

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”) and K. & K. Interiors, Inc. (“K&K”), with Wozniak and K&K each individually referred to as a “Party” and collectively as the “Parties.” Wozniak is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Wozniak alleges that K&K 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 § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Wozniak alleges that K&K manufactures, sells, and/or distributes for sale in California, dishes with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Wozniak alleges that K&K failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to lead from its dishes with exterior designs.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are dishes with exterior designs containing lead including, but not limited to, the *Dish with Rabbit Design, #12500A, UPC #8 40429 11987 3*, manufactured, sold or distributed for sale in California by K&K (“Products”).

### 1.4 Notice of Violation

On or about March 30, 2017, Wozniak served K&K and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that K&K violated Proposition 65 when it failed to warn its customers and consumers in California

that its Products expose users to lead. 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**

K&K denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 K&K of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by K&K of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by K&K. However, this Section shall not diminish or otherwise affect K&K's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 29, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") (0.09%) lead in any exterior decorations when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance (e.g., ASTM C738-94 (2016)); and (b) yield no more than 1.0 microgram (" $\mu\text{g}$ ") of lead when analyzed pursuant to NIOSH Test Method No. 9100 as applied to exterior decorations of the Product.

## **2.2 Reformulation Commitment**

As of the Effective Date, K&K 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.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Agreement, K&K agrees to pay \$1,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Wozniak. Wozniak’s counsel shall be responsible for remitting K&K’s penalty payment(s) under this Settlement Agreement to OEHHA. On or before the Effective Date, K&K shall pay a civil penalty in the amount of \$1,000. K&K will provide its payment in a check in the amount of \$250 made payable to “Paul Wozniak, Client Trust Account” and a check made payable to “OEHHA” in the amount of \$750 to be delivered to the address provided in Section 3.3, below.

### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, K&K agrees to pay \$16,500 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of K&K’s management, and negotiating a settlement. K&K’s payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.”

### **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 K&K, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom K&K directly or indirectly distribute or sell 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 lead 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 lead 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, other than K&K, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to K&K.

### **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 lead in the Products manufactured, imported, distributed, or sold by K&K 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 K&K. Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve K&K's Products.

#### **4.3 K&K's Release of Wozniak**

K&K, 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 otherwise rendered inapplicable by reason of law generally, as to K&K specifically as a result of a statutory exemption, or as to the Products, then K&K may provide written notice to Wozniak of any asserted change in the law, or its applicability to K&K or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, K&K or the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For K&K:

Kyle Camp, President  
K. & K. Interiors, Inc.  
2230 Superior Street  
Sandusky, OH 44870

For Wozniak:

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

with copy to K&K's counsel:

Amy P. Lally, Esq.  
Sidley Austin, LLP  
555 West Fifth Street  
Los Angeles, California 90013

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

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (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 § 25249.7(f)**

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

10. **MODIFICATION**

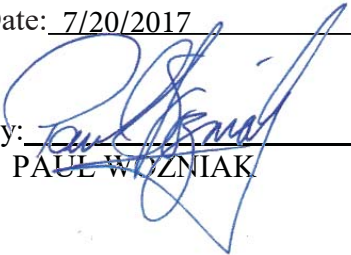
This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 7/20/2017

By:   
PAUL WOZNIAK

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kyle Camp, President  
K. & K. INTERIORS, INC.

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

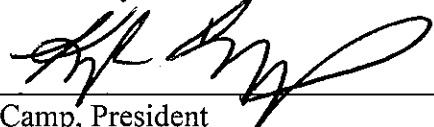
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
PAUL WOZNIAK

**AGREED TO:**

Date: 7/23/2017

By:   
\_\_\_\_\_  
Kyle Camp, President  
K. & K. INTERIORS, INC.