

1 Clifford A. Chanler, State Bar No. 135534
Laralei S. Paras, State Bar No. 203319
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 clifford@chanler.com
laralei@chanler.com

6 Attorneys for Plaintiff
7 PAUL WOZNIAK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,
Plaintiff,
v.
BARDWIL INDUSTRIES, INC.; *et al.*,
Defendants.

Case No. CGC-18-570910

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

7 Wozniak is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Bardwil employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Wozniak alleges that Bardwil manufactured, imported, sold and/or distributed for sale in
16 California napkin rings containing lead, and that it did so without providing the health hazard
17 warning that Wozniak alleges is required by Proposition 65. Lead is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are napkin rings containing lead including,
21 but not limited to, the *Napkin Rings Set of 4, STYLE 8873, MERRY RING, UPC #0 47596 60584 4*,
22 manufactured, imported, or purchased for resale by Bardwil and distributed, sold and/or offered for
23 sale in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On May 31, 2018, Wozniak served Bardwil and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (Notice), alleging that Bardwil violated Proposition 65 when it
27 failed to warn its customers and consumers in California that the Products expose users to lead.
28 Bardwil represents that it no longer manufactures, imports or otherwise sells the Products in

1 California, in part, in response to the Notice. To the best of the Parties' knowledge, no public
2 enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in
3 the Notice.

4 **1.7 Complaint**

5 On October 26, 2018, Wozniak commenced the instant action (Complaint), naming Bardwil
6 as one of the defendants for the alleged violations of Proposition 65 that are the subject of the
7 Notice.

8 **1.8 No Admission**

9 Bardwil denies the material, factual and legal allegations contained in the Notice and
10 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
11 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
12 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be
13 construed as, an admission by Bardwil of any fact, finding, conclusion of law, issue of law, or
14 violation of law. This section shall not, however, diminish or otherwise affect Bardwil's obligations,
15 responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Bardwil as to the allegations contained in the Complaint, that venue is proper in the
19 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
23 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

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

25 **2.1 Commitment to Reformulate or Provide Warnings**

26 Commencing on the Effective Date and continuing thereafter, Bardwil shall (a) only
27 manufacture for sale, import for sale, and purchase for resale in California Products (as defined
28 herein) that are Reformulated Products as defined by Section 2.2; (b) label the Products that Bardwil

1 sells, ships for sale, or distributes for sale to customers or consumers in California, or to customers
2 with nationwide distribution, after the Effective Date, with a clear and reasonable warning as set
3 forth in Sections 2.3 through 2.6; or (c) discontinue sales of the Products in California.

4 **2.2 Reformulation Standard**

5 “Reformulated Products” are defined as Products that (a) contain lead in concentrations that
6 do not exceed 90 parts per million (ppm), equivalent to 0.009%, in any exterior parts analyzed
7 pursuant to U.S. Environmental Protection Agency (EPA) testing methodologies 3050B and 6010B;
8 and (b) yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH
9 9100 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies,
10 the Parties may use equivalent methodologies utilized by a state or federal agency to determine lead
11 content in a solid substance.

12 **2.3 Clear and Reasonable Warnings**

13 Bardwil has represented and the Parties accordingly stipulate based on that representation
14 that Bardwil has discontinued the sale of Products to customers in California. While Bardwil does
15 not anticipate selling Products to consumers in California, in the event Bardwil decides to sell any
16 Products, Bardwil shall provide clear and reasonable warnings for all Products provided for sale to
17 customers in California in accordance with this Section pursuant to Title 27, California Code of
18 Regulations, § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness
19 as compared with other words, statements, designs, or devices as to render it likely to be read and
20 understood by an ordinary individual under customary conditions before purchase or use and shall be
21 provided in a manner such that it is clearly associated with the specific Product to which the warning
22 applies.

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

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

1 **(b) Short-Form Warning.** Bardwil may, but is not required to, use the following
2 short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the
3 additional requirements in Sections 2.5 and 2.6, as follows:

4 **⚠ WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

5
6 **(c) Foreign Language Requirement.** Where a consumer product sign, label or
7 shelf tag used to provide a warning includes consumer information in a language other than English,
8 the warning must also be provided in that language in addition to English.

9 **2.4 Product Warnings**

10 In the event Bardwil recommences sale of a Product that is not a Reformulated Product to
11 consumers in California, Bardwil shall affix a warning to the Product label or otherwise directly on
12 each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the
13 internet to customers located in California. For the purpose of this agreement, “Product label”
14 means a display of written, printed or graphic material that is printed on or affixed to a Product or its
15 immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point
16 type and no smaller than the largest type size used for other consumer information on the product.
17 The warning shall consist of either the Warning, or the Short-Form Warning described in subsection
18 2.3(a) or (b), respectively.

19 **2.5 Mail Order Catalog Warnings**

20 In the event that, after the Effective Date, Bardwil prints new catalogs and sells Products via
21 mail order through such catalogs to customers located in California, Bardwil shall provide a warning
22 for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a
23 manner that clearly associates the warning with the specific Product being purchased. Any warning
24 provided in a mail order catalog shall be in the same type size or larger than other consumer
25 information provided for the Product within the catalog and shall be provided on the same page and
26 in the same location as the display and/or description of the Product. The catalog warning may use
27 the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product
28 label also uses the Short-Form Warning content.

1 **2.6 Internet Warnings**

2 If, after the Effective Date, Bardwil sells Products via the internet to customers located in
3 California, Bardwil shall provide warnings for each Product both on the Product label in accordance
4 with Section 2.4, and by prominently displaying the warning to the customer prior to completing the
5 purchase or during the purchase of the Products without requiring customers to seek out the warning.
6 The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in
7 conjunction with the sale of the Products via the internet shall appear either: (a) on the same web
8 page on which the Product is displayed; (b) on the same web page as the order form for the Product;
9 or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning
10 shall appear in any of the above instances adjacent to or immediately following the display or
11 description of the Product for which it is given in the same type size or larger than the Product
12 description text. The internet warning may use the Short-Form Warning content described in
13 Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning
14 content.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payments**

17 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
18 in the Notice, Complaint, and this Consent Judgment, Bardwil agrees to pay \$3,800 in civil
19 penalties. Bardwil’s civil penalty payment will be allocated according to Health and Safety Code
20 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
21 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five
22 percent (25%) of the penalty payment retained by Wozniak. Bardwil shall issue its payment in two
23 checks made payable to (a) “OEHHA” in the amount of \$2,850; and (b) “Paul Wozniak, Client Trust
24 Account” in the amount of \$950. Wozniak’s counsel shall send OEHHA’s portion of the penalties
25 paid by Bardwil to OEHHA and confirm in writing to Bardwil’s counsel that such it has done so.

26 **3.2 Reimbursement of Attorneys’ Fees and Costs**

27 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute
28 without reaching terms on their fees and costs. Shortly after the other settlement terms had been

1 finalized, the Parties negotiated the compensation to be paid to Wozniak’s counsel under general
2 contract principles and the private attorney general doctrine codified at California Code of Civil
3 Procedure § 1021.5 for all work performed through the mutual execution of this Consent Judgment
4 and court approval of the same, but exclusive of fees and costs on appeal, if any. Bardwil agrees to
5 pay \$30,000 by a check made payable to “The Chanler Group” for all fees and costs incurred
6 investigating, bringing this matter to Bardwil’s attention, litigating, and negotiating a settlement in
7 the public interest.

8 **3.3 Payment Timing; Payments Held in Trust**

9 All payments due under this Consent Judgment shall be held in trust until the Court approves
10 the Parties’ settlement. Bardwil shall deliver its civil penalty and attorneys’ fee reimbursement
11 payments to its counsel within fifteen (15) days of the date that this Consent Judgment is fully
12 executed by the Parties. Bardwil’s counsel shall provide Wozniak’s counsel with written
13 confirmation following its receipt of the settlement funds. Thereafter, Bardwil’s counsel shall hold
14 the settlement funds in trust until the Court grants the motion for approval of this Consent Judgment
15 contemplated by Section 5. The checks due under Section 3.1 and 3.2 of this Consent Judgment
16 shall be delivered to Wozniak’s counsel to the address in Section 3.4 by overnight courier, with a
17 tracking number, such that payment is received by plaintiff’s counsel on or before five (5) calendar
18 days after the Effective Date.

19 **3.4 Payment Address**

20 All payments required by this Consent Judgment shall be delivered to the following address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Wozniak’s Release of Proposition 65 Claims**

28 Wozniak, acting on his own behalf and in the public interest, and on behalf of his successors,
assigns, heirs, attorneys, agents, representatives, and affiliates (collectively “Releasers”), releases
Bardwil and its parents, subsidiaries, affiliated entities under common ownership, directors, officers,

1 employees, and attorneys (collectively, Releasees) and each entity to whom Bardwil directly or
2 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,
3 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
4 (Downstream Releasees) for any violations arising under Proposition 65 for unwarned exposures to
5 lead from the Products manufactured, imported, distributed or sold by Bardwil prior to the Effective
6 Date, as set forth in the Notice and Complaint. Compliance with the terms of this Consent Judgment
7 constitutes compliance with Proposition 65 by Bardwil with respect to the alleged or actual failure to
8 warn about exposures to lead from Products manufactured, sold or distributed for sale by Bardwil
9 after the Effective Date.

10 **4.2 Wozniak's Individual Release of Claims**

11 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
12 a release to Bardwil, Releasees, and Downstream Releasees which shall be effective as a full and
13 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
14 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
15 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
16 exposures to lead in Products manufactured, imported, distributed or sold by Bardwil before the
17 Effective Date. Wozniak has not assigned his rights nor claims as a citizen enforcer under California
18 Health and Safety Code § 25249.5 et seq. Nothing in Section 4 affects Wozniak's right to
19 commence or prosecute an action under Proposition 65 against a Releasee or Downstream Releasee
20 that does not involve Bardwil's Products.

21 **4.3 Bardwil's Release of Wozniak**

22 Bardwil, on its own behalf and on behalf of its past and current agents, representatives,
23 attorneys, successors and/or assignees, hereby waive any and all claims against Wozniak and his
24 attorneys and other representatives, for any and all actions taken or statements made (or those that
25 could have been taken or made) by Wozniak and his attorneys and other representatives in the course
26 of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
27 the Products.
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4.4 Mutual Waiver of California Civil Code Section 1542

The Parties each acknowledge that they are familiar with Section 1542 of the Civil Code, which provides as follows:

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

Wozniak, in his individual capacity only and *not* in his representative capacity, and Bardwil, each on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 through 4.3, above.

5. COURT APPROVAL

This Consent Judgment shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties. Wozniak and Bardwil agree to support the entry of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval of this Consent Judgment, which motion Wozniak shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to any objection that any third-party may file or lodge, and appearing at the hearing before the Court if so requested.

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Bardwil
9 may provide Wozniak with written notice of any asserted change in the law, and shall have no
10 further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent
11 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
12 Bardwil from its obligation to comply with any pertinent state or federal law or regulation.

13 **8. NOTICE**

14 Unless specified herein, all correspondence and notice required by this Consent Judgment
15 shall be in writing and sent by: (a) personal delivery; (b) first-class registered or certified mail, return
16 receipt requested; or (c) a recognized overnight courier to any Party by the other at the following
17 addresses:

18 To Bardwil:	To Wozniak:
19 Alan Kennedy, President	Attn: Proposition 65 Coordinator
20 Bardwil Industries, Inc.	The Chanler Group
21 1071 Ave Of The Americas Fl 4	2560 Ninth Street
New York, NY 10018	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

22 With a Copy To:
23 John Poulos, Esq.
24 Lewis Brisbois
2020 West El Camino Ave, Ste 700
Sacramento, CA 95833

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

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1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 Wozniak and his counsel agree to comply with the reporting form requirements referenced in
7 California Health and Safety Code § 25249.7(f).

8 **11. ENTIRE AGREEMENT**

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

17 **12. MODIFICATION**

18 This Consent Judgment may be modified only by: (a) a written agreement of the Parties and
19 the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion of
20 any party and the entry of a modified Consent Judgment by the Court thereon.

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13. AUTHORIZATION

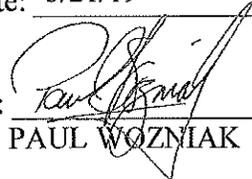
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 3/21/19

Date: 3/22/19

By: 
PAUL WOZNIAK

By: Ronald Tasselto
Ronald Tasselto, Chief Financial Officer
BARDWIL INDUSTRIES, INC.