay \$5,000 in civil penalties in accordance with this
17 Section. The penalty payment will be allocated in accordance with California Health & Safety Code
18 § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
19 Health Hazard Assessment (“OEHHA”) by Wozniak. Wozniak’s counsel shall be responsible for
20 remitting STC’s penalty payment(s) under this Consent Judgment to OEHHA. Within 5 calendar
21 days of the Effective Date, STC shall provide its payment in a check made payable to “OEHHA” in
22 the amount of \$3,750 and a check made payable to “Paul Wozniak, Client Trust Account” in the
23 amount of \$1,250 to be delivered to the address provided in Section 3.4.

24 **3.2 Reimbursement of Attorneys’ Fees and Costs**

25 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
27 be resolved after the material terms of the agreement had been settled. Shortly after the other
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1 settlement terms had been finalized, STC expressed a desire to resolve Wozniak’s fees and costs.
2 The Parties then negotiated a resolution of the compensation due to Wozniak and his counsel under
3 general contract principles and the private attorney general doctrine codified at California Code of
4 Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement, as
5 well as work reasonably to be incurred in the future, STC shall reimburse Wozniak and his counsel
6 \$37,600. STC’s payment shall be delivered to the address in Section 3.4, within 5 calendar days of
7 the Effective Date, in the form of a check payable to “The Chanler Group.” The reimbursement shall
8 cover all fees and costs incurred by Wozniak investigating, bringing this matter to STC’s attention
9 and negotiating a settlement of the matter.

10 **3.3 Payment Timing; Penalty for Late Payments**

11 All payments due under this Consent Judgment shall be delivered to Wozniak’s counsel
12 within 5 calendar days after the Effective Date on the condition that STC is provided with the
13 necessary tax documents. Timing of the settlement payment is of the essence. STC agrees and
14 represents that should any settlement payment required by this Consent Judgment not be received by
15 Wozniak’s counsel within five (5) calendar days after the Effective Date, Wozniak may seek to
16 enforce STC’s payment obligations under general contract principles and Code of Civil Procedure
17 section 664.6, and Wozniak shall be entitled to the reasonable fees incurred recovering any unpaid or
18 untimely settlement payments pursuant to general contract principles and Code of Civil Procedure §
19 1021.5.

20 **3.4 Payment Address**

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

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2550 Ninth Street, Suite 205
Berkeley, CA 94710

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

27 Wozniak, acting on his own behalf and on behalf of his past and current agents,
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1 representatives, attorneys, successors, and assignees, and in the public interest, releases STC and its
2 parents, subsidiaries, affiliated entities, shareholders, directors, members, officers, agents, employees,
3 and attorneys (“STC Releasees”), and each entity to whom STC directly or indirectly distributes or
4 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,
5 retailers, franchisees, cooperative members, and licensees, including Amazon.com, LLC and its
6 affiliates (collectively, “Releasees”), from all claims arising under Proposition 65 based on unwarmed
7 exposures to DEHP, DINP, DBP, and/or Lead in Products manufactured, assembled, imported,
8 distributed, sold, and/or offered for sale in the State of California by STC before the Effective Date.

9 **4.2 Wozniak’s Individual Release of Claims**

10 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
11 a release hereinto STC, STC Releasees, and Releasees, which shall be effective as a full and final
12 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
13 attorneys’ fees, damages, losses, claims, liabilities, and demands of Wozniak of any nature, character
14 or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged
15 or actual exposures to DEHP, DINP, DBP and/or Lead in Products manufactured, imported,
16 distributed, sold, and/or offered for sale in the State of California by STC prior to the Effective Date.
17 The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any
18 entities that manufactured the Products, or any component parts thereof, or any distributors or
19 suppliers who sold the Products, or any component parts thereof to STC. Nothing in this Section
20 affects Wozniak’s right to commence or prosecute an action under Proposition 65 against a Releasee
21 that does not involve STC’s Products.

22 **4.3 STC’s Release of Wozniak**

23 STC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and
24 assignees, hereby waives any and all claims against Wozniak and his attorneys and other
25 representatives, for any and all actions taken or statements made (or those that could have been taken
26 or made) by Wozniak and his attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
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1 respect to the Products.

2 **5. COURT APPROVAL**

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

6 **6. SEVERABILITY**

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

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 if any of the provisions of this Consent Judgment
14 are rendered inapplicable or no longer required as a result of any such repeal or preemption or
15 rendered inapplicable by reason of law generally as to the Products, then STC may provide Wozniak
16 with written notice of any asserted change in the law. The Parties shall then meet and confer for 30
17 days regarding STC's injunctive obligations pursuant to this Consent Judgment with respect to, and
18 to the extent that, the Products are so affected.

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to
21 this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class
22 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party
23 by the other party at the following addresses:
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1 For STC:

For Wozniak:

2 Thomas Le Blanc, President
3 Service Tool Company, L.L.C.
4 2501 South Lewis Street
5 New Iberia, LA 70560

Proposition 65 Coordinator
The Chanler Group
2550 Ninth Street, Suite 205
Berkeley, CA 94710

6 With a Copy to:

7 George Gigounas
8 Gregory G. Sperla
9 DLA PIPER LLP (US)
10 555 Mission Street, Suite 2400
11 San Francisco, CA 94105

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

14 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES; INTEGRATION**

15 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
16 each of which shall be deemed an original, and all of which, when taken together, shall constitute one
17 and the same document.

18 This Consent Judgment contains the entire agreement between the Parties as to all matters to
19 which it pertains, and supersedes any and all prior or contemporaneous agreements, terms, promises,
20 or other arrangements made or discussed between the parties or current or former counsel for the
21 parties, or proposed before the execution of this Consent Judgment by either party or that party's
22 current or former counsel, whether written, oral, or otherwise.

23 **10. POST-EXECUTION ACTIVITIES**

24 Wozniak agrees to comply with the reporting form requirements referenced in Health and
25 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
26 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent
27 Judgment, which Wozniak shall draft, file, and support, and which STC shall support, including
28 appearing at the settlement approval hearing if requested.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8
9 **AGREED TO:**

AGREED TO:

10 Date: 8/23/19

11 Date: 8/26/19

12
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14 By: 

15 Paul Wozniak

16 By: 

17 Thomas Le Blanc, President
18 Service Tool Company, L.L.C.
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