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12 PAUL WOZNIAK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

FLP, LLC; and DOES 1-150, inclusive,

Defendants.

Case No. CIV- 1703377

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 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 defendant FLP, LLC (“FLP”), with Wozniak and FLP each referred to individually as a “Party”
5 and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Wozniak is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are gloves with vinyl/PVC and/or
22 latex components containing DEHP including, but not limited to, *Spot Clean Cleaning Solutions*
23 *Latex Gloves, Item Number 6097, UPC #8 40109 16097 3*, that are manufactured, imported,
24 distributed, sold and/or offered for sale by FLP in the State of California, hereinafter the
25 “Products.”

26 **1.6 Notice of Violation**

27 On or about March 30, 2017, Wozniak served FLP, and certain requisite public enforcement
28 agencies with a 60-Day Notice of Violation (“Notice”), alleging that FLP violated Proposition 65

1 when it failed to warn its customers and consumers in California that the Products expose users to
2 DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
3 prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On September 13, 2017, Wozniak commenced the instant action, naming FLP as one of the
6 defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

8 FLP denies the material, factual and legal allegations contained in the Notice and maintains
9 that all products that it has sold and distributed in California, including the Products, have been and
10 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
11 admission by FLP of any fact, finding, issue of law or violation of law; nor shall compliance with
12 this Consent Judgment constitute or be construed as an admission by FLP of any fact, finding,
13 conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise
14 affect the obligations, responsibilities and 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 FLP as to the allegations contained in the Complaint, that venue is proper in the
18 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent 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 mean the date that
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
23 including any unopposed Tentative Ruling approving this Consent Judgment.

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 **2.1 Reformulation Standards**

26 "Reformulated Products" are defined as those Products containing DEHP in concentrations
27 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
28

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 90 days after the Effective Date, FLP 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 90 days after the Effective Date, FLP shall provide clear and reasonable warnings for all Products 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. FLP shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

(b) Mail Order Catalog and Internet Sales. In the event that FLP sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, FLP shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog.

1 The following warning shall be provided on the same page and in the same location as the display
2 and/or description of the Product:



WARNING: This product can expose you to chemicals, including
DEHP, which are known to the State of California to cause
cancer and birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov.

6 Where it is impracticable to provide the warning on the same page and in the same location
7 as the display and/or description of the Product, FLP may utilize a designated symbol to cross
8 reference the applicable warning and shall define the term “designated symbol” with the following
9 language on the inside of the front cover of the catalog or on the same page as any order form for
10 the Product(s):



WARNING: Certain products identified with this symbol ▼ and offered
for sale in this catalog can expose you to chemicals,
including DEHP, which are known to the State of
California to cause cancer and birth defects or other
reproductive harm. For more information go to
www.P65Warnings.ca.gov.

16 The designated symbol must appear on the same page and in close proximity to the display
17 and/or description of the Product. On each page where the designated symbol appears, FLP must
18 provide a header or footer directing the consumer to the warning language and definition of the
19 designated symbol.

20 **(ii) Internet Website Warning.** A warning shall be given in conjunction with
21 the sale of the Products via the internet, which warning shall appear either: (a) on the same web
22 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
23 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
24 purchaser during the checkout process. The following warning statement shall be used and shall
25 appear in any of the above instances adjacent to or immediately following the display, description,
26 or price of the Product for which it is given in the same type size or larger than the Product
27 description text:



WARNING: This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Alternatively, where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, FLP may utilize a designated symbol to cross reference the applicable warning with a “designated symbol” which may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:



WARNING: Certain products identified with this symbol ▼ and offered for sale in this website can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Consent Judgment, FLP shall pay \$6,000 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. FLP shall deposit the civil penalty amount into the trust account for its counsel within five business days of the execution of this Consent Judgment by the Parties. Counsel for FLP shall provide The Chanler Group with written confirmation within three business days of receipt that the funds have been deposited into a trust account. Within five days of the Effective Date, counsel for FLP shall send a check in the amount of \$1,500 written to “Paul Wozniak, Client Trust Account,” and a check in the amount of \$4,500 to “OEHHA,” to the address provided in Section 3.3 below.

1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
5 other settlement terms had been finalized, FLP expressed a desire to resolve Wozniak’s fees and
6 costs. The Parties then negotiated a resolution of the compensation due to Wozniak and his counsel
7 under general contract principles and the private attorney general doctrine codified at California
8 Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of
9 this agreement, FLP shall reimburse Wozniak and his counsel \$34,000. FLP shall deposit the
10 attorneys’ fees and costs amount into the trust account for its counsel within five business days of
11 the execution of this Consent Judgment by the Parties. Counsel for FLP shall provide The Chanler
12 Group with written confirmation within three business days of receipt that the funds have been
13 deposited in a trust account. Within five days of the Effective Date, counsel shall issue a check to
14 “The Chanler Group” in the amount of \$34,000, and shall deliver it to the address listed in Section
15 3.3 below.

16 **3.3 Payment Address**

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

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

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Wozniak’s Release of Proposition 65 Claims**

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

1 customers, retailers, franchisers, cooperative members, licensors and licensees (“Downstream
2 Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DEHP from
3 the Products manufactured, imported, distributed or sold by FLP through the Effective Date, as set
4 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
5 with Proposition 65 by FLP with respect to the alleged or actual failure to warn about exposures to
6 DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that
7 this Section 4.1 release is limited to the Products, as defined in Section 1.5.

8 **4.2 Wozniak’s Individual Release of Claims**

9 Wozniak, in his individual capacity only and *not* in his representative capacity, also
10 provides a release to FLP, Releasees, and Downstream Releasees which shall be effective as a full
11 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
12 expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of Wozniak of any
13 nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and
14 arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed,
15 or sold by FLP prior to the Effective Date. The Parties further understand and agree that this
16 Section 4.2 release is limited to the Products, as defined in Section 1.5.

17 **4.3 FLP’s Release of Wozniak**

18 FLP, on its own behalf and on behalf of its past and current agents, representatives,
19 attorneys, successors, and/or assignees, hereby waive any and all claims against Wozniak and his
20 attorneys and other representatives, for any and all actions taken or statements made (or those that
21 could have been taken or made) by Wozniak and his attorneys and other representatives, whether in
22 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
23 matter with respect to the Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
27 after it has been fully executed by all Parties. Wozniak and FLP agree to support the entry of this
28 agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner.

1 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
2 noticed motion is required for judicial approval of this Consent Judgment, which motion Wozniak
3 shall draft and file and FLP shall support, appearing at the hearing if so requested. If any third-
4 party objection to the motion is filed, Wozniak and FLP agree to work together to file a reply and
5 appear at any hearing. This provision is a material component of the Consent Judgment and shall
6 be treated as such in the event of a breach.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
14 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
15 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
16 preemption or rendered inapplicable by reason of law generally as to the Products, then FLP shall
17 provide Wozniak with written notice of any asserted change in the law, and shall have no further
18 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
19 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve FLP from
20 its obligation to comply with any pertinent state or federal law or regulation.

21 **8. NOTICE**

22 Unless specified herein, all correspondence and notice required by this Consent Judgment
23 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
24 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
25 following addresses:
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1 To FLP:

To Wozniak:

2 Peg Carew Toledo, Esq.
3 PEG CAREW TOLEDO,
4 LAW CORPORATION
5 3001 Douglas Blvd., Suite 340
Roseville, CA 95661

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

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

8 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

12 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

13 Wozniak and his counsel agree to comply with the reporting form requirements referenced
14 in California Health and Safety Code section 25249.7(f).

15 **11. MODIFICATION**

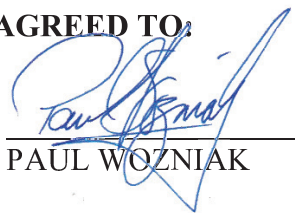
16 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
17 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
18 any party and the entry of a modified Consent Judgment by the Court thereon.

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12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their
respective Parties and have read, understood, and agreed to all of the terms and conditions of this
Consent Judgment.

AGREED TO:



PAUL WOZNIAK

Dated: October 18, 2017

AGREED TO:

FLP, LLC

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

12. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.

AGREED TO:

PAUL WOZNIAK

Dated: _____

AGREED TO:



FLP, LLC

By: Dr. Kristin H. Hansen
(Print Name)

Its: Corporate Counsel
(Title)

Dated: 10/19/17