

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Paul Wozniak (“Wozniak”) and Kole Imports (“Kole”) with Wozniak and Kole 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. Kole is a California corporation that 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 Kole manufactures, imports, sells and/or distributes for sale in California, certain 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

For the purposes of this Settlement Agreement, “Products,” are defined as: (a) vinyl/PVC electrical tape containing DEHP that are manufactured, imported, distributed, sold and/or offered for sale by Kole in the State of California, including, but not limited to, the *Sterling Tape Premium Electrical Tape, ML216, UPC #7 31015 16290 1*, and (b) game cases containing DEHP that are manufactured, imported, distributed, sold and/or offered for sale by Kole in the State of California, including, but not limited to the *Domino Gift Set, OA046, UPC #7 31015 042104*.

1.4 Notice of Violation

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

Kole 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 Kole 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 Kole 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 July 28, 2017.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Commitment to Reformulate or Provide Warnings


Commencing no later than thirty (30) days after the Effective Date, and continuing thereafter, Kole agrees to only manufacture, distribute, purchase for sale, or offer for sale in or into California: (a) “Reformulated Products”, or (b) Products that are sold with a clear and reasonable health hazard warning pursuant to Section 2.3 below.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings Defined

Commencing on the Effective Date and continuing thereafter, all Products it sells and/or distributes for sale in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Kole further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing one of the following statements, or such other statement consistent with California Code of Regulations, Title 27, §§ 25601 through 25603:

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

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

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 the claims referred to in this Settlement Agreement, Kole shall pay \$2,500 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 Kole’s penalty payment under this Settlement Agreement to OEHHA. On or before the Effective Date, Kole shall provide its payment in a check made payable to “Paul Wozniak, Client Trust Account” in the amount of \$625 and a check made payable to “OEHHA” in the amount of \$1,875 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, Kole 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, Kole shall reimburse Wozniak and his counsel \$17,500 on or before the Effective Date. Kole’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 Kole’s attention and negotiating a settlement of the matter.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered on or before the Effective Date 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 Kole

This Settlement Agreement is a full, final and binding resolution between Wozniak and Kole, of any violation of Proposition 65 that was or could have been asserted by Wozniak on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against Kole, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Kole directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about exposures to DEHP in Products sold or distributed for sale by Kole prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Wozniak on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP from Products sold or distributed for sale by Kole before the Effective Date. The releases provided by Wozniak under this

Settlement Agreement are provided solely on Wozniak's behalf and are not releases on behalf of the public.

4.2 Kole's Release of Wozniak

Kole on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or 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, seeking to enforce Proposition 65 against it in this matter, or 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 Kole 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 Kole 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 Kole:

Robert Kole, Co-President
Kole Imports
24600 Main Street
Carson, CA 90745

With a Copy to:

Jennifer Taggart, Esq.
Demetriou, Del Guercio, Springer & Francis LLP
915 Wilshire Blvd., Suite 2000
Los Angeles, California 90017

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:

Date: 7/19/2017

By:

Paul Woznick

AGREED TO:

Date:

7/20/17

By:

Robert Kole, Co-President
Kole Imports