SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Paul Wozniak and Grocery Outlet Inc.

This Settlement Agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and Grocery Outlet Inc. (Grocery Outlet) with Wozniak and Grocery Outlet collectively referred to as the "Parties." Wozniak is an individual residing in 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. Grocery Outlet 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 §§ 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

Wozniak alleges that Grocery Outlet manufactures, imports, sells and/or distributes for sale in California, sprayers with metal nozzles that contain lead, and that it does so without providing the health hazard warning that Wozniak alleges is required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are Grocery Outlet private label sprayers with metal nozzles containing lead including, but not limited to, the *Pressure Sprayer, Item #801614, UPC #0 86467 00440 9*, manufactured, imported, or purchased for resale by Grocery Outlet and distributed, sold and/or offered for sale in the State of California, hereinafter the "Products."

1.4 Notice of Violation

On or about May 30, 2019, Wozniak served Grocery Outlet and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Grocery Outlet

and Catalina Products Corp. violated Proposition 65 when they failed to warn their customers and consumers in California that the 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

Grocery Outlet denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed 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 Grocery Outlet of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Grocery Outlet of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the 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, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing on the Effective Date and continuing thereafter, Grocery Outlet shall only manufacture for sale, import for sale, and purchase for resale in California Products that are Reformulated Products as defined by Section 2.2. Any Products, that are not Reformulated Products, which Grocery Outlet sells, ships for sale, or distributes for sale to customers or consumers in California, or to customers with nationwide distribution, after the Effective Date, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, after the Effective Date, Grocery Outlet sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Grocery Outlet shall also provide

warnings for such Products by identifying the specific Product to which the warning applies as specified in Sections 2.4 through 2.6.

2.2 Reformulation Standards

"Reformulated Products" are Products that (a) contain lead in concentrations that do not exceed 90 parts per million (ppm), equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S. Environmental Protection Agency (EPA) testing methodologies 3050B and 6010B; and (b) yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies, the Parties may use equivalent methodologies utilized by a state or federal agency to determine lead content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Grocery Outlet shall provide clear and reasonable warnings for all Products provided for sale to customers at Grocery Outlet stores in California in accordance with this Section pursuant to Title 27 California Code of Regulations (CCR) § 25600, *et seq*., provided, however, that such obligation shall apply only to the extent such warning requirement applies to Grocery Outlet as a retailer in accordance with Title 27 CCR § 26500.2. 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) Warning. The warning shall consist of the following statement (Warning):

> ⚠ **WARNING**: This product can expose you to 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.

(b) Short-Form Warning. Grocery Outlet may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

⚠ **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

(c) Foreign Language Requirement. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.4 Product Warnings

Grocery Outlet shall affix a warning to the Product label or otherwise directly on each Product provided for sale in Grocery Outlet retail stores located in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, "Product label" means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, Grocery Outlet prints new catalogs and sells Products via mail order through such catalogs to customers located in California, Grocery Outlet shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.6 Internet Warnings

If, after the Effective Date, Grocery Outlet sells Products via the internet to customers located in California, Grocery Outlet shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word "**WARNING**" given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for which it is given in the same type size or larger than the Product description text. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Grocery Outlet agrees to pay a total of $1,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty amount retained by Wozniak.

Grocery Outlet will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Wozniak's counsel on or before October 1, 2019. Grocery Outlet shall provide two checks made payable to: (a) "OEHHA" in the amount of $750 and (b) "Paul Wozniak, Client Trust Account" in the

amount of $250. Thereafter, Wozniak's counsel shall send OEHHA's portion of the penalties paid by Grocery Outlet to OEHHA.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Wozniak and his counsel offered to resolve the non-monetary elements of this dispute, subject to reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue of fees and costs to be resolved after the material terms of the agreement had been conditionally settled. Shortly after the other settlement terms had been finalized, the Parties then negotiated a resolution of the compensation due to Wozniak's counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement, Grocery Outlet shall reimburse Wozniak's counsel $14,500. Grocery Outlet will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Wozniak's counsel on or before October 1, 2019, 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 Grocery Outlet's attention and negotiating a settlement of the matter.

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
2550 Ninth Street, Suite 205
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak's Release of Grocery Outlet

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and *not* on behalf of the public, and Grocery Outlet, 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 Grocery Outlet, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Grocery Outlet directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Grocery Outlet in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Wozniak as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Wozniak's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Wozniak 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 exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to lead in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by Grocery Outlet, before the Effective Date (collectively, Claims), against Grocery Outlet and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Grocery Outlet. Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Grocery Outlet's Products.

4.2 <u>Grocery Outlet's Release of Wozniak</u>

Grocery Outlet, 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.

5. PUBLIC INTEREST

It is Grocery Outlet's understanding that the commitments it has agreed to herein, and actions to be taken by Grocery Outlet under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Grocery Outlet that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Grocery Outlet's failure to provide a warning concerning exposure to lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, that do not meet the reformulation standards set out in Section 2.2, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Grocery Outlet is in compliance with this Settlement Agreement.

6. 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.

7. 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 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Grocery Outlet shall provide written notice to Wozniak of any asserted change in the law and shall have no further injunctive 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 Grocery Outlet from any obligation to comply with any pertinent state or federal toxics control law.

8. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered; (b) sent by first-class (registered or certified mail) return receipt requested; or (c) sent by overnight courier, to one party by the other party at the following addresses:

For Grocery Outlet:

Pamela Burke, General Counsel
Grocery Outlet Inc.
5650 Hollis Street
Emeryville, CA 94608

With a Copy to:

Joshua A. Bloom, Esq.
Environmental General Counsel LLP
2120 University Avenue
Berkeley, CA 94704

For Wozniak:

Proposition 65 Coordinator
The Chanler Group
2550 Ninth Street, Suite 205
Berkeley, CA 94710

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

9. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

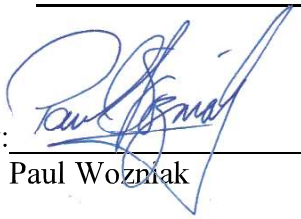
Wozniak agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:	**AGREED TO:**
Date: 9/20/19	Date: _____
By: 	By: _____
Paul Wozniak	Title: _____

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AGREED TO:	**AGREED TO:**
Date:_____	Date: 9/20/19
By:_____ Paul Wozniak	By: Aisha Barbeau Title: Deputy General Counsel