

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Paul Wozniak and MSRF, Inc.

This Settlement Agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and MSRF, Inc. (MSRF) with Wozniak and MSRF 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. MSRF employs ten or more persons and does not dispute that it 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 MSRF manufactures, imports, sells and/or distributes for sale in California, pint and similar drinking glasses with exterior designs 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 pint and similar drinking glasses with exterior designs potentially containing lead including, but not limited to, the *Game Night Pint Glass Spinner*, UPC #7 02014 30356 5, manufactured, imported, or purchased for resale by MSRF and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about July 1, 2019, Wozniak served MSRF and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that MSRF violated

Proposition 65 when it failed to warn its 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

The Settlement Agreement resolves claims that are denied and disputed by MSRF. The Parties enter into this Settlement Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. MSRF denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has shipped, sold and/or distributed in California, including the Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by MSRF 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 MSRF 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 November 8, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing on the Effective Date and continuing thereafter, MSRF 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. In the alternate, any Products, that are not Reformulated Products, which MSRF sells, ships for sale, or distributes for sale to customers or consumers in California, or to customers with nationwide distribution and which are likely to end up for sale in or into California, 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, MSRF itself sells

Products that are not Reformulated Products via mail order catalog and/or the internet to consumers located in California, MSRF shall also provide warnings for such Products by identifying the specific Product to which the warning applies as set forth 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, MSRF shall provide clear and reasonable warnings for all non-reformulated Products MSRF thereafter distributes or causes to be distributed for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* 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 cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or:

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Short-Form Warning. MSRF 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:** Cancer and 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

MSRF shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold by MSRF via mail order catalog and/or the internet directly to end user 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

MSRF represents that it does not currently sell Products directly to end user customers in California via mail order catalog. In the event that, after the Effective Date, MSRF prints new catalogs and sells Products via mail order through such catalogs to end user customers located in California, MSRF 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

MSRF represents that it does not currently sell Products directly to end user customers in California via the internet. If, after the Effective Date, MSRF sells Products via the internet directly to end user customers located in California, MSRF 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, MSRF agrees to pay a total of \$1,200 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.

MSRF 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 November 8, 2019. MSRF shall provide two checks made payable to: (a) "OEHHA" in the amount of \$900; and (b) "Paul Wozniak, Client Trust Account" in the amount of \$300. Thereafter, Wozniak's counsel shall send OEHHA's portion of the penalties paid by MSRF 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. 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, MSRF shall reimburse Wozniak's counsel \$15,400. MSRF 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 November 8, 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 MSRF'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 MSRF

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and *not* on behalf of the public, and MSRF, 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 MSRF, its parents, subsidiaries, affiliated entities under common ownership, and each of their directors, officers, employees, attorneys, agents and their predecessors, successors and assigns and each entity to whom MSRF directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their predecessors, successors and assigns (collectively, Releasees), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, shipped, sold and/or offered for sale by MSRF in California before the Effective Date, as alleged in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by MSRF and Releasees with regard to the alleged or actual failure to warn about exposure to lead from the Products manufactured, distributed, shipped, sold or offered for sale by MSRF after the Effective Date.

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, shipped, sold and/or offered for sale or shipment by MSRF, before the Effective Date (collectively, Claims), against MSRF 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 MSRF. Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve MSRF's Products.

4.2 MSRF's Release of Wozniak

MSRF, 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. 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.

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 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 MSRF 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. To the extent that California enacts revised regulations regarding Proposition 65 safe harbor warning language for exposure to lead in consumer products, the Parties agree to meet and confer on appropriate revisions, if any, to the wording or means of conveying any warning provided pursuant to this Settlement Agreements. Nothing in this Settlement Agreement shall be interpreted to relieve MSRF from any obligation to comply with any pertinent state or federal toxics control law.

7. 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 MSRF:

David Reich, President
MSRF, Inc.
3319 North Elston Avenue
Chicago, IL 60618

With a Copy to:

Lauren M. Michals, Esq.
Nixon Peabody LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111

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.

8. **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.

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

Wozniak agrees to comply with the reporting requirements referenced in Health & Safety Code § 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 and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 11/6/19

Date: 11/7/2019

By:

Paul Wozniak

By:

David Reich, President
MSRF, Inc.