

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement (the “Agreement”) is entered into by and between Paul Wozniak (“Wozniak”) and Simple Products Corporation (“SPC”), with Wozniak and SPC 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 SPC 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 SPC manufactures, sells, and/or distributes for sale in California, safety armbands and other products described below containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer. Wozniak alleges that SPC failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to lead from its safety armbands.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are the *Lux Pro Safety LED Armbands, Item #1600 (hereinafter “Products”)* and the *Lux Pro Illuminated Dog Leash Item #1501*, and *Lux Pro Illuminated Dog Collar Item #1525 (collectively referred to hereinafter as “Additional Products”)* which have been and may be in the future manufactured, sold or distributed for sale in California by SPC.

### 1.4 Notice of Violation

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

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**

SPC 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 and the Additional Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by SPC 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 SPC of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by SPC. However, this Section shall not diminish or otherwise affect SPC'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 25, 2017.

## **2. INJUNCTIVE RELIEF: CESSATION OF SALES, REFORMULATION OR WARNINGS**

### **2.1 Cessation of Sales**

SPC represents that it is no longer selling in California nor distributing for sale in California the Products and the Additional Products. However, in the event that SPC renews efforts to manufacture, import, distribute, sell or offer the Products or the Additional Products for sale in the State of California, other than those Products and Additional Products that are already in the stream of commerce, such Products and Additional Products shall meet the Reformulation or Warning requirements of Sections 2.2 and 2.3 below.

## **2.2 Reformulation Standard**

Reformulated Products and Additional Products are defined as those Products and Additional Products that: (a) contain no more than 100 parts per million (“ppm”) (0.1%) lead in any accessible components 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)); or (b) yield no more than 1.0 microgram (“µg”) of lead when analyzed pursuant to NIOSH Test Method No. 9100 as applied to accessible components of the Products or the Additional Products. Products and Additional Products that do not meet the Reformulation Standard above, shall comply with the warning requirements of Section 2.3.

## **2.3 Use of Warnings for Non-Reformulated Products and Additional Products**

Commencing on the Effective Date, SPC shall provide clear and reasonable warnings for all Products and Additional Products that do not meet the reformulation standard of Section 2.1, as set forth in subsections 2.3(a) and (b). 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 of the *specific* Products or Additional Products the warning applies, so as to minimize the risk of consumer confusion.

### **(a) Retail Store Sales.**

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

**WARNING:** This product can expose you to lead, which is 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](http://www.P65Warnings.ca.gov).

**(b) Mail Order Catalog and Internet Sales.** In the event that SPC sells Products or Additional Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, SPC shall provide warnings for such Products or Additional 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 or Additional 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. The following warning shall be provided on the same page and in the same location as the display and/or description of the Products or Additional Products:

**WARNING:** This product can expose you to lead, which is 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](http://www.P65Warnings.ca.gov).

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 Products or Additional Products, SPC may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s) or Additional Product(s):

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog can expose you to lead, which is 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](http://www.P65Warnings.ca.gov).

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Products or Additional Products. On each page

where the designated symbol appears, SPC must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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

**WARNING:** This product can expose you to lead, which is 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](http://www.P65Warnings.ca.gov).

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product or Additional 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:** This product can expose you to lead, which is 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](http://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 claims alleged in the Notice or referred to in this Settlement Agreement, SPC agrees to pay \$3,000 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 SPC’s penalty payment under this Settlement Agreement to OEHHA. On or before the Effective Date, SPC will provide its payment in a check in the amount of \$750 made payable to “Paul Wozniak, Client Trust Account” and a check made payable to “OEHHA” in the amount of \$2,250 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, SPC agrees to pay \$21,500 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of SPC’s management, and negotiating a settlement. SPC’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 SPC, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, and each entity to whom SPC directly or indirectly

distributes or sells, or to whom SPC has directly or indirectly distributed or sold, the Products or Additional 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 or Additional 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 and the Additional 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 SPC, that manufactured the Products, the Additional Products or any component parts thereof, or any distributors or suppliers that sold the Products, the Additional Products, or any component parts thereof to SPC.

#### **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 or the Additional Products manufactured, imported, distributed, or sold by SPC 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, the Additional Products, or any component parts thereof, or any distributors or suppliers that sold the Products, the Additional Products, or any component parts thereof to SPC. Nothing in this Section affects Wozniak’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve SPC’s Products or Additional Products. .

### **4.3 SPC's Release of Wozniak**

SPC, 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 or the Additional 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 SPC specifically as a result of a statutory exemption, or as to the Products or the Additional Products, then SPC may provide written notice to Wozniak of any asserted change in the law, or its applicability to SPC, the Products or the Additional Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, SPC, the Products, or the Additional 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 SPC:

Brian Christensen, President  
Simple Products Corporation  
138 East 12300 South C-165  
Draper, UT 84020

For Wozniak:

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

with copy to SPC's counsel:

Peter M. de Jonge, Esq.  
Thorpe North & Western  
The Walker Center  
175 South Main Street  
Salt Lake City, Utah 84111

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: 7/18/2017

By:   
PAUL WOZNIAK

**AGREED TO:**

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

By: \_\_\_\_\_  
Brian Christensen, President  
SIMPLE PRODUCTS CORPORATION

**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: 7-14-2017

By:  \_\_\_\_\_  
Brian Christensen, President  
SIMPLE PRODUCTS CORPORATION