

SETTLEMENT AGREEMENT

AG Notice Nos. 2020-00308, 2020-01345 and 2022-00723

1. INTRODUCTION

1.1 Wozniak and Compass Health Brands Corporation

This settlement agreement (Settlement Agreement) is entered into by and between Paul Wozniak and Compass Health Brands Corporation (Settling Entity) with Wozniak and the Settling Entity 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. The Settling Entity has 10 or more employees and Wozniak contends that the Settling Entity falls within the scope of California Health & Safety Code §§25249.5, *et seq.* (Proposition 65).

1.2 General Allegations

Wozniak alleges that the Settling Entity manufactures, imports, distributes, retails and/or otherwise facilitates for sale in California the products defined below, and that it does so without providing the health hazard warning is required by Proposition 65 for consumer exposures to Di(2-ethylhexyl)phthalate (DEHP). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, and birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are wheelchair and wheelchair accessories, containing DEHP including, but not limited to, upholstered components such as seats, cushions and backs, leg rests, and armrests and calf pads, hereinafter the “Product” or “Products.”

//

1.4 Notices of Violation

On February 11, 2020 and June 5, 2020, Wozniak asserts that he served the Settling Entity and the requisite public enforcement agencies with a 60-Day Notice of Violation and a Supplemental 60-Day Notice of Violation, respectively (Notices), alleging that the Settling Entity violated Proposition 65 when it failed to warn customers or 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 Notices. On April 8, 2022, Wozniak also served the Settling Entity and the requisite public enforcement agencies with a second Supplemental 60-Day Notice of Violation (April 8, 2022 Notice) alleging that the Settling Entity violated Proposition 65 when it failed to warn customers or consumers in California that the Products expose users to DEHP. Wozniak represents that the scope of the April 8, 2022 Notice is no broader than the two prior Notices combined.

1.5 Other Procedural Background

An enforcement action covering certain claims asserted in the Notices was filed on June 19, 2020 (Action). The Action was subsequently dismissed without prejudice, after a Notice of Default was issued, in advance of this Settlement Agreement being reached.

1.6 No Admission

The Settling Entity denies the material, factual and legal allegations contained in the Notices and maintains that all Products that were sold and distributed in California have been and are in compliance with all laws, and further contends that it has no obligations under Proposition 65 to provide warnings on any third-party sellers' Products. Nothing in this Settlement Agreement shall be construed as either a waiver or admission by the Settling Entity, and each of its respective parents, subsidiaries, affiliates, past and current agents, directors,

officers, employees, representatives, attorneys, successors, assignees, and/or anyone else acting on their behalf of any fact, finding, issue of law or violation of law, in this or any other matter; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Settling Entity of any fact, finding, conclusion, issue of law or violation of law. This subsection shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

1.7 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean June 28, 2022. The term “Compliance Date” shall refer to July 30, 2022.

2. INJUNCTIVE RELIEF: WARNINGS OR REFORMULATION

2.1 Injunctive Relief

In the event the Settling Entity proceeds with the option to reformulate on or before the Compliance Date, and continuing thereafter, the Settling Entity 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 as defined by Section 2.2, which the Settling Entity sells, ships for sale, or distributes for sale to customers or consumers in California after the Compliance Date, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, in addition to direct sales to customers after the Compliance Date, the Settling Entity sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, the Settling Entity shall also provide warnings for such Products by identifying the specific Product to which the warning applies as set forth in subsections 2.5 through 2.6. Section 2 shall not apply for Products that

have already entered the stream of commerce (i.e., have left the Settling Entity's possession) prior to the Compliance Date.

2.2 Reformulation Standard

In addition to the obligation to warn under Section 2.3, the Settling Entity represents it has begun reviewing, and trying to implement in good faith, the option to reformulate under Section 2.2 to meet a concentration limit of 1000 parts per million (0.1%) for DEHP in all accessible components of the Products manufactured, imported or sold in California on and after the Compliance Date subject to commercial feasibility. For purposes of this Section 2.2, commercial feasibility refers to the following material factors: (1) the availability of other materials that do not incorporate other substances regulated under Proposition 65 (New Materials); (2) performance characteristics, including efficacy, durability, and stability, of any New Materials or the resulting product; (3) the availability and reliability of the supply of New Materials; and (4) whether there are any material cost considerations for the use of New Materials. If the Settling Entity's efforts meet the reformulation standard referenced in section 2.2.2 for some Products, the Settling Entity may elect to reformulate them.

2.2.2 Reformulation Standards


Reformulated Products are those 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-CHC1001-09.4 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. The Settling Entity may rely on its suppliers' test results performed in compliance with the requirements of this section so long as (1) the tests are performed by a certified laboratory in the United States or an internationally recognized laboratory outside of the United State such as Intertek, SGS, Eurofins or TuV which is accredited by the State of California, a federal agency, the National Environmental Laboratory Accreditation Program or similar nationally recognized accrediting organization as set forth in 27 California Code of Regulations (CCR) §25900 (a)(3) for detecting the presence of DEHP through the methods set forth above in this subparagraph 2.2.2; and (2) the results can be compared to the reformulation standards set forth above.

2.3 Clear and Reasonable Warnings

Commencing after the Compliance Date, the Settling Entity shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers in California in accordance with 27 CCR § 25600, *et seq.* Specifically, 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 Product to which the warning applies.

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

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

(b) **Short-Form Warning.** the Settling Entity may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning)

instead of the Warning described in 2.3(a), 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 On-Product Warnings

For all Products sold after July 30, 2022, the Settling Entity shall affix a warning to the Product label or otherwise directly applied to the 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 Compliance Date, the Settling Entity prints new catalogs and sells Products, via mail order through such catalogs to customers located in California, the Settling Entity 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 any of the Products are offered for sale, via the internet to customers located in California, after the Compliance Date, such Product listings shall contain a warning (as set forth above) which is displayed to the purchaser prior to completion of the transaction without requiring the potential buyer to use considerable effort to be made aware of the health hazard advisory, in accordance with the provisions set forth in 27 CCR § 25602(b). The warning (or a clearly and reasonably marked hyperlink to the warning using the signal word “⚠ Warning” or “⚠ Product Warning”) given in conjunction with the online sale of the Products shall appear either: (a) prominently placed in the area in which the Product’s image, price and add-to-cart are displayed; (b) on the same page as the order confirmation for the Products (e.g., review cart URL); or (c) on the page displayed to the purchaser during the checkout process for any shipment recipient with a California address.

On or before the Compliance Date, the Settling Entity may, at its option, comply with the injunctive commitments set forth in subsection 2.3 above by delisting a Product such that the item is then unavailable for online sale for shipment to an address in California. If it does so, the previously delisted Product may be reinstated for sale online to California consumers if it complies with subsections 2.1 through 2.3 prior to the date of such relisting.

2.7 Right to Cure

As of the time of this Settlement Agreement, neither Wozniak nor his counsel have any specific knowledge of the presence of any other products sold on the site operated by the

Settling Entity that, in their opinion, fail to comply with Proposition 65's warning requirement.

Wozniak represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims against the Settling Entity. Wozniak further warrants that neither he nor his agents or attorneys are aware of any other potential private enforcer or attorney who intends to bring litigation based on the subject matter of the Settlement Agreement.

To the extent Wozniak identifies any product in the future, whether or not subject to this Settlement Agreement, which he believes is not in compliance with Proposition 65 or this Settlement Agreement, Wozniak agrees to advise the Settling Entity of such potential violation in the manner set forth in Section 7, and provide the Settling Entity with 45 calendar days (calculated from the date notice is provided electronically) to cure any alleged violation, provide a Proposition 65 warning, or take other action to ensure that the product is not sold in California.

Such notice to the Settling Entity shall contain information sufficient for the Settling Entity to identify the product such as the Settling Entity's I.D. Number, the Product SKU number, the name of the Product, and/or a screenshot of the product's online listing. If the alleged non-compliance is cured, Wozniak shall take no further action to enforce Proposition 65 or this Settlement Agreement with respect to the alleged failure to comply with Proposition 65 or the terms of this Settlement Agreement, and the matter shall be deemed to be resolved. Further, so long as the Settling Entity cures the alleged non-compliance relating to a Product subject to this Settlement Agreement within the 45 days, the Settling Entity shall not be in breach or violation of this Settlement Agreement in any respect. In the event Wozniak advises the Settling Entity of any alleged non-compliant product as discussed herein, Wozniak shall not be entitled to financial remuneration, provided the Settling Entity timely remedies the non-

compliant product as discussed herein.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Fines

Pursuant to Health & Safety Code §25249.7(b), and in settlement of all claims alleged in the Notices, the Settling Entity agrees to pay a total of \$30,000 in civil fines. This payment will be allocated in accordance with Health & Safety Code §25249.12(c)(1) and (d), with 75% of the penalty amount paid to OEHHA and the remaining 25% of the penalty amount paid to and retained by Wozniak.

The Settling Entity will deliver its civil penalty payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer such that payment is received by Wozniak's counsel on or before on or before June 29, 2022, subject to Wozniak and Wozniak's counsel completing any reasonably necessary tax and compliance documentation to enable the Settling Entity to complete the payment. For non-electronic payments, the Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of \$22,500; and (b) "Paul Wozniak" in the amount of \$7,500. Thereafter, Wozniak's counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Wozniak.

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 Settling Entity then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted, but were unable, to reach an

accord on the amount of compensation due to Wozniak's counsel under the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5 and Proposition 65 implementing regulations codified at 11 CCR § 3201, for all work performed in the matter. The Parties agree to have Wozniak and his counsel's outstanding fee and cost claims adjudicated by binding arbitration (ADR Process), the costs of which shall be paid by the Settling Entity. Wozniak and the Settling Entity further agree that the arbitrator's determination shall be final and binding upon the Parties. The arbitration shall be conducted at Judicial Arbitration and Mediation Services (JAMS) offices in San Francisco, California, within thirty days of the Effective Date of this Settlement Agreement, or within such other time frame established by the arbitrator. The parties agree that at Wozniak's option, the arbitration shall be conducted by one of the following arbitrators: Hon. William J. Cahill, Hon. Robert B. Freedman, Hon. David E. Hunter and Hon. Richard Kramer. A briefing schedule shall be proposed to the neutral as follows: Wozniak shall file his opening brief ten calendar days before the hearing, Compass shall file any opposition five calendar days before hearing before the hearing and Wozniak may file a reply brief two calendar days before the hearing. Counsel may appear through an audio-visual service (e.g., Zoom) and Compass shall not be responsible for any of Wozniak's counsel travel costs to attend the hearing. The parties agree that no memorandum may exceed ten pages in length. Wozniak and his counsel may request their fees and costs associated with this ADR Process and the arbitrator shall determine the amount of any additional award consistent with California law. The payment of any awarded fees shall be made to Chanler, LLC, within five business days of receiving notice of the award at the address provided in subsection 3.3 below.

//

//

3.3 Payment Address and Effect of Non-Payment

All non-electronic 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

Time is of the essence. Accordingly, if payment is not received by the due date, then this Settlement Agreement shall be null and void.

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak's Release of Settling Entity

This Settlement Agreement is a full, final and binding resolution between Wozniak and the Settling Entity, including any manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative member, including, but not limited to SB Medical, 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 the Settling Entity and each of its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (releasees), based on their failure to warn about alleged exposures to DEHP contained in the Products that were sold and/or offered for sale in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Wozniak and his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he 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 in the Products against the Settling Entity and the releasees, except as set forth in subsection 3.2 above (i.e., binding fee arbitration).

Nothing in this subsection, therefore, shall affect Wozniak's right to commence an action under Proposition 65 against the Settling Entity and its releasees that do not involve the Products covered by this Settlement Agreement. However, as of the time of this Settlement Agreement, neither Wozniak nor its attorneys have any specific knowledge of the presence of any other products sold on the site operated by the Settling Entity that, in their opinion, fail to comply with Proposition 65's warning requirement. To the extent Wozniak identifies any such product in the future, Wozniak agrees to advise the Settling Entity in the manner set forth in Section 7, and provide the Settling Entity with 45 business days (calculated from the date notice is provided electronically) to cure any alleged violation prior to issuing any 60-day notice to the Settling Entity. If the alleged violation is cured, Wozniak agrees not to take any action to enforce Proposition 65 with respect to the Settling Entity. Wozniak represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims against the Settling Entity. Wozniak further warrants that neither he nor his agents or attorneys are aware of any other potential private enforcer or attorney who intends to bring litigation based on the subject matter of the Settlement Agreement.

4.2 Settling Entity's Release of Wozniak

The Settling Entity, 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 in connection with the Notices or Products.

4.3 Limited Release

It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice, and relating to the Products, will develop or be discovered. Wozniak, on behalf of himself only and not in a representative capacity, and the Settling Entity on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, nevertheless waive California Civil Code § 1542 as to such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. SEVERABILITY

If, subsequent to its execution, 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 & ENFORCEMENT

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. Nothing in this Settlement Agreement shall

be interpreted to relieve the Settling Entity from any obligation to comply with any pertinent state or federal law.

The Parties agree that if the Office of Environmental Health Hazard Assessment (OEHHA) changes its warning regulations affecting subsections 2.3 through 2.6 above, then the Settling Entity may either conform with the revised law or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow. In doing so, the Settling Entity will be in compliance with this Settlement Agreement as long as it continues to fulfill any warning obligations unaffected by such new changes.

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 the Settling Entity 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.

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; and (d) electronically transmitted to one party by the other party at the following addresses:

For the Settling Entity:
Compass Health Brands Corporation
6753 Engle Rd, Suite A
Middleburg Heights, OH 44130
Attention: Legal Department

With a Copy to:
Chris M. Amantea, Esq.
Law Offices of Chris M. Amantea
7590 Fay Ave., Suite 520
La Jolla, CA 92037
camantea@ca-envirolaw.com

For Wozniak:

Proposition 65 Coordinator
Chanler, LLC
72 Huckleberry Hill Road
New Canaan, CT 06840
clifford@chanlerLLC.com

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 only be modified only by a written agreement of the Parties.

//

//

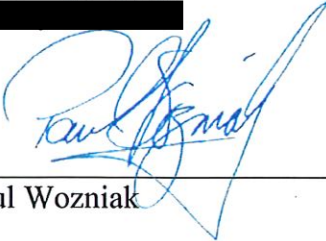
//

//


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:

Date: June 27, 2022
[Redacted]
By: 
Paul Wozniak

AGREED TO:

Date: June 23, 2022
[Redacted]
By: 
Stuart Straus
Chief Executive Officer
Compass Health Brands Corporation