

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Paul Wozniak and Creative Co-Op, Inc.

This Settlement Agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and Creative Co-Op, Inc. (Creative Co-Op) with Wozniak and Creative Co-Op 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. Creative Co-Op 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 Creative Co-Op manufactures, imports, sells and/or distributes for sale in California, planters 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 planters with exterior designs containing lead including, but not limited to, the *Stoneware Planter, Item #68451905*, manufactured, imported, or purchased for resale by Creative Co-Op 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 28, 2020, Wozniak served Creative Co-Op and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Creative Co-Op 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

Creative Co-Op 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 Creative Co-Op 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 Creative Co-Op 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 March 28, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing on the Effective Date and continuing thereafter, Creative Co-Op shall only manufacture for sale, import for sale, and purchase for resale in California Products that are Reformulated Products as defined by Section 0.

2.2 Reformation Standards

"Reformulated Products" are Products that (a) contain lead in concentrations that do not exceed 100 parts per million (ppm) 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.

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, Creative Co-Op agrees to pay a total of \$3,500 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.

Creative Co-Op 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. Creative Co-Op shall provide two checks made payable to: (a) "OEHHA" in the amount of \$2,625; and (b) "Paul Wozniak" in the amount of \$875. Thereafter, Wozniak's counsel shall send OEHHA's portion of the penalties paid by Creative Co-Op 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, Creative Co-Op 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, Creative Co-Op shall reimburse Wozniak's counsel \$19,700. Creative Co-Op 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 "The Chanler Group." The

reimbursement shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to Creative Co-Op'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
91 East Blithedale Avenue
Mill Valley, CA 94941

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak's Release of Creative Co-Op

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and *not* on behalf of the public, and Creative Co-Op, 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 Creative Co-Op, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Creative Co-Op directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including Stein Mart, Inc.), 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 Creative Co-Op 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 Creative Co-Op, before the Effective Date (collectively, Claims), against Creative Co-Op 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 Creative Co-Op. Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Creative Co-Op's Products.

4.2 Creative Co-Op's Release of Wozniak

Creative Co-Op, 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

Creative Co-Op 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 Creative Co-Op 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 Creative Co-Op:

Adam Schrier, President
Creative Co-Op, Inc.
6000 Freeport Avenue, Suite 101
Memphis, TN 38141

For Wozniak:

Proposition 65 Coordinator
The Chanler Group
91 East Blithedale Avenue
Mill Valley, CA 94941

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: 3/12/2020

Date: 3/9/20

By:

Paul Wozniak

By:

Adam Schrier, President
Creative Co-Op, Inc.