

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Paul Wozniak and Medical Depot, Inc.**

This Settlement Agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and Medical Depot, Inc. (Medical Depot) with Wozniak and Medical Depot 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. Medical Depot 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 Medical Depot manufactures, imports, sells and/or distributes for sale in California, wheelchairs with armrests, hand grips, and/or other accessible vinyl components that contain di(2-ethylhexyl)phthalate (DEHP), and in certain padded wheelchair parts tris(1,3- dichloro-2-propyl) phosphate (TDCPP), and that it does so without providing the health hazard warning that Wozniak alleges is required by Proposition 65. Medical Depot also manufactures or otherwise sells certain products for companies under private label agreements. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. TDCPP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

#### **1.3 Product Description**

The products that are covered by this Settlement Agreement are wheelchair armrests, vinyl hand grip, and/or other accessible vinyl components containing DEHP, and in certain alleged cases TDCPP including, but not limited to, the *Drive Armrest Pad, Item STDSDSKVB, UPC #8 22383 22928 7*, the *Vinyl Arm Pad, Desk Length, #66055BK-A3, #59PP45*, and the *Vinyl Hand Grip, #59PP76*,

manufactured, imported, or purchased for resale by Medical Depot and private label customers and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

**1.4 Notices of Violation**

On or about April 24, 2020 and on June 5, 2020, Wozniak served Medical Depot, Mooreford, Inc., Express Med, and certain requisite public enforcement agencies with a 60-Day Notice of Violation No. 2020-01068 and a Supplemental 60-Day Notice of Violation No. 2020-01346 (Medical Depot Notices) respectively, alleging that Medical Depot, Mooreford, Inc., and Express Med violated Proposition 65 when it failed to warn its customers and consumers in California that the Product identified as *Drive Armrest Pad, Item STDSDSKVB, UPC #8 22383 22928 7* exposes users to DEHP.

On or about February 11, 2020, Wozniak served Alco Sales & Service Co. (Alco) and certain requisite public enforcement agencies with a 60-Day Notice of Violation No. 2020-00307, alleging that Alco violated Proposition 65 when it failed to warn its customers and consumers in California that the Product identified as *Vinyl Arm Pad, Desk Length, #66055BK-A3, #59PP45* expose users to DEHP. On or about April 24, 2020, and June 5, 2020, Wozniak served Alco, W.W. Grainger, Inc., and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation No. 2020-01071 and a Second Supplemental 60-Day Notice of Violation No. 2020-01341 (Alco Notices) respectively, alleging that Alco violated Proposition 65 when it failed to warn its customers and consumers in California that the Products identified as *Vinyl Arm Pad, Desk Length, #66055BK-A3, #59PP45* and *Vinyl Hand Grip, #59PP76* expose users to both DEHP and TDCPP. Medical Depot makes, distributes or otherwise sells the Products at issue in the Alco Notices.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Medical Depot and Alco Notices, which shall be referred hereafter collectively as the “Notices.”

**1.5 No Admission**

Medical Depot denies the material, factual and legal allegations contained in the Notices and maintains that all products that it has sold and distributed in California, including the 2020-01346

Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Medical Depot 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 Medical Depot 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 October 29, 2020.

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

**2.1 Injunctive Relief**

Commencing on the Effective Date and continuing thereafter, Medical Depot 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 Medical Depot has reason to believe are sold, shipped for sale, or distributed for sale to private label customers or consumers in California, or to customers that Medical Depot has reason to believe distributes or otherwise sells the Products 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, Medical Depot or those private label customers which Medical Depot has reason to believe distributes or otherwise sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Medical Depot 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 subsection 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.

“Reformulated Products” also refer to Products that, in addition to meeting the above standard, contain no more than 25 parts per million (0.0025%) of TDCPP when analyzed pursuant to Environmental Protection Agency testing methodologies 3545 and 8270C, or alternative methodologies used by state or federal agencies to determine the presence of, or to measure the amount of TDCPP in a solid substance.


### **2.3 Clear and Reasonable Warnings**

Commencing on or before the Effective Date, Medical Depot shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to consumers 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 as each warning applies to the listed chemical(s) in the Product (Warning):

 **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](http://www.P65Warnings.ca.gov).

or

 **WARNING:** This product can expose you to TDCPP, which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).


or

 **WARNING:** This product can expose you to TDCPP, which is known to the State of California to cause cancer, and to 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](http://www.P65Warnings.ca.gov).


(b) **Short-Form Warning.** Medical Depot 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 each warning applies to the listed chemical(s) in the Product, as follows:

 **WARNING:** Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

or

 **WARNING:** Cancer – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

or

 **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**

Medical Depot 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 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, Medical Depot prints new catalogs and sells Products that are not Reformulated Products, via mail order through such catalogs to customers located in California, Medical Depot 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, Medical Depot sells Products, that are not Reformulated Products, via the internet directly to consumers located in California, or to customers that it has reason to believe will sell the Products to consumers located in California, Medical Depot 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 consumer prior to completing the purchase or during the purchase of the Products without requiring consumers 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 consumer 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 Notices or referred to in this Settlement Agreement, Medical Depot agrees to pay a total of \$2,700 in civil penalties. This settlement is the total of \$1,500 paid in settlement of all claims alleged in the Drive Notices, and \$1,200 in settlement of all claims alleged in the Alco Notices. The total 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.

Medical Depot will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is postmarked to Wozniak's counsel by September 30, 2020. Medical Depot shall provide two checks made payable to: (a) "OEHHA" in the amount of \$2,025; and (b) "Paul Wozniak" in the amount of \$675. Thereafter, Wozniak's counsel shall send OEHHA's portion of the penalties paid by Medical Depot to OEHHA and assume all liability for OEHHA's portion of the penalties identified in this section.

#### **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 almost finalized, Medical Depot 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, Medical Depot shall reimburse Wozniak's counsel \$20,000, of which \$10,000 is a result of the work related to the Drive Notices, and \$10,000 is the result of work related to the Alco Notices.



Medical Depot will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is postmarked to Wozniak’s counsel on or before September 30, 2020, 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 Medical Depot’s attention, and negotiating a settlement of the Notices.

**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 Medical Depot, Downstream Parties, and Private Label Customers**

This Settlement Agreement is a full, final, and binding resolution between Wozniak, as an individual in furtherance of the public interest pursuant to Health & Safety Code section 25249.7(d), *et al.*, and Medical Depot, 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 Medical Depot, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom or through whom Medical Depot directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers (including Mooreford Inc., Express Med, and W.W. Grainger, Inc.)(collectively, Downstream Parties), franchisees, cooperative members, private label customers (including Alco Sales & Service Co.), and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to DEHP (and TDCPP if sixty-day notices were issued as to those entities such as Alco and W.W. Grainger, Inc.) contained in the Products that were manufactured, distributed, sold, and/or offered for sale by Medical Depot, the Downstream Parties, and Medical Depot’s private label customers (including Alco Sales &

Service Co.) in California before the Effective Date, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, Wozniak as an individual and also 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 DEHP (and TDCPP if sixty-day notices were issued as to those entities such as Alco) in the Products, as alleged in the Notices, manufactured, distributed, sold and/or offered for sale by Medical Depot or other private label customers, before the Effective Date (collectively, Claims), against Medical Depot 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 Medical Depot. Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Medical Depot's Products.

#### **4.2 Medical Depot's Release of Wozniak**

Medical Depot, 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 Medical Depot 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 Medical Depot 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 Medical Depot:

Robert Size, CEO  
Medical Depot, Inc.  
99 Seaview Boulevard  
Port Washington, NY 11050

With a Copy to:

Stephanie Sheridan, Esq.  
Steptoe & Johnson, LLP  
1 Market Street  
Spear Tower, Suite 3900  
San Francisco, CA 94105

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.

**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**

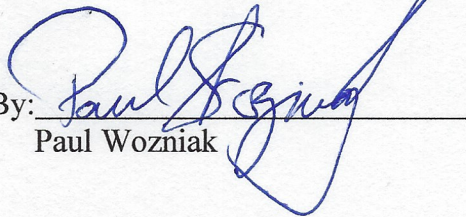
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agreed to all of the terms and conditions contained herein.

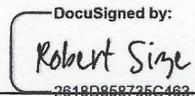
**AGREED TO:**

**AGREED TO:**

Date: September 22, 2020

Date: September 16, 2020

By:   
Paul Wozniak

By:   
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Robert Size, CEO  
Medical Depot, Inc.