

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak ("Wozniak") and Bessey Tools Inc. ("Bessey"), with Wozniak and Bessey 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. Wozniak alleges that Bessey 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 Bessey manufactures, sells, and/or distributes for sale in California, vinyl/PVC clamp grips containing di(2-ethylhexyl)phthalate ("DEHP") above applicable safe harbor levels. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Wozniak alleges that Bessey failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC clamp grips.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC clamp grips containing DEHP including, but not limited to, the *Bessey 2 In. Metal Spring Clamp, XM5, UPC No. 0 91162 01002 0*, manufactured, caused to be manufactured by, sold, imported and/or distributed for sale in California by Bessey ("Products").

1.4 Notice of Violation

On or about December 22, 2014, Wozniak served Bessey, retailers Lowe's Companies, Inc. and Orchard Supply Company, LLC, and certain requisite public



enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Bessey violated Proposition 65 when it failed to warn its customers and consumers in California that its vinyl/PVC clamp grips expose users to DEHP. 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

Bessey denies all factual and legal allegations contained in the Notice and maintains that all of the products that it has sold, imported, offered for sale, and/or distributed in California, including the Products, have been, and are, in compliance with all federal, state, and local laws. Nothing in this Settlement Agreement shall be construed as an admission by Bessey 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 Bessey of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bessey. However, this Section shall not diminish or otherwise affect Bessey'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 the date on which it is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

Commencing on the Effective Date, Bessey shall only manufacture, or cause to be manufactured, for sale in California Products that: (1) bear the clear and reasonable warnings set forth in subsection 2.1; or (2) are exempt pursuant to Section 2.2 as Reformulated Products as defined in Section 2.3.

2.1 Product Warnings

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. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product(s) the warning applies, so as to minimize the risk of consumer confusion. Bessey shall affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in California that states:

WARNING: This product will expose you to DEHP, a chemical known to the State of California to cause birth defects (or other reproductive harm). For more information go to www.P65Warnings.ca.gov.¹



or

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

or


WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm).

2.2 Exceptions to Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Commitment

Reformulated Products are defined as Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of

¹ The diamond shaped border in the standard (Globally Harmonized System) pictogram “” for toxic hazards is to appear in the color red. The word “WARNING” shall be written in all capital letters, in bold print no smaller than 10 point type; the remainder of the warning language shall be written in 8 point type font or larger. Bessey may enclose the text of the warning message in a box.

determining DEHP content in a solid substance.

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, Bessey agrees to pay \$12,000.00 in civil penalties. Each penalty payment will be allocated by Wozniak 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 retained by Wozniak, and delivered to the address in Section 3.3 herein.

3.1.1 Initial Civil Penalty. Within one week of the Effective Date, Bessey shall pay an initial civil penalty in the amount of \$4,000.00. Bessey will provide its payment in one check made payable to "Paul Wozniak, Client Trust Account."

3.1.2 Final Civil Penalty. On or before ~~November 1, 2015~~, Bessey shall pay a final civil penalty of \$8,000.00 in one check made payable to "Paul Wozniak, Client Trust Account." The final civil penalty shall be waived in its entirety, however, if, no later than September 21, 2015, an officer of Bessey provides Wozniak's counsel with written certification that, as of the date of the certification, all Products manufactured by Bessey for sale or purchased by Bessey for sale in or into California are Reformulated Products, and that they will continue to provide only Reformulated Products in the future. Bessey shall not be required to make any certification regarding any products manufactured prior to the date of the written certification. The option to provide a written certification of expedited reformulation, in lieu of maintaining the warning option and making the final civil penalty payment required by this Section is a material term, and time is of the essence. Bessey shall deliver its certificate, if any, to Wozniak's counsel at the address provided in Section 3.3, below. In the event that Bessey does not timely certify its compliance or make the final civil penalty payment required by this

Section, Wozniak may seek relief under any available legal remedy. If successful, the Parties further agree that Wozniak shall be entitled to his reasonable attorneys' fees and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.

3.2 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, Bessey agrees to pay \$30,000.00 to Wozniak and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Bessey's management, and negotiating a settlement. Bessey's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak's Release of Bessey and Downstream Customers

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and not on behalf of the public, and Bessey, of any violation of Proposition 65 that was or could have been asserted by Wozniak, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasors"), and Releasors hereby release any such claims, against Bessey, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, representatives, attorneys, and each entity to whom Bessey directly or



indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, franchisees, cooperative members, licensors, licensees and retailers, including but not limited to, Lowe's Companies, Inc. and Orchard Supply Company, LLC, and their present and former parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, representatives, attorneys, agents, ("Releasees"), from any and all claims for violations of Proposition 65 up through the Effective Date based on alleged exposure to DEHP contained in Products manufactured, distributed, imported, sold and/or offered for sale by Bessey in California, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP contained in Products manufactured, distributed, sold or offered for sale by Bessey in California, as set forth in the Notice.

In further consideration of the promises and agreements herein contained, Wozniak, on his own behalf and not on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have as an individual, 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 arising under Proposition 65 with respect to the alleged DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by Bessey before the Effective Date.

4.2 Bessey's Release of Wozniak

Bessey 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, whether in the course of investigating claims,

otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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.

6. 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 otherwise rendered inapplicable by reason of law generally, as to Bessey specifically as a result of a statutory exemption, or as to the Products, then Bessey may provide written notice to Wozniak of any asserted change in the law, or its applicability to Bessey or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Bessey or the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice 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:

Bessey :

Carsten Spang, President
Bessey Tools Inc.
1 Wright Avenue
Le Roy, NY 14482

With a copy to:

Richard M. Scherer, Jr., Esq.
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, NY 14203

Wozniak:

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



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.

8. 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.

9. 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).

10. MODIFICATION

This Settlement Agreement may not be altered, amended or terminated except by instrument in writing signed by each of the Parties.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and, understandings, representations and warranties, both written and oral, among the Parties with respect to the subject matter hereof and thereof.

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: August 24, 2015

By: 
PAUL WOZNIAK

AGREED TO:

Date: _____

By: _____
Carsten Spang, President
BESSEY TOOLS INC.

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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: _____

By: _____

PAUL WOZNIAK

AGREED TO:

Date: SEPTEMBER 02, 2015

By:  

Carsten Spang, President Rainer Steinle, COO
BESSEY TOOLS INC.