

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement ("Settlement Agreement") is entered into by and between Paul Wozniak ("Wozniak") and Rhode Island Textile Company ("RI Textile") with Wozniak and RI Textile each referred to individually as a "Party" and collectively as the "Parties." Wozniak is a resident of 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 contained in consumer products. RI Textile 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 and Safety Code section 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Wozniak alleges that RI Textile manufactures, imports, sells and/or distributes for sale in California, through retailers in California, including but not limited to Dollar General, vinyl/PVC bags 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.

1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC bags that contain DEHP, including, but not limited to, the *Shoe Gear Shoe Shone Kit, Item# 792-04, UPC #0 70049 79204 4* that are manufactured, imported, distributed, sold and/or offered for sale in California by RI Textile ("Products").

1.4 Notice of Violation

On or about June 29, 2017, Wozniak served RI Textile and the requisite public enforcement agencies with a document entitled "60-Day Notice of Violation" (Notice") that provided the recipients with notice of alleged violations of Proposition 65 by RI Textile for failing to warn its customers and consumers in California that the Products it sold exposed

users to DEHP. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

RI Textile denies the material, factual, and legal allegations contained in the Notice and maintains that all the products that they have sold and distributed for sale 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 RI Textile 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 RI Textile of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect RI Textile'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 September 18, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing no later than thirty (30) days after the Effective Date, and continuing thereafter, RI Textile 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 2.2 below.

2.2 Reformulated Products Defined

For purposes of this Consent Judgment, "Reformulated Products" shall mean Products containing Accessible Components that yield: no more than 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C. For Purposes of this Settlement, "Accessible Component" shall mean any component of a Product that may be handled, touched or mouthed by a consumer during a reasonably foreseeable use of the Product.

2.3 Product Warnings

Commencing no later than thirty (30) days of the Effective Date and continuing thereafter, all Products RI Textile 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. RI Textile 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:



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



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

2.4 Grace Period for Products Manufactured Prior to the Effective Date

Liability for Products that were manufactured and distributed for retail sale prior to the Effective Date shall be subject to releases provided by Section 4 of this Settlement agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code Section 25249.7(b)(2)

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, RI Textile shall pay civil penalties in the amount of \$2,000. The penalty payments shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) and the remaining 25% of the penalty

paid to Wozniak. Within 5 (five) business days of the Effective Date, RI Textile shall issue two separate checks, the first check payable to “Paul Wozniak, Client Trust Account” in the amount of \$500, and the second check payable to “OEHHA” in the amount of \$1,500. Wozniak’s counsel shall be responsible for remitting RI Textile’s penalty payment under this Settlement Agreement to OEHHA.

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, RI Textile 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, RI Textile shall reimburse Wozniak and his counsel \$15,000 within 5 (five) business days of the Effective Date. RI Textile’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 RI Textile’s attention and negotiating a settlement of the matter in the public interest.

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 Releases

This Settlement Agreement is a full, final and binding resolution between Wozniak in his individual capacity and not on behalf of the public, and RI Textile, of any violation of Proposition 65 that was or could have been asserted by Wozniak, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against RI Textile, their parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys ("Releasees"), and each entity to whom RI Textile directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, including specifically, Dollar General Co. (hereafter "Dollar General"), franchisees, cooperative members, licensors, and licensees ("Downstream Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by RI Textile in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Wozniak, in his individual capacity only, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all his rights 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses - including, but not limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal - limited to and arising under Proposition 65 with respect to DEHP in the Products that were manufactured, distributed, sold and/or offered for sale by RI Textile before the Effective Date (collectively "claims"), against RI Textile and Releasees and Downstream Releasees.

Additionally, in further consideration of the promises and agreements herein contained, Wozniak, in his individual capacity only, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all his rights 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses - including, but not limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal - limited to and arising under Proposition 65.

4.2 Rhode Island's Release of Wozniak

RI Textile, 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 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 is held by a court to be unenforceable, the validity of the remaining provisions 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then RI Textile may provide Wozniak with written notice of any asserted change in the law, and shall have no further 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 RI Textile from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

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

For RI Textile:

Glendon Elliot, President
Rhode Island Textile Company
35 Martin Street
Cumberland, RI 02864

For Wozniak:

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

Any Party may, from time to time, 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 PDF 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 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).

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 on behalf of their respective Parties and have read, understood, and agreed to all the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 9/14/17

By: 

PAUL WOZNIAK

AGREED TO:

Date: 9/18/2017

By: 

Glendon Elliott, President
RHODE ISLAND TEXTILE
COMPANY