

# **SETTLEMENT AGREEMENT**

AG Notice No. 2023-00424

## **1. INTRODUCTION**

### **1.1 Wozniak and Karman Healthcare Inc.**

This settlement agreement (Settlement Agreement) is entered into by and between Paul Wozniak and Karman Healthcare Inc., (Settling Entity or Karman) 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. For the purposes of this Settlement Agreement only, Wozniak alleges that the Settling Entity 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 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 lead and Di(2-ethylhexyl)phthalate (DEHP). Lead and DEHP are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

### **1.3 Product Description**

The products covered by this Settlement Agreement are wheelchairs, rollators and their related components as well as walking canes that contain lead and/or DEHP and are offered for sale to consumers in California (hereinafter referred to as the “Product” or “Products”).

#### 1.4 Notices of Violation

On March 4, 2020, Wozniak alleges that he served Karman and requisite public enforcement agencies with a 60-Day Notices of Violation (hereinafter referred to as the “March 4 Notice”), alleging that Karman violated Proposition 65 when it failed to warn its customers or other consumers in California that certain vinyl upholstery on armpads offered for sale on Walgreen.com to consumers in California contain and expose users to lead.

On October 4, 2022, Wozniak alleges that he served Karman and requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (hereinafter referred to as the “October 4 Notice”), alleging that Karman violated Proposition 65 when it failed to warn its customers or other consumers in California that certain padded armrests and other vinyl upholstered components used on wheelchairs offered for sale to consumers in California contain and expose users to DEHP.

On February 13, 2023, Wozniak alleges that he served Karman and requisite public enforcement agencies with a Second Supplemental 60-Day Notice of Violation (hereinafter referred to as the “February 13 Notice”), alleging that Karman violated Proposition 65 when it failed to warn its customers or other consumers in California that certain Products offered for sale to consumers in California contain and expose users to DEHP as well as lead.

The March 4 Notice, October 4 Notice and February 13 Notice shall be collectively referred to as the “Notices.” To the best of the Parties’ knowledge, no public enforcer commenced or otherwise diligently prosecuted the allegations set forth in the Notices.

#### 1.5 Other Procedural Background

An enforcement action covering certain claims asserted in the March 4 Notice was filed on August 30, 2022 (CGC- 22-601492, herein referred to as “2022 Action”). On March 10,

2023, Wozniak commenced another action (CGC-23-605097, herein referred to as “2023 Action”), covering certain claims asserted in the October 4 Notice and February 13 Notice. On April 27, 2023, Wozniak filed a first amended complaint bringing in the allegations relating to lead and DEHP in walking canes with soft vinyl grips. The 2022 Action and 2023 Action, including any amendment to any of them, are collectively referred to as “Actions.” The Actions were subsequently dismissed without prejudice 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 July 20, 2023. The term “Compliance Date” shall mean 30 calendar days after the Effective Date.

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

### **2.1 Injunctive Relief**

Pursuant to the terms set forth below, with respect to Products sold in California that do not have a clear and reasonable Proposition 65 warning by the Compliance Date, Karman, at its option, agrees to either: (i) reformulate the Products, as set forth in Section 2.2 below; (ii) provide a clear and reasonable Proposition 65 warning for the Products, as set forth in Section 2.3 below; or (iii) cease selling the Products in California and prohibit the shipment of the Products to California addresses with regard to Products sold online. The Parties understand and agree that some Products may appear online that contain no warning but are not able to be shipped to California addresses (so sales cannot be completed) and that this complies with Section 2.1(iii) above.

### **2.2 Reformulation Standard**


A “Reformulated Product” (a) contains lead in concentrations that do not exceed 90 parts per million, equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S. Environmental Protection Agency (EPA) methodologies 3050B and 6010B, or (b) yields 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 (c) 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. In addition to the above tests, Karman may use equivalent methods utilized by any California or federal agency to determine lead content in a solid substance.


### 2.3 Clear and Reasonable Warnings

On or before the Compliance Date, Karman shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers 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 or other message that is in compliance with Proposition 65 (Warning):

 **WARNING:** This product can expose you to chemicals including lead, 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).


or


 **WARNING:** This product can expose you to chemicals including DEHP, 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).

or

 **WARNING:** This product can expose you to chemicals including lead and DEHP, which are 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.** Karman may use the following short-form warning as set forth in this Section 2.3 (Short-Form Warning) or any substantially similar language so long as it is allowed under Proposition 65's implementing regulations:

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

(c) **Internet Warnings.** For any of the Products that are not Reformulated Products pursuant to Section 2.2 and are offered for sale online to California consumers after the Compliance Date, such Product listings shall contain a Warning or Short-Form Warning (as set forth above) which is prominently 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. 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) prominently placed on a webpage in which the Product's photograph, price, or “add to cart” section are displayed; (b) on the same webpage as the order form for the Product; or (c) on any webpage displayed to the purchaser during the checkout process and prior to its completion for any purchaser with a California shipping address. The symbol “” may be placed adjacent to the signal word. The internet warning may use the Short-Form Warning content described in subsection 2.3(b).

(d) **Product Warnings.** Karman 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 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.

#### 2.4 Foreign Language Requirement

Karman shall comply with the requirements set forth in 27 California Code of Regulations §25602(d) if and to the extent it applies to any sale of any of the Products to any purchaser with a California shipping address.

#### 2.5 Option to Delist

On or before the Compliance Date, Karman may, at its option, comply with the injunctive commitments set forth in Section 2.3 above by delisting a Product such that the item is then unavailable in general or for online sale for shipment to an address in California and have its online retailers delist the Product on their platforms as well. If it does so, the previously delisted Product may be reinstated for sale online to California consumers if it complies with Sections 2.1 through 2.4 prior to the date of such relisting.

### **3. MONETARY SETTLEMENT TERMS**

#### 3.1 Civil Fines

Within the date set forth below and Karman's receipt of a current W-9 from Wozniak and the California Office of Environmental Health Hazard Assessment (OEHHA), whichever date is later, pursuant to California Health & Safety Code §25249.7(b), and in settlement of all alleged violations and claims referred to in the Notices, Complaints, Actions, and this Settlement Agreement, Karman agrees to pay \$100,000 in civil penalties. Payment will be made in two installments of \$35,000 and \$65,000. Karman's first installment of \$35,000 is due within ten

(10) calendar days of the Effective Date, such civil penalty payment will be allocated according to California Health & Safety Code §25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to OEHHA, and the remaining twenty-five percent (25%) of the penalty payment paid to Wozniak. Karman's second penalty installment of \$65,000 is due on August 31, 2023, and will also be allocated between OEHHA and Wozniak in the same manner: (a) "OEHHA" in the amount of \$48,750; and (b) "Paul Wozniak" in the amount of \$16,250. Plaintiff's counsel shall send the portions of the penalties paid by Karman to OEHHA and Wozniak.

If an officer of Karman certifies, in writing, no later than August 15, 2023, that all Products shipped for sale by Karman in California after December 15, 2023, are "Reformulated Product" as defined in subsection 2.2, then the second installment of \$65,000 shall be waived in its entirety. The certification shall be received by Wozniak and his counsel by electronic and overnight mail at the address set forth in Section 8. If the certification is not received in a timely manner, then Karman shall pay the remaining \$65,000 on August 31, 2023, as specified above.

### 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, Proposition 65 implementing regulation for fee awards at 11 California Code of Regulations §3201 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 Settlement Agreement. Within ten (10) calendar days of the Effective Date, and Karman's receipt of a current W-9 from Chanler LLC, whichever date is later, Karman agrees to pay \$280,000 by a check made payable to "Chanler, LLC" for all fees and costs incurred in investigating, bringing this matter to Karman's attention, litigating, and negotiating a settlement in furtherance of the public interest.

### 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

Should the payments due under Section 3 not clear within thirty (30) business days from the Effective 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, acting on his own behalf, (and not on behalf of the public yet furthers its health interests), each of his past, current, and future agents, representatives, attorneys, successors, and/or assignees, and Karman and its past, current, and future direct and indirect subsidiaries, affiliated entities under common ownership, predecessors, successors, directors, officers, managers, shareholders, members, employees, agents, assignees, and attorneys (collectively, Releasees) and each person or entity to whom any of the Releasees directly or indirectly distributes or sells, or in the past directly or indirectly distributed or sold, the Products including, but not limited to, any downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,

licensors and licensees including Amazon.com, Inc., and Walgreen Co., (collectively, Downstream Releasees) of, from, and with regard to any and all violations arising under Proposition 65 for unwarned exposures to lead and/or DEHP from the Products manufactured, produced, packaged, imported, supplied, distributed, sold, or offered for sale on by Karman prior to the Compliance Date, including as set forth in any of the Notices, Complaints, and/or Actions (Released Allegations). Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by Karman, each of the Releasees, and/or each of their Downstream Releasees, with respect to the alleged or actual failure to warn about exposures to lead and/or DEHP from the Products. including as set forth in any of the Notices, Complaints, and/or Actions.

Wozniak, acting on his own behalf and in his personal capacity, and not in his representative capacity, on behalf of himself, each of his past, current, and future agents, representatives, attorneys, successors, and/or assignees, further release, waives, and fully discharges Karman, each of the Releasees, and/or each of their Downstream Releasees from any and all related claims, actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands, of any nature, character or kind, whether arising in law or equity, known or unknown, suspected or unsuspected, asserted or unasserted, including as set forth in any of the Notices, Complaints, and/or Actions, arising from or related to any alleged or actual exposures to lead and/or DEHP from Products manufactured, produced, packaged, imported, supplied, distributed, sold, or offered for sale by Amazon and Walgreen, each of the Releasees, and/or each of their Downstream Releasees before the Compliance Date (Released Claims). Wozniak, in his personal capacity only, specifically waives any and all rights and benefits related to the Released Claims that he now has, or in the future may have,

conferred by virtue of the provisions of Section 1542 of the California Civil Code, which 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.

#### 4.2 Settling Entity's Release of Wozniak

Karman, on its own behalf and on behalf of its past, current, and future agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Wozniak and his attorneys and other representatives, for any and all actions taken or statements made by Wozniak and his attorneys and other representatives in the course of investigating the claims at issue in this matter, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products as set forth in in any of the Notices, Complaints, or Actions.

#### **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. In the event that Proposition 65 is repealed, preempted, or is otherwise amended or rendered inapplicable by reason of law generally, or as to any of the Products or any of the alleged violations set forth in any of the Notices, Complaints, and Actions, then Karman may provide Wozniak with written notice 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 and/or any requirement set forth in this Settlement Agreement is affected by such a change in the law. Nothing in this Settlement Agreement shall be interpreted to relieve Karman from its obligation to comply with any other applicable state or federal law or regulation.

The Parties agree that if OEHHA changes any of its applicable regulations, including its warning regulations, then Karman may either conform with the revised regulations or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow.

**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:  
Karman Healthcare Inc.  
19255 San Jose Avenue  
City of Industry, CA 91748  
Attention: Legal Department

With a Copy to:  
J. Scott Donald, Esq.  
Spinelli, Donald and Nott  
601 University Avenue, Suite 225  
Sacramento, CA 95825  
scottd@sdlaw.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. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties or any of their counsel except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically contained or referred to in this Settlement Agreement have been made by any Party hereto or any of their counsel. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto or any of their counsel.

**11. MODIFICATION**

This Settlement Agreement may only 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 agreed to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: July \_19\_, 2023

Date: July 18, 2023

By: 

Paul Wozniak

By: 

Chiachyi Horng  
Chief Executive Officer  
Karman Healthcare Inc.