

1 Josh Voorhees, State Bar No. 241436
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 josh@chanler.com
10 ctuttle@chanler.com

11 Attorneys for Plaintiff
12 PAUL WOZNIAK

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

PAUL WOZNIAK,

Plaintiff,

v.

WAXMAN INDUSTRIES, INC., *et al.*,

Defendants.

Case No. RG17864046

[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 acting on
4 behalf of the public interest (“Wozniak”), and Waxman Industries, Inc. (“Waxman”), with Wozniak
5 and Waxman each individually 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 Waxman employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Waxman imports, sells, or distributes for sale in California hose
16 coupling nuts that contain lead without first providing the exposure warning required by Proposition
17 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other
18 reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment “Products” are defined as hose coupling nuts
21 containing lead that are imported, sold, or distributed for sale in California by Waxman, including,
22 but not limited to, the *Plumb Craft Waxman Sink Sprayer & Hose, #76-351, UPC #0 28905 76351 6*.
23 Waxman represents that it has no prior settlement that relates in any way to the Products.

24 **1.6 Notice of Violation**

25 On March 30, 2017, Wozniak served Waxman, and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”) alleging that Waxman violated Proposition 65 by
27 failing to warn its customers and consumers in California of the health hazards associated with
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1 exposures to lead from the Products. No public enforcer has commenced and is diligently
2 prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On June 14, 2017, Wozniak filed the instant action ("Complaint"), naming Waxman as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Waxman as to the allegations in the Complaint, that venue is proper in the County of
19 Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
24 approval of this Consent Judgment.

25 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

27 Commencing within 30 days of the Effective Date and continuing thereafter, Waxman agrees
28 to only manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)

Reformulated Products as defined by Section 2.2 below, or (b) Products that bear a clear and reasonable health hazard warning pursuant to Section 2.3 below.

2.2 Reformulation Standard

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products that:

(a) contain no more than 90 parts per million ("ppm") lead 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; and (b) yield no more than 1.0 microgram ("ug") of lead when a wipe is applied to all surfaces according to NIOSH Test Method No. 9100.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Waxman that are not Reformulated Products, Waxman will only offer such Products with a clear and reasonable warning in accordance with this Section or Title 27 California Code of Regulations section 25600, et seq., as amended from time to time. Waxman further agrees that any warning used will be prominently placed in relation to the Products 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 purchase or use. For purposes of this Settlement Agreement, a warning satisfying the above criteria that is affixed directly to a Product or its accompanying labeling or packaging containing the following statement shall be deemed clear:

⚠️ WARNING: This product can expose you to chemicals including lead, 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.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
4 referred to in the Notice, Complaint, and this Consent Judgment, Waxman shall pay \$3,000 in civil
5 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
6 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
7 of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent
8 (25%) of the penalty retained by Wozniak. Wozniak's counsel shall be responsible for delivering
9 OEHHA's portion of any penalty payment(s) made under this Consent Judgment. Within five days of
10 the Effective Date, Waxman shall provide its payment in a check made payable to "Paul Wozniak,
11 Client Trust Account" in the amount of \$750 and a check made payable to "OEHHA" in the amount
12 of \$2,250 to be delivered to the address provided in Section 3.3, below.

13 **3.2 Reimbursement of Attorney's Fees and Costs**

14 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
16 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
17 other settlement terms had been finalized, the Parties negotiated the compensation due to Wozniak
18 and his counsel under general contract principles and the private attorney general doctrine codified at
19 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
20 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
21 on appeal, if any. Under these legal principles, Waxman shall pay \$22,000 for all fees and costs
22 incurred by Wozniak investigating, bringing this matter to Waxman's attention, litigating and
23 negotiating a settlement in the public interest.

24 **3.3 Payment Timing; Payments Held in Trust**

25 All payments due under this Consent Judgment shall be held in trust until the Effective Date.
26 Within five (5) days of the date that this Consent Judgment is fully executed by the Parties, all
27 payments due under this agreement shall be delivered to Waxman's counsel and held in trust until
28 the Effective Date. Waxman's counsel shall provide Wozniak's counsel with written confirmation

1 upon its receipt of the settlement payments. Within five days of the Effective Date, Waxman's
2 counsel shall deliver the civil penalty and attorneys' fee reimbursement payments to Wozniak's
3 counsel.

4 **3.4 Payment Address**

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

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

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Wozniak's Public Release of Proposition 65 Claims**

11 Wozniak, acting on his own behalf and in the public interest, releases Waxman and its
12 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
13 and attorneys ("Releasees"), and each entity to whom Waxman directly or indirectly distributes or
14 sells the Products including, without limitation, its downstream customers, distributors, wholesalers,
15 and retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to
16 the failure to warn about exposures to lead from Products sold or distributed for sale by Waxman
17 prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent
18 Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from
19 Products sold or distributed for sale by Waxman after the Effective Date.

20 **4.2 Wozniak's Individual Release of Claims**

21 Wozniak, in his individual capacity only and *not* in any representative capacity, also provides
22 a release to Waxman, Releasees, and Downstream Releasees, which shall be effective as a full and
23 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
24 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
25 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
26 exposures to lead in Products sold or distributed for sale by Waxman before the Effective Date.
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1 **4.3 Waxman's Release of Wozniak**

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

7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

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

22 **8. NOTICE**

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

2 Eric L. Zalud, Esq.
3 Benesch, Friedlander, Coplan & Aronoff LLP
4 200 Public Square, Suite 2300
Cleveland, Ohio 44114

5 For Wozniak:

6 Proposition 65 Coordinator
7 The Chanler Group
8 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

16 **10. POST EXECUTION ACTIVITIES**

17 Wozniak agrees to comply with the reporting form requirements referenced in Health and
18 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
19 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
20 which motion Wozniak shall draft and file. In furtherance of obtaining such approval, the Parties
21 agree to mutually employ their best efforts, and those of their counsel, to support the entry of this
22 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
23 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
24 approval, responding to any objection that any third-party may file or lodge, and appearing at the
25 hearing before the Court if so requested.

26 **11. MODIFICATION**

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

1 **12. AUTHORIZATION**

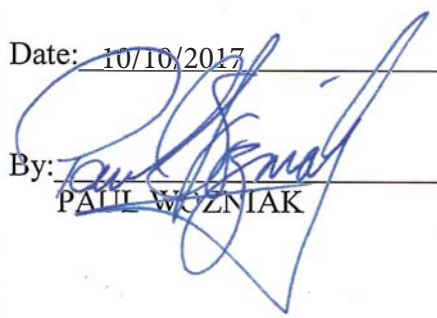
2 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
3 have read, understand, and agree to all the terms and conditions contained herein.
4

5 **AGREED TO:**

AGREED TO:

6
7 Date: 10/10/2017

Date: OCTOBER 5, 2017

8
9 By: 

PAUL WOZNIAK

By: 

SENIOR VP
AND CFO

WAXMAN CONSUMER PRODUCTS
GROUP, INC.