

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Paul Wozniak and Sakar International, Inc.**

This Settlement Agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and Sakar International, Inc. (Sakar) with Wozniak and Sakar 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. Sakar 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 Sakar manufactures, imports, sells and/or distributes for sale in California, vinyl cases that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Wozniak alleges is required by Proposition 65. DEHP 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 vinyl personal care product cases containing DEHP including, but not limited to, the *Vivitar 10 Piece Essentials Care Kit (Case)*, *PG-V230-BLU*, *UPC #6 81066 70570 4*, manufactured, imported, or purchased for resale by Sakar and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

#### **1.4 Notice of Violation**

On or about January 7, 2020, Wozniak served Sakar and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Sakar violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. 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**

Sakar 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 Sakar 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 Sakar 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 May 8, 2020.

### **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

#### **2.1 Injunctive Relief**

Commencing on the Effective Date and continuing thereafter, Sakar 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 Sakar sells, ships for sale, or distributes for sale to customers or consumers in 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, Sakar sells Products via mail order catalog and/or the internet that are not Reformulated Products to customers located in California, Sakar

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. This Section 2 shall not apply for Products that have already entered the stream of commerce prior to the Effective Date.


## **2.2 Reformulation Standards**

“Reformulated Products” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001-09.3 or CPSC-CH-C1001-09.4 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

## **2.3 Clear and Reasonable Warnings**

Commencing on or before the Effective Date, Sakar shall, in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.*, provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers in California. 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 chemicals including Di(2-ethylhexyl)phthalate, 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](http://www.P65Warnings.ca.gov).

(b) **Short-Form Warning.** Sakar 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](http://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**

Sakar shall affix a warning to the Product label or otherwise directly on each Product, that is not a Reformulated Product, provided for sale in retail outlets 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 no smaller than the largest type size used for other consumer information on the product, or if the Short-Form Warning of subsection 2.3(b) is used, then a font no smaller than 6-point type. For purposes of this Agreement, “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional information, but does not include the brand name, product name, company name, location of manufacture, or product advertising. 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, Sakar prints new catalogs and sells Products, that are not Reformulated Products, via mail order through such catalogs to customers located in California, Sakar 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 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, Sakar sells Products, that are not Reformulated Products, via the Internet to customers located in California, Sakar 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, in a manner that does not require 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, Sakar agrees to pay a total of \$2,800 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.

Sakar 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 the Effective Date. Sakar shall provide two checks made payable to: (a) "OEHHA" in the amount of \$2,100; and (b) "Paul Wozniak" in the amount of \$700. Thereafter, Wozniak's counsel shall send OEHHA's portion of the penalties paid by Sakar 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, Sakar expressed a desire to resolve Wozniak's fees and costs. 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, Sakar shall reimburse Wozniak's counsel \$18,000. Sakar 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 the Effective Date, in the form of a check payable to "Chanler, LLC." The reimbursement shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to Sakar'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:

Chanler, LLC  
Attn: Proposition 65 Controller  
72 Huckleberry Hill Road  
New Canaan, CT 06840

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Wozniak's Release of Sakar**

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and in furtherance of the interests of public health, but not on behalf of the public, and Sakar, 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, employees, attorneys, successors, and/or assignees, against Sakar, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Sakar directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Burlington), franchisees, cooperative members, and licensees (collectively, "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 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, employees, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that they may have against Sakar and Releasees, 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 arising under Proposition 65 with respect to DEHP in the Products, as alleged in the Notice, for Products manufactured, distributed, sold and/or offered for sale by Sakar, before the Effective Date (collectively, "Claims").

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 Sakar. Nothing

in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Sakar's Products.

#### **4.2 Sakar's Release of Wozniak**

Sakar, 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 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 Sakar 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 Sakar 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 Sakar:

Jeffrey Saka, President  
Sakar International, Inc.  
195 Carter Drive  
Edison, NJ 08817

With a Copy to:

Matthew Kaplan, Esq.  
Tucker Ellis LLP  
515 South Flower Street, Forty-Second Floor  
Los Angeles, CA 90071

For Wozniak:

Proposition 65 Coordinator  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840

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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signatures and as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code §§1633.1 *et seq.*

**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. DISPUTE RESOLUTION; RIGHT TO CURE AS TO NON-MONETARY TERMS**

Any dispute concerning the non-monetary terms of this Agreement shall be subject to both a meet and confer and, if necessary, mediation. No Party shall file an action alleging a breach of this Agreement or noncompliance with Proposition 65 related to the Products without having first participated in this dispute resolution process. The Party alleging a breach of this Agreement shall provide a notice at the address set forth in Section 7 setting forth all material terms of the alleged dispute including, but not limited to (a) copies of all test results, proofs of purchase (*e.g.*, receipts) and photographs of the Products (including all labeling and packaging); and (b) a proposed remedy for the alleged defect (which proposed remedy shall not include payment of any sort to the other Party) (the, “Notice of Dispute”). Within two weeks of receipt of the Notice of Dispute, the Parties shall meet and confer about a proposed resolution. If an agreement is not reached within sixty (60) days of receipt of the Notice of Dispute, the Parties shall mediate their dispute in New York City or San Francisco before a single, neutral mediator affiliated with JAMS. If agreement on the identity of a mediator cannot be reached, then one shall be appointed by JAMS. The mediation shall take place within ninety (90) days of receipt of the Notice of Dispute.

The Party that received the Notice of Dispute shall, if they agree that a breach of this Agreement or other violation of Proposition 65 has occurred with respect to the Products, have the right to cure. The right to cure can only be exercised during the period of time prior to conclusion of any mediation and shall be exercised by informing the notifying party that they accept the remedy proposed in the Notice of Dispute. A party shall only have one right to cure for each alleged breach (*i.e.*, if an alleged breach occurs for a second time, no right to cure exists and the party alleging the breach can, at its option, proceed without any further meeting and conferring or mediation).

**11. MODIFICATION**

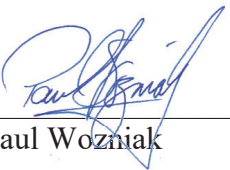
This Settlement Agreement may be modified only by a written agreement of the Parties.

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:**

Date: May 8, 2020

By:   
Paul Wozniak

**AGREED TO:**

Date: May 8, 2020

By:   
Its: Legal  
Sakar International, Inc.