

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”) and The Music Link Corporation (“Music Link”), with Wozniak and Music Link each individually referred to as a “Party” and collectively as the “Parties.” Wozniak is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Music Link 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Wozniak alleges that Music Link manufactures, sells, and/or distributes for sale in California, drum stools with vinyl/PVC upholstery containing lead and the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”); and ukulele instrument bags containing lead. DEHP and lead are listed pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects or other reproductive harm. Wozniak alleges that Music Link failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP and lead from the drum stools and the instrument bags sold in California.

1.3 Product Description

The products that are covered by this Settlement Agreement are drum stools with vinyl/PVC upholstery containing lead and DEHP manufactured, sold and/or distributed for sale in California by Music Link, including, but not limited to, the *Drum Stool, Chrome Padded Round Seat, DH-107 (UPC No .8 40246 01465 8)*; and instrument bags containing lead, including but not limited to the *Savannah Ukulele W/Bag, Item: SU-*

ASST, SU-105-RED (UPC No. 8 40246 03132 7). All such drum stools with vinyl/PVC upholstery containing lead and DEHP and instrument bags containing lead are referred to collectively hereinafter as “Products”.

1.4 Notice of Violation

On March 26, 2014, Wozniak served Music Link and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Music Link violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP and lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Music Link denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Music Link of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Music Link of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Music Link. This Section shall not, however, diminish or otherwise affect Music Link’s 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 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Music Link shall

only purchase for sale or manufacture for sale in California, (a) Reformulated Products; or (b) Products sold with a clear and reasonable warning pursuant to Section 2.2. For purposes of this Settlement Agreement, “Reformulated Products” are (i) Products that contain no more than 1,000 parts per million (“ppm”) (0.1%) DEHP content in any component when analyzed pursuant to EPA testing methodologies 3580A and 8270C; and (ii) Products containing a maximum of 0.009% (90 ppm) of lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B. In addition to the EPA methodologies authorized by this Section, the Parties may use equivalent methodologies utilized by state and federal agencies to measure lead or DEHP content in a solid substance to determine DEHP and/or lead content of the Products.

2.2 Clear and Reasonable Warnings for Non-Reformulated Products

Commencing on the Effective Date and continuing thereafter, for all Products other than Reformulated Products, Music Link agrees that it will only sell or distribute such Products for sale in California with a clear and reasonable warning in accordance with this Section. Music Link further agrees to affix the warning directly to the Product, or on Product packaging or labeling, if any. The warning shall be prominently placed with such conspicuousness when compared to 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. The warning shall further be provided in such a manner that the consumer or user understands to which *specific* Product the warning applies, so as to limit the risk of any consumer confusion.

A warning provided under this Settlement Agreement shall contain the following statement:

WARNING: This product contains [*lead and/or DEHP*], a chemical known to the State of California to cause birth defects or other reproductive harm.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Music Link agrees to pay in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Wozniak.

3.1.1 Initial Civil Penalty Payment Date. Within 10 days of the Effective Date, Music Link shall pay an initial civil penalty of \$3,500. Music Link will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$2,625 and (b) “Paul Wozniak, Client Trust Account” in the amount of \$875.

3.1.2 Final Civil Penalty. On January 31, 2015, Music Link shall pay a final civil penalty of \$12,000. The final civil penalty shall be waived in its entirety if, no later than January 15 2015, an officer of Music Link provides Wozniak’s counsel with written certification that, as of the date of its certification, all of the Products it purchases for sale or manufacture in California are Reformulated Products as defined by Section 2.1, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Agreement is a material term, and time is of the essence.

3.2 Reimbursement of Wozniak’s Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Music Link agrees to pay to Wozniak and his counsel \$23,000 for all fees and costs incurred investigating,

bringing this matter to the attention of Music Link’s management, and negotiating a settlement in the public interest.

3.3 Payment Procedures

3.3.1 Payment Addresses. Payments shall be delivered as follows:

(a) All payments and tax documentation required for Wozniak and his counsel under this Settlement Agreement shall be delivered to:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) All payments and tax forms required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the following addresses as appropriate:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Courier or Other Non-U.S. Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

3.3.2 Proof of Payment to OEHHA. Music Link agrees to provide Wozniak with a copy of each penalty check sent to OEHHA, enclosed with Music Link’s penalty payment(s) to Wozniak, and delivered to the address provided in Section 3.3.1(a).

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak’s Release of Music Link

This Settlement Agreement is a full, final and binding resolution between Wozniak and Music Link, of any violation of Proposition 65 that was or could have been asserted by Wozniak on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, against Music Link, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Music Link directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively, "Releasees"), based on their alleged failure to warn about exposures to DEHP and lead in Products that Music Link sold or distributed for sale prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Wozniak on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 alleging a failure to warn about exposures to DEHP and lead from Products sold or distributed for sale by Music Link before the Effective Date. The releases provided by Wozniak under this Settlement Agreement are provided solely on Wozniak's behalf and are not releases on behalf of the public.

4.2 Music Link's Release of Wozniak

Music Link on behalf of itself, and on behalf of its past and current 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 (or those that could have been taken or made) by Wozniak and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. 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.

7. 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 as to the Products, then Music Link may provide written notice to Wozniak of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Music Link:

Steve Patrino, President
The Music Link Corporation
31067 San Clemente Street
Hayward, CA 94544

with a copy to:

Blaine L. Fields, Esq.
Trial Counsel
227 North First Street
San Jose, CA 95113

For Wozniak:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth St.
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Wozniak and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

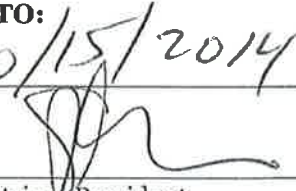
AGREED TO:

Date: October 21, 2014

By: 
PAUL WOZNIAK

AGREED TO:

Date: 10/15/2014

By: 
Steve Patrino, President
THE MUSIC LINK CORPORATION