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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 PAUL WOZNIAK,

14 Plaintiff,

15 v.

16 W. C. BRADLEY/ZEBCO HOLDINGS, INC.;
17 *et al.*,

18 Defendants.
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Case No. CGC-17-562147

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 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 W. C. Bradley/ Zebco Holdings, Inc. (“Zebco”), with Wozniak and Zebco each individually
5 referred to as a “Party” and, collectively, as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Zebco employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §
13 25249.6 *et seq.* (“Proposition 65.”)

14 **1.4 General Allegations**

15 Wozniak alleges that Zebco manufactures, imports, sells, or distributes for sale, in California,
16 vinyl/PVC zipper pulls containing di(2-ethylhexyl)phthalate (“DEHP”), without first providing the
17 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC zipper pulls containing DEHP
21 that are manufactured, imported, sold or offered for sale, in California, including, but not limited to
22 the *William Joseph Mini Chest Pack, WMINIS, UPC #6 39966 00009 2*, hereinafter the “Products.”

23 **1.6 Notice of Violation**

24 On March 30, 2017, Wozniak served Zebco and the requisite public enforcement agencies
25 with a 60-Day Notice of Violation (“Notice”), alleging that Zebco violated Proposition 65 by failing
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1 to warn its customers and consumers in California of the health hazards associated with exposures to
2 the Products. To the best of the parties' knowledge, no public enforcer or enforcement agency has
3 commenced and is diligently prosecuting an action to enforce the violations that are the subject of the
4 Notice.

5 **1.7 Complaint**

6 On October 26, 2017, Wozniak filed the instant action ("Complaint"), naming Zebco as a
7 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
8 Notice.

9 **1.8 No Admission**

10 Zebco denies the material, factual, and legal allegations contained in the Notice and
11 Complaint, and maintains that all of the products it sold and distributed for sale in California,
12 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
13 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
14 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
15 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
16 not, however, diminish or otherwise affect Zebco's obligations, responsibilities, and duties under this
17 Consent Judgment.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Zebco as to the allegations in the Complaint, that venue is proper in the County of
21 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
22 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
25 the Court grants the motion for approval of this Consent Judgment, as contemplated by Section 5.
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1 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

2 Commencing 60 days after the Effective Date and continuing thereafter, Zebco shall only
3 manufacture for sale, import for sale, sell or distribute for sale, in California, Products that are either:
4 (a) Reformulated Products, as defined in Section 2.1, below; or (b) Products bearing one of the
5 Proposition-65 compliant health hazard warnings, detailed in Section 2.2, below.

6 **2.1 Reformulated Products Defined**

7 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products
8 containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible
9 component (i.e., any component that may be touched during a reasonably foreseeable use) when
10 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
11 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of
12 determining DEHP content in a solid substance.

13 **2.2 Clear and Reasonable Warnings**

14 Commencing on 60 days after the Effective Date and continuing thereafter, Zebco shall
15 provide clear and reasonable warnings as set forth in this section for all Products manufactured or
16 distributed for sale, in California, that do not qualify as Reformulated Products. Each warning shall
17 be prominently placed with such conspicuousness as compared with other words, statements, designs,
18 or devices as to render it likely to be read and understood by an ordinary individual under customary
19 conditions *before* purchase or use. Each warning shall be provided in a manner such that the
20 consumer or user understands to which *specific* Product the warning applies, so as to minimize the
21 risk of consumer confusion. For purposes of this Consent Judgment, a clear and reasonable warning
22 satisfying these criteria shall consist of a warning affixed directly to the packaging, labeling, or
23 directly on each Product provided for sale in California that states:

24 For Products:

1 Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty
2 retained by Wozniak. Wozniak’s counsel shall be responsible for delivering OEHHA’s portion of
3 any penalty payment(s) made under this Consent Judgment.

4 Zebco shall provide its payment in two separate checks, for the following amounts: (1) a
5 check made payable to “OEHHA” in the amount of \$2,250; and (2) a check made payable to “Paul
6 Wozniak, Client Trust Account” in the amount of \$750.

7 **3.2 Reimbursement of Attorney’s Fees and Costs**

8 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
10 be resolved after the parties settled the material terms of this Consent Judgment. Shortly after the
11 other settlement terms were finalized, the Parties negotiated the compensation due to Wozniak and
12 his counsel under general contract principles and the private attorney general doctrine, codified at
13 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
14 this Consent Judgment, and court approval of the same, but exclusive of fees and costs on appeal, if
15 any. Under these legal principles, Zebco shall pay \$25,000 for all fees and costs incurred by
16 Wozniak in investigating, bringing this matter to Zebco’s attention, litigating and negotiating a
17 settlement in the public interest. Zebco shall provide its payment in the form of a check, made
18 payable to “The Chanler Group.”

19 **3.3 Payment Timing; Payments Held in Trust**

20 All payments due under this Consent Judgment shall be held in trust until such time as the
21 Court approves the Parties’ settlement. Within ten (10) days of the date that this Consent Judgment
22 is fully executed by the Parties, all payments due under this agreement shall be delivered to Zebco’s
23 counsel, Cooper White & Cooper, and held in trust by Cooper White & Cooper until the Court
24 grants the motion for approval of this Consent Judgment, as contemplated by Section 5. Zebco’s
25 counsel shall provide Wozniak’s counsel with written confirmation upon its receipt of the settlement
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1 payments. Within ten (10) days of the Court’s approval of this Consent Judgment, Zebco’s counsel
2 shall deliver the civil penalty and attorneys’ fee reimbursement payments to Wozniak’s counsel.

3 **3.4 Payment Address**

4 All payments required by this Consent Judgment shall be delivered to:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

10 Wozniak, acting on his own behalf and in the public interest, releases Zebco and its parents,
11 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
12 attorneys (“Releasees”), and each entity to whom Zebco directly or indirectly distributes or sells the
13 Products including, without limitation, its downstream customers, distributors, wholesalers, and
14 retailers (“Downstream Releasees”) for any violation arising under Proposition 65 pertaining to the
15 failure to warn about exposures to DEHP from Products sold or distributed for sale by Zebco prior
16 to the Effective Date, as set forth in the Notice.

17 **4.2 Wozniak’s Individual Release of Claims**

18 Wozniak, in his individual capacity only and *not* in any representative capacity, also provides
19 a release to Zebco, Releasees, and Downstream Releasees, which shall be effective as a full and final
20 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
21 attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
22 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
23 exposures to DEHP in Products sold or distributed for sale by Zebco before the Effective Date.
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
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1 with respect to exposures to DEHP from Products sold or distributed for sale by Zebco after the
2 Effective Date.

3 **4.3 Zebco's Release of Wozniak**

4 Zebco, on its own behalf, and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak, and his
6 attorneys and other representatives, for any and all actions taken or statements made by Wozniak,
7 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
8 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and shall
11 be null and void if it is not approved and entered by the Court within one year after it is fully
12 executed by the Parties, or by such additional time as the Parties may agree to in writing.

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of California
19 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
20 rendered inapplicable by reason of law generally or as to the Products, then Zebco may provide
21 written notice to Wozniak of any asserted change in the law, and shall have no further injunctive
22 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
23 so affected.

24 **8. NOTICE**

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1 Unless specified herein, all correspondence and notice required by this Consent Judgment
2 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
3 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

4 For Zebco:

5 Jeff Pontius, President
6 W. C. Bradley/Zebco Holdings, Inc.
7 6101 East Apache Street
8 Tulsa, OK 74115

9 With a copy to:

10 John Epperson, Counsel
11 Cooper White & Cooper
12 201 California Street, 17th Floor
13 San Francisco, CA 94111

14 For Wozniak:

15 Proposition 65 Coordinator
16 The Chanler Group
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710-2565

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
25 same document.

26 **10. POST EXECUTION ACTIVITIES**

27 Wozniak agrees to comply with the reporting form requirements referenced in Health and
28 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
§ 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion
Wozniak shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually

1 employ their best efforts, and those of their counsel, to support the entry of this agreement as
2 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
3 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
4 any objection that any third-party may file or lodge, and appearing at the hearing before the Court if
5 so requested.

6 **11. MODIFICATION**

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

10 **12. AUTHORIZATION**

11 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
12 have read, understand, and agree to all of the terms and conditions contained herein.

13 **AGREED TO:**

AGREED TO:

14
15 Date: 11/15/2017

Date: WMB

16
17 By: 
PAUL WOZNIAK

18 By: 11/13/17
JEFF PONTIUS, PRESIDENT
W. C. BRADLEY/ZEBCO HOLDINGS, INC.