

1 Josh Voorhees, State Bar No. 241436  
2 Troy C. Bailey, State Bar No. 277424  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118  
9 Josh@chanler.com  
10 Troy@chanler.com  
11 Attorneys for Plaintiff  
12 PAUL WOZNIAK  
13

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11 PAUL WOZNIAK,

12 Plaintiff,

13 v.

14 WILSON HUNT INTERNATIONAL  
15 LTD.; and DOES 1-150, inclusive,

16 Defendants.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CIV-1702388

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between plaintiff Paul Wozniak  
4             (“Wozniak”) and defendant Wilson Hunt International Ltd. (“Wilson Hunt”), with Wozniak and  
5             Wilson Hunt each referred to individually as a “Party” and collectively as the “Parties.”

6             **1.2 Plaintiff**

7             Wozniak is a resident of the State of California who seeks to promote awareness of  
8             exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
9             substances contained in consumer and commercial products.

10            **1.3 Defendant**

11            Wilson Hunt employs ten or more persons and is a person in the course of doing business  
12            for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
13            and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Wozniak alleges that Wilson Hunt manufactures, imports, sells and/or distributes for sale  
16            in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), Diisononyl phthalate  
17            (“DINP”), Di-*n*-butyl phthalate (“DBP”), Di-isodecyl phthalate (“DIDP”) and lead, and that it  
18            does so without providing the health hazard warning that Wozniak alleges is required by  
19            Proposition 65. DEHP, DINP, DBP, DIDP and lead (the “Listed Chemicals”) are listed pursuant  
20            to Proposition 65 as chemicals known to the State of California to cause birth defects and other  
21            reproductive harm.

22            **1.5 Product Description**

23            The products covered by this Consent Judgment are bags containing the Listed Chemicals  
24            including, but not limited to, *Champro Sports Football Equipment Bag, E43BG, UPC #7 52044*  
25            *64697 2* that are manufactured, imported, distributed, sold and/or offered for sale in California by  
26            Wilson Hunt (“Products”).

1           **1.6 Notices of Violation**

2           On or about March 30, 2017, Wozniak served Wilson Hunt and the requisite public  
3 enforcement agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Wilson  
4 Hunt violated Proposition 65 when it failed to warn its customers and consumers in California  
5 that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public  
6 enforcer has commenced and is diligently prosecuting an action to enforce the allegations set  
7 forth in the Notice. On August 17, 2017, plaintiff served a Supplemental 60-Day Notice of  
8 Violation on Wilson Hunt and the requisite public enforcement agencies (the “Supplemental  
9 Notice”), alleging that Wilson Hunt violated Proposition 65 when it failed to warn its customers  
10 and consumers in California that the Products manufactured and/or distributed by Wilson Hunt  
11 exposed users to DINP, DBP, DIDP and lead, in addition to DEHP. The Notice is hereby  
12 considered to be amended *nunc pro tunc* by the Supplemental Notice. To the best of the Parties’  
13 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce  
14 the allegations set forth in the Notice and Supplemental Notice (collectively “Notices”).

15           **1.7 Complaint**

16           On June 30, 2017, Wozniak commenced the instant action, naming Wilson Hunt as one of  
17 the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

18           **1.8 No Admission**

19           Wilson Hunt denies the material, factual, and legal allegations contained in the Notices  
20 and Complaint, and maintains that all of the products that it has sold and/or distributed for sale in  
21 California, including the Products, have been, and are, in compliance with all laws. Nothing in  
22 this Consent Judgment shall be construed as an admission by Wilson Hunt of any fact, finding,  
23 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
24 Judgment constitute or be construed as an admission by Wilson Hunt of any fact, finding,  
25 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or  
26 otherwise affect Wilson Hunt’s obligations, responsibilities, and duties under this Consent  
27 Judgment.

1           **1.9     Jurisdiction**

2           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over Wilson Hunt as to the allegations contained in the Complaint, that venue is  
4 proper in the County of Marin, and that the Court has jurisdiction to enter and enforce the  
5 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure  
6 section 664.6.

7           **1.10    Effective Date**

8           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
9 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,  
10 including any unopposed Tentative Ruling approving this Consent Judgment.

11       **2.     INJUNCTIVE SETTLEMENT TERMS**

12           **2.1     Reformulation Standards**

13           “Reformulated Products” are defined as those Products containing DEHP, DINP, DBP  
14 and DIDP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed  
15 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or  
16 other methodology utilized by federal or state government agencies for the purpose of  
17 determining DEHP, DINP, DBP and DIDP content in a solid substance; and containing a  
18 maximum of 90 parts per million of lead by weight in any accessible component (i.e., any  
19 component that can be touched or handled during reasonably foreseeable use) when analyzed  
20 pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B.

21           **2.2     Reformulation Commitment**

22           As of the Effective Date, Wilson Hunt shall not manufacture, import, distribute, sell or  
23 offer the Products for sale in the State of California unless they are Reformulated Products  
24 pursuant to Section 2.1 above, or carry the Proposition 65 warnings as specified in Section 2.3  
25 below. This provision shall not apply to Products in the possession of retailers or independent  
26 distributors or in the possession of the general public.

27  
28

1           **2.3 Product Warnings**


2           Commencing on the Effective Date, Wilson Hunt shall provide clear and reasonable  
3 warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products that do not  
4 qualify as Reformulated Products. Each warning shall be prominently placed with such  
5 conspicuousness as compared with other words, statements, designs, or devices as to render it  
6 likely to be read and understood by an ordinary individual under customary conditions before  
7 purchase or use. Each warning shall be provided in a manner such that the consumer or user  
8 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer  
9 confusion. The use of the warning language set forth below in 2.3(a)(i ) and (ii) shall constitute  
10 such clear and reasonable warnings as a matter of law.

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

12           **(i) Product labeling before August 1, 2018:** On all Products manufactured  
13 prior to August 1, 2018, and after the Effective Date, Wilson Hunt shall affix a warning to the  
14 packaging, labeling or directly on each Product provided for sale in retail outlets in California that  
15 states:

16                   **WARNING:** This product contains chemicals known to the State  
17 of California to cause cancer, birth defects, or other reproductive  
18 harm

19           **(ii) Product Labeling after August 1, 2018:** On all product manufactured  
20 after August 1, 2018 Wilson Hunt shall affix a warning to the packaging, labeling, or directly on  
21 each Product provided for sale in retail outlets in California that states in at least 6 point type:


22                    **WARNING:** This product can expose you to lead and phthalates, including di  
23 (2-ethylhexyl) phthalate (“DEHP”), which are known to the  
24 State of California to cause cancer and birth defects or other  
25 reproductive harm. For more information go to  
26 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

27           Wilson Hunt may use this warning, (2.3(a)(ii)), earlier solely in its discretion.

28           **(b) Mail Order Catalog and Internet Sales.** In the event that Wilson Hunt sells  
Products via mail order catalog and/or the internet, to customers located in California, after the  
Effective Date, that are not Reformulated Products, Wilson Hunt shall provide warnings for such


1 Products sold via mail order catalog or the internet to California residents. Warnings given in the  
2 mail order catalog or on the internet shall identify the *specific* Product to which the warning  
3 applies as further specified in Sections 2.3(a)(i) and (ii) above.

4 (i) **Mail Order Catalog Warning.** After August 1, 2018, any warning  
5 provided in a mail order catalog shall be in the same type size or larger than the Product  
6 description text within the catalog. The following warning shall be provided on the same page  
7 and in the same location as the display and/or description of the Product:

8  **WARNING:** This product can expose you to lead and phthalates,  
9 including di (2-ethylhexyl) phthalate (“DEHP”), which  
10 are known to the State of California to cause cancer and  
11 birth defects or other reproductive harm. For more  
information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

12 This warning shall not be required on catalogues printed prior to the Effective Date.


13 Where it is impracticable to provide the warning on the same page and in the same  
14 location as the display and/or description of the Product, Wilson Hunt may utilize a designated  
15 symbol to cross reference the applicable warning and shall define the term “designated symbol”  
16 with the following language on the inside of the front cover of the catalog or on the same page as  
17 any order form for the Product(s):

18  **WARNING:** Certain products identified with this symbol ▼ and  
19 offered for sale in this catalog can expose you to lead and  
20 phthalates, including di (2-ethylhexyl) phthalate  
21 (“DEHP”) chemicals which are known to the State of  
22 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).


23  
24 The designated symbol must appear on the same page and in close proximity to the  
25 display and/or description of the Product. On each page where the designated symbol appears,  
26 Wilson Hunt must provide a header or footer directing the consumer to the warning language and  
27 definition of the designated symbol.  
28

1                                   (ii)     **Internet Website Warning**

2                   As of the Effective Date, a warning shall be given in conjunction with the sale of the  
3 Products via the internet, which warning shall appear either: (a) on the same web page on which a  
4 Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same  
5 page as the price for any Product; or (d) on one or more web pages displayed to a purchaser  
6 during the checkout process. The following warning statement shall be used and shall appear in  
7 any of the above instances adjacent to or immediately following the display, description, or price  
8 of the Product for which it is given in the same type size or larger than the Product description  
9 text:

10                    **WARNING:** This product can expose you to lead and phthalates,  
11 including di (2-ethylhexyl) phthalate (“DEHP”), which  
12 are known to the State of California to cause cancer and  
13 birth defects or other reproductive harm. For more  
14 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15                   Alternatively, where it is impracticable to provide the warning on the same page and in  
16 the same location as the display and/or description of the Product, Wilson Hunt may utilize a  
17 designated symbol to cross reference the applicable warning with a “designated symbol” which  
18 may appear adjacent to or immediately following the display, description, or price of the Product  
19 for which a warning is being given, provided that the following warning statement also appears  
20 elsewhere on the same web page, as follows:

21                    **WARNING:** Certain products identified with this symbol ▼ and  
22 offered for sale in this website can expose you to lead  
23 and phthalates, including di (2-ethylhexyl) phthalate  
24 (“DEHP”), which are known to the State of California to  
25 cause cancer and birth defects or other reproductive  
26 harm. For more information go to  
27 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1     **3.     MONETARY SETTLEMENT TERMS**

2             **3.1     Civil Penalty**

3             Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
4     claims referred to in this Consent Judgment, Wilson Hunt shall pay \$6,500.00 in civil penalties in  
5     accordance with this Section. The penalty payment will be allocated in accordance with  
6     California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to  
7     the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Wozniak. No  
8     later than five (5) days after the Effective Date, Wilson Hunt shall issue two checks payable as set  
9     forth below. Within five (5) days of the Effective Date, Wilson Hunt shall send a check in the  
10    amount of \$1,625.00 written to “Paul Wozniak, Client Trust Account,” and a check in the amount  
11    of \$4,875.00 to “OEHHA,” to the address for Plaintiff’s Counsel provided in Section 3.3 below.

12            **3.2     Reimbursement of Attorneys’ Fees and Costs**

13            The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute  
14    without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
15    the issue to be resolved after the material terms of the agreement had been settled. Shortly after  
16    the other settlement terms had been finalized, Wilson Hunt expressed a desire to resolve  
17    Wozniak’s fees and costs. Wilson Hunt agrees to pay Wozniak and his counsel under general  
18    contract principles, and the private attorney general doctrine codified at California Code of Civil  
19    Procedure section 1021.5, reasonable attorney’s fees and costs for all work performed through the  
20    mutual execution of this agreement, including the reasonable fees and costs incurred as a result of  
21    investigating, bringing this matter to Wilson Hunt’s attention, negotiating a settlement in the  
22    public interest, and seeking court approval of the same. Wilson Hunt agrees to pay \$34,000.00 as  
23    reimbursement for costs and fees incurred in this matter. Within five (5) days of the Effective  
24    Date, Wilson Hunt shall issue a check to “The Chanler Group” in the amount of \$34,000.00 and  
25    shall send it to the address listed in Section 3.3 below.

26            **3.3     Payment Address**

27            All payments required by this Consent Judgment shall be delivered to the following  
28    address:



1 The Chanler Group  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Wozniak’s Release of Proposition 65 Claims**

8 Wozniak, acting on his own behalf and in the public interest, releases Wilson Hunt and its  
9 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
10 and attorneys (“Releasees”) and each entity to whom Wilson Hunt directly or indirectly  
11 distributes or sells the Products including, but not limited to, its downstream distributors,  
12 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees  
13 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned  
14 exposures to DEHP, DINP, DBP, DIDP and lead from the Products manufactured, imported,  
15 distributed or sold by Wilson Hunt prior to the Effective Date, as set forth in the Notice and the  
16 Supplemental Notice. Compliance with the terms of this Consent Judgment constitutes  
17 compliance with Proposition 65 by Wilson Hunt with respect to the alleged or actual failure to  
18 warn about exposures to DEHP, DINP, DBP, DIDP and lead from the Products, as set forth in the  
19 Notices. The Parties further understand and agree that this Section 4.1 release shall not extend  
20 upstream to any entities that manufactured the Products or any component parts thereof, or any  
21 distributors or suppliers who sold the Products or any component parts thereof to Wilson Hunt.

22 **4.2 Wozniak’s Individual Release of Claims**

23 Wozniak, in his individual capacity only and *not* in his representative capacity, also  
24 provides a release to Wilson Hunt, Releasees, and Downstream Releasees which shall be effective  
25 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,  
26 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of Wozniak of  
27 any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to  
28 and arising out of alleged or actual exposures to DEHP, DINP, DBP, DIDP and lead in Products  
manufactured, imported, distributed, or sold by Wilson Hunt prior to the Effective Date. The  
Parties further understand and agree that this Section 4.2 release shall not extend upstream to any

1 entities that manufactured the Products, or any component parts thereof, or any distributors or  
2 suppliers who sold the Products, or any component parts thereof to Wilson Hunt. Nothing in this  
3 Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against  
4 a Releasee that does not involve Wilson Hunt's Products.

#### 5 **4.3 Wilson Hunt's Release of Wozniak**

6 Wilson Hunt, on its own behalf and on behalf of its past and current agents,  
7 representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against  
8 Wozniak and his attorneys and other representatives, for any and all actions taken or statements  
9 made (or those that could have been taken or made) by Wozniak and his attorneys and other  
10 representatives, whether in the course of investigating claims or otherwise seeking to enforce  
11 Proposition 65 against it in this matter with respect to the Products.

#### 12 **5. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and  
14 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
15 year after it has been fully executed by all Parties. Wozniak and Wilson Hunt agree to support  
16 the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in  
17 a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code  
18 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,  
19 which motion Wozniak shall draft and file and Wilson Hunt shall support, appearing at the  
20 hearing if so requested. If any third-party objection to the motion is filed, Wozniak and Wilson  
21 Hunt agree to work together to file a reply and appear at any hearing. This provision is a material  
22 component of the Consent Judgment and shall be treated as such in the event of a breach.

#### 23 **6. SEVERABILITY**

24 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,  
25 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
26 remaining provisions shall not be adversely affected. This severability provision shall not apply  
27 if the release portions of this Decree are found to be unenforceable.  
28

1     **7. GOVERNING LAW**

2             The terms of this Consent Judgment shall be governed by the laws of the State of  
3 California and apply within the State of California. In the event that Proposition 65 is repealed,  
4 preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the  
5 provisions of this Settlement Agreement are rendered inapplicable or no longer required as a  
6 result of any such repeal or preemption or rendered inapplicable by reason of law generally as to  
7 the Products, then Wilson Hunt shall provide Wozniak with written notice of any asserted change  
8 in the law, and shall have no further injunctive obligations pursuant to this Consent Judgment,  
9 with respect to, and to the extent that, the Products are so affected. Nothing in this Consent  
10 Judgment shall be interpreted to relieve Wilson Hunt from its obligation to comply with any  
11 pertinent state or federal law or regulation.

12     **8. NOTICE**

13             Unless specified herein, all correspondence and notice required by this Consent Judgment  
14 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, or  
15 Priority Overnight mail return receipt requested; or (iii) a recognized overnight courier to any  
16 Party by the other at the following addresses:

17 To Wilson Hunt:

To Wozniak:

18 Elizabeth V. McNulty  
19 Taylor | Anderson LLP  
20 19100 Von Karman Ave., Ste. 820  
Irvine, CA 92612

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

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

24     **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

25             This Consent Judgment may be executed in counterparts and by facsimile or portable  
26 document format (pdf) signature, each of which shall be deemed an original and, all of which,  
27 when taken together, shall constitute one and the same document.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**10. COMPLIANCE WITH REPORTING REQUIREMENTS**

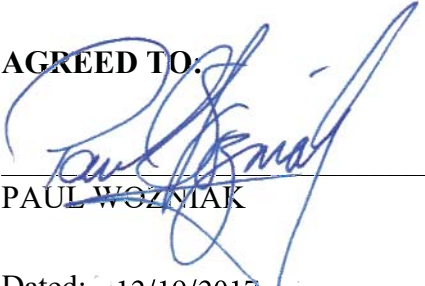
Wozniak and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**  
  
\_\_\_\_\_  
PAUL WOZNIAK

Dated: 12/19/2017 \_\_\_\_\_

**AGREED TO:**  
\_\_\_\_\_  
WILSON HUNT INTERNATIONAL LTD.

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Title)

Dated: \_\_\_\_\_

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties  
6 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful  
7 motion of any party and the entry of a modified Consent Judgment by the Court thereon.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their  
10 respective Parties and have read, understood, and agreed to all of the terms and conditions of this  
11 Consent Judgment.

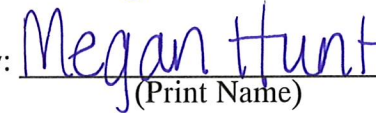
12  
13 **AGREED TO:**

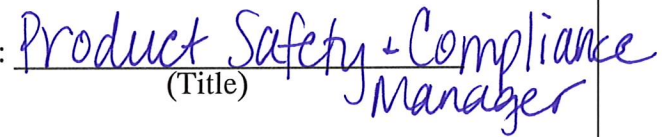
14 \_\_\_\_\_  
15 PAUL WOZNIAK

16 Dated: \_\_\_\_\_  
17

**AGREED TO:**

18   
19 \_\_\_\_\_  
20 WILSON HUNT INTERNATIONAL LTD.

21 By:   
22 \_\_\_\_\_  
23 (Print Name)

24 Its:   
25 \_\_\_\_\_  
26 (Title)

27 Dated:   
28 \_\_\_\_\_