

# **SETTLEMENT AGREEMENT**

AG Notice Nos. 2022-01122, 2022-02533 and 2022-02887

## **1. INTRODUCTION**

### **1.1 Wozniak and Alco Sales & Service Co.**

This settlement agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and Alco Sales & Service Co., (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. Wozniak contends that the Settling Entity has 10 or more employees and 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) and Diisononyl phthalate (DINP). 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. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. The Settling Entity is making commitments in furtherance of the public interest as set forth below.

### **1.3 Product Description**

The products covered by this Settlement Agreement are wheelchairs, wheelchair parts, wheelchair components and wheelchair accessories, containing DEHP and DINP including, but

not limited to, wheel locks and upholstered components such as seats, cushions and backs, leg rests, armrests, calf pads, and carry pouch (hereinafter the “Product” or “Products”).

#### 1.4 Notices of Violation

On June 1, 2022, Wozniak asserts that he served the Settling Entity and Amazon.com, Inc., (Amazon) and the requisite public enforcement agencies with a 60-Day Notice of Violation (June 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. On October 19, 2022, Wozniak served the Settling Entity, Amazon and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (October 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 and DINP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the June 2022 and October 2022 Notice. On December 2, 2022, Wozniak also served the Settling Entity, Amazon and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (December 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 and DINP. The requisite waiting period has not yet lapsed on the December 2022 Notice.

#### 1.5 Other Procedural Background

An enforcement action covering certain claims asserted in the Notices was filed on September 28, 2022 (Action). The Action was subsequently dismissed without prejudice in advance of this Settlement Agreement being reached.

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## 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 its 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 December 30, 2022. The term “Compliance Date” shall refer to March 31, 2023.

## 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 subsection 2.2. Any Products, that are not Reformulated Products as defined by subsection 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 subsection 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 subsection 2.3, the Settling Entity represents it has begun reviewing, and agrees to utilize best efforts to reformulate under subsection 2.2 to meet a concentration limit of 1000 parts per million (0.1%) for each of DEHP and DINP 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 subsection 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 subsection 2.2.2 for some but not all Products, the Settling Entity should reformulate those that can be reformulated.

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### 2.2.2 Reformulation Standard Reformulated Products

Reformulated Products are those Products containing DEHP in a concentration of less than 0.1 percent (1,000 parts per million) and DINP in a concentration 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 subsection 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 and DINP 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):


**For Products that contain only DEHP:**

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


**For Products that contain only DINP:**

 **WARNING:** This product can expose you to DINP, 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

**For Products that contain only DEHP and DINP:**


 **WARNING:** This product can expose you to DINP, which is known to cause cancer, and to DEHP which is known can cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**For Products that contain DEHP and/or DINP and other Proposition 65 chemicals:**


 **WARNING:** This product can expose you to chemicals including [DINP and/or DEHP], which [is/are] known to cause [cancer] [and] [birth defects or other reproductive harm]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**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) if allowed by 27 C.C.R. 25603(b), and subject to the additional requirements in subsections 2.5 and 2.6 as applicable by their chemical component:

**For Products that contain DINP:**

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

**For Products that contain DEHP or DEHP and DINP:**

 **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. For purposes of this Settlement Agreement, “Consumer Information” includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacture, or product advertising.

2.4 On-Product Warnings

Commencing after the Compliance Date, 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 by Settling Entity 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 if allowed as 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 subsection 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. The catalog warning may use the Short-Form Warning content described in subsection 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 directly by the Settling Party, via the internet through Amazon.com and/or any other website 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 California 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 may appear either: (a) on the primary display page for the Product, placed close to the area in which the Product’s image, price, or add-to-cart button are displayed; (b) on the same page as the order confirmation for the



Products; (c) on any page displayed to the purchaser during the checkout process for any shipment recipient with a California address; or (d) in a photograph of the Product with the Warning on the Product or its label so long as it does not need to be magnified for the purchaser to view it.

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, Wozniak and his counsel represent and warrant that they do not have any specific knowledge of any products, which contain or cause exposure to DEHP, DINP or any other Proposition 65-listed chemical, sold on the website operated by the Settling Entity (or sold by Settling Entity on Amazon.com) that, in their opinion, fail to comply with Proposition 65's warning requirement other than those Products set forth in Section 1.3 of this Settlement Agreement or otherwise previously disclosed 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 against Settling Entity.

To the extent Wozniak identifies any product sold on the website operated by the Settling Entity (or sold by Settling Entity on Amazon.com), which contain or cause exposure to DEHP,

DINP or any other Proposition 65-listed chemical, in the future, which he believes is not in compliance with Proposition 65 generally or this Settlement Agreement specifically, 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 Penalty**

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 \$16,000 in civil penalties. 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 December 30, 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 \$12,000; and (b) "Paul Wozniak" in the amount of \$4,000.

Wozniak agrees that his counsel shall be responsible for sending the portion of the civil 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. Shortly after the other settlement terms had been finalized, the Settling Entity 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, the Settling Entity shall reimburse Wozniak's counsel \$60,000. The Settling Entity will deliver its 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 December

30, 2022, in the form of a check payable to “Chanler, LLC,” subject to Wozniak and Wozniak’s counsel completing any reasonably necessary tax and compliance documentation to enable the Settling Entity to complete the payment. The reimbursement shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to the Settling Entity’s attention and negotiating a settlement of the matter in furtherance of the public interest for the Products.

### 3.3 Payment Address

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

## 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 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, and any manufacturers, suppliers, licensors, licensees and each entity to whom it directly or indirectly distributes or sells Products, including but not limited to distributors, wholesalers, customers, , resellers, retailers (including but not limited to Amazon.com, Inc.), franchisees, and cooperative members, and each of their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees and attorneys (Releasees) based on their failure to warn about alleged exposures to DEHP and DINP in the Products that were sold and/or offered for

sale in California by the Settling Entity through Amazon.com and/or any other channels to customers in California before the Effective Date, as alleged in the Notices.

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 and DINP in the Products against the Settling Entity and the releasees. 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.

#### 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.

### 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 unless expressly disallowed by the new implementing regulations. 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:  
Alco Sales & Service Co.  
6851 High Grove Blvd  
Burr Ridge, IL 60527-7579  
Attention: Legal Department

With a Copy to:  
Kim Sandell, Esq.  
Jacob P. Wilson, Esq.  
Conkle, Kremer & Engel  
Professional Law Corporation  
3130 Wilshire Boulevard, Suite 500  
Santa Monica, California 90403-2351  
k.sandell@conklelaw.com & support@conklelaw.com  
j.wilson@conklelaw.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).

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**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:**

**AGREED TO:**

Date: December 27, 2022

Date: December \_\_, 2022

By: \_\_\_\_\_

Paul Wozniak

By: \_\_\_\_\_

Alvin Herman Jr.  
President  
Alco Sales & Service Co.



**10. MODIFICATION**

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

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**AGREED TO:**

**AGREED TO:**

Date: December \_\_, 2022

Date: December 27 2022

By: \_\_\_\_\_  
Paul Wozniak

By:   
Alvin Herman Jr.  
President  
Alco Sales & Service Co.