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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION
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18 PAUL WOZNIAK,

19 Plaintiff,

20 v.

21 ACME INTERNATIONAL ENTERPRISES,
22 INC., *et al.*,

23 Defendant

Case No. RG15766676

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Cal. Civ. Proc. Code § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Paul Wozniak (“Wozniak”) and Acme
4 International Enterprises, Inc. (“Acme”), with Wozniak and Acme each individually referred to as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Wozniak is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances in
9 consumer products.

10 **1.3 Defendant**

11 Wozniak alleges, and Acme disputes, that Acme employs ten or more individuals and is a
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that Acme manufactures, imported, sold, or distributed for sale in California,
16 nylon cooking utensils that contain 4, 4'-Methylenedianiline (“4, 4'-MDA”) without first providing
17 the exposure warning required by Proposition 65. 4, 4'-MDA is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are nylon cooking utensils allegedly
21 containing 4, 4'-MDA that are manufactured, imported, distributed, sold, or offered for sale in
22 California by Acme, including, but not limited to, kitchen utensils included with the *Acme Kitchen*
23 *Gear Essential Gear 5 Mini Tools, #94330, UPC #0 72898 94330 1*, collectively referred to as the
24 “Products.”

25 **1.6 Notices of Violation**

26 On January 23, 2015, Wozniak served Acme and all requisite public enforcement agencies
27 with a 60-Day Notice of Violation (“Notice”) alleging that Acme violated Proposition 65 by failing to
28 warn its customers and consumers in California that the Products expose users to 4,4'-MDA.

1 Thereafter, on June 26, 2015, Wozniak served a Supplemental 60-Day Notice of Violation
2 (“Supplemental Notice”) on Acme, its retail customer in California, Bed Bath & Beyond, Inc., and all
3 requisite public enforcers alleging that, in addition to the claims alleged in the Notice, Bed Bath &
4 Beyond, Inc. also violated Proposition 65 by failing to warn consumers in California of the health
5 hazards associated with exposures to 4, 4'-MDA in the Products.

6 The Notice and Supplemental Notice are collectively referred to as the “Notices.” No public
7 enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in
8 either of the Notices.

9 **1.7 Complaint**

10 On April 16, 2015, Wozniak filed the instant action (“Complaint”) naming Acme as a
11 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
12 the Notice. Thereafter, on December 11, 2015, Wozniak filed a Doe amendment to the Complaint,
13 adding Bed Bath & Beyond as a defendant in this action for the alleged violations that are the subject
14 of the Supplemental Notice.

15 **1.8 No Admission**

16 Acme denies the material, factual, and legal allegations contained in the Notice and
17 Complaint, and it maintains that all of the products that it has sold, manufactured, imported and/or
18 distributed for sale in California, including the Products, have been and are in compliance with all
19 applicable laws. Nothing in this Consent Judgment shall be construed as an admission by Acme of
20 any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
21 Consent Judgment constitute or be construed as an admission by Acme of any fact, finding,
22 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or
23 otherwise affect Acme’s obligations, responsibilities, and duties under this Consent Judgment.

24 **1.9 Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Acme as to the allegations contained in the Complaint, that venue is proper in the
27 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
28 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
3 the Court grants the motion for approval of the Parties' settlement contemplated by Section 5.

4 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

5 **2.1 Reformulated Products**

6 Commencing on the Effective Date, and continuing thereafter, Acme shall only purchase for
7 sale, or manufacture for sale in California, "Reformulated Products" or Products with clear and
8 reasonable warnings as set forth in Section 2.2 below. For purposes of this Consent Judgment,
9 Reformulated Products are defined as Products that: : (a) contain less than or equal to 200 parts per
10 million ("ppm") 4, 4'-MDA by weight using validated preparation and analytical methods used to
11 detect the presence of 4, 4'-MDA in a solid substance; and (b) produce a leach result of no more than
12 10 micrograms per liter (μ /L) 4, 4'-MDA by digesting the food contact end of the product into 100
13 milliliters of 3% acetic acid de-ionized water for 2 hours at 100°C, replenishing the acetic acid
14 solution as needed to maintain 100 ml, and analyzing the leachate using a validated method to detect
15 the presence of 4, 4'-MDA in a liquid. The testing shall be conducted in an accredited laboratory
16 with qualified personnel. All analytical reports must contain quality control data that verify the
17 laboratory's performance for the results in each analytical report.

18 **2.2 Product Warnings**

19 **2.2.1 Product Warning.** If Acme manufactures or sells any Products after the
20 Effective Date, that are not Reformulated Products, Acme shall provide a warning under this Consent
21 Judgment, which shall be (1) affixed to the exterior packaging of such product or (2) affixed to the
22 Product itself in immediate proximity to any marketing, ownership or pricing tags or labels or, if
23 none, to a surface of the product that would be immediately visible to a purchaser or user upon
24 inspection or use. Each warning shall be of such size, color and font and shall be prominently placed
25 with such conspicuousness as compared with other words, statements, designs, or devices as to render
26 it likely to be read and understood by an ordinary individual under customary conditions before
27 purchase. Each warning shall be provided in a manner such that the consumer or user understands to
28 which specific product the warning applies, so as to minimize the risk of consumer confusion. A

1 warning provided pursuant to this Consent Judgment shall state:

2 **WARNING:** This product contains a chemical known
3 to the State of California to cause cancer.

4 **2.2.2 Internet Website Warning.** After the Effective Date, a warning shall be
5 given in conjunction with any offer to sell or sale by Acme of Products that are not Reformulated
6 Products to California residents via the internet, which warning shall appear on one or more web
7 pages displayed to a purchaser prior to completing payment and/or during the "checkout" process.
8 The following warning statement shall be used and shall appear in the same type size or larger than
9 the text describing such Products that are not Reformulated Products:

10 **WARNING:** This product contains a chemical known
11 to the State of California to cause cancer.

12 **2.3 Exceptions to Warning Requirements**

13 The warning requirements set forth in Section 2.2 shall not apply to any Products shipped to a
14 third party or held in inventory before the Effective Date.

15 **2.4 Products in the Stream of Commerce**

16 Acme's Products manufactured and distributed for retail sale prior to the Effective Date which
17 may remain in the stream of commerce are Products for which a civil penalty has been assessed
18 pursuant to Section 3.1, below, and are subject to the releases of liability pursuant to Section 4 of this
19 Consent Judgment.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Civil Penalty Payment**

22 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
23 this Consent Judgment, Acme shall pay \$2,000 in civil penalties. The civil penalty payment shall be
24 allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
25 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
26 ("OEHHA") and twenty-five percent (25%) of the funds remitted to Wozniak. Acme shall deliver its
27 payment in two checks payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Paul Wozniak,
28 Client Trust Account" in the amount of \$500. Wozniak's counsel shall be responsible for delivering
OEHHA's portion of the penalty payment.

1 **3.2 Reimbursement of Attorney's Fees and Costs**

2 After reaching an agreement on all terms essential to this Consent Judgment, the Parties
3 negotiated Acme's reimbursement of a portion of the fees and costs incurred by Wozniak and his
4 counsel as a separate and final term of this Consent Judgment. Pursuant to general contract principles
5 and the private attorney general doctrine codified at California Code of Civil Procedure section
6 1021.5, for all work performed through the mutual execution of this Consent Judgment, Acme shall
7 pay \$15,000 in a check payable to "The Chanler Group." Acme's payment under this Section shall
8 cover all fees and costs incurred by Wozniak investigating, bringing this matter to Acme's attention,
9 litigating, and negotiating a settlement in the public interest.

10 **3.3 Payments Held in Trust**

11 The settlement payments required by Sections 3.1 and 3.2 shall be delivered to Acme's
12 counsel within 15 days of the date that this Consent Judgment is fully executed by the Parties, held
13 in trust until, and disbursed within five days after the Effective Date. Acme's counsel shall provide
14 Wozniak's counsel with written confirmation upon receiving of Acme's settlement payments.

15 **3.3 Payment Address**

16 All payments required by this Consent Judgment shall be delivered to:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Wozniak's Public Release of Proposition 65 Claims**

24 Wozniak, acting on his own behalf and in the public interest, releases Acme and its parents,
25 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
26 attorneys ("Releasees") and each entity to whom Acme directly or indirectly distributes or sells the
27 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers
28 (including, but not exclusively, Bed Bath & Beyond, Inc.), franchisees, cooperative members,
licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65
for unwarned exposures to 4, 4'-MDA from the Products sold by Acme prior to the Effective Date,

1 as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
2 compliance with Proposition 65 with respect to the failure to warn about exposures to 4, 4'-MDA
3 from Products sold by Acme before the Effective Date.

4 **4.2 Wozniak's Individual Release of Claims**

5 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
6 a release to Acme, Releasees, and Downstream Releasees which shall be effective as a full and final
7 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
8 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
9 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
10 exposures to 4,4'-MDA in the Products sold or distributed for sale by Acme before the Effective
11 Date.

12 **4.3 Acme's Release of Wozniak**

13 Acme, on its own behalf, and on behalf of its past and current agents, representatives,
14 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
15 attorneys and other representatives for any and all actions taken or statements made (or those that
16 could have been taken or made) by Wozniak and his attorneys and other representatives, whether in
17 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
18 matter, or with respect to the Products.

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
22 has been fully executed by the Parties, or by such additional time as the parties may agree in writing.

23 **6. SEVERABILITY**

24 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
25 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
26 adversely affected.

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Acme may
5 provide written notice to Wozniak of any asserted change in the law, and shall have no further
6 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
7 Products are so affected.

8 **8. NOTICE**

9 Unless specified herein, all correspondence and notice required by this Consent Judgment
10 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
11 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

12 For Acme:

13 Acme International Enterprises, Inc.
14 400 Lyster Avenue
15 Saddle Brook, NJ 07663

16 with a copy to:

17 Albert T. Liou, Esq.
18 LKP Global Law, LLP
19 1901 Avenue of the Stars, Suite 480
20 Los Angeles, CA 90067

21 For Wozniak:

22 The Chanler Group
23 Attn: Proposition 65 Coordinator
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710-2565

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

29 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **10. POST EXECUTION ACTIVITIES**

2 Wozniak agrees to comply with the reporting form requirements referenced in Health and
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
4 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
5 furtherance of obtaining such approval, which motion Wozniak's counsel shall draft and file and
6 Acme shall support by, without limitation, appearing at the hearing if requested, and by jointly
7 replying with Wozniak to any objection raised by any third-party, if any.

8 **11. DISMISSAL OF BED BATH & BEYOND, INC.**

9 Within 10 days of the Effective Date, or Wozniak's receipt of Acme's settlement funds,
10 whichever is later, Wozniak will file a request for dismissal with prejudice as to defendant Bed Bath
11 & Beyond, Inc.

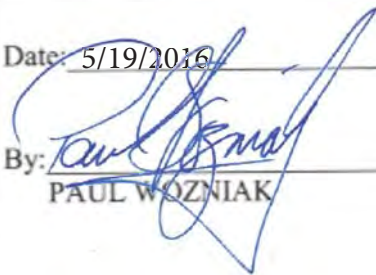
12 **12. MODIFICATION**

13 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
14 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
15 Party, and the entry of a modified consent judgment by the Court.

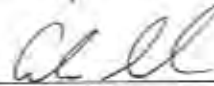
16 **13. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment and have read, understood,
18 and agree to all of the terms and conditions contained herein.

19 **AGREED TO:**

20
21 Date: 5/19/2016
22 By: 
23 PAUL WOZNIAK

AGREED TO:

24 Date: May 19, 2016
25 By: 
26 [signature]
27 Andrew Skobe
28 [print name]
Its: CFO, Treasurer, & Secretary
[title]

ACME INTERNATIONAL ENTERPRISES, INC.