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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17
18

19 PAUL WOZNIAK,

20 Plaintiff,

21 v.

22 CLT COMPUTERS, INC., *et al.*,

23 Defendants.
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25
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Case No. CGC-17-559353

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”),
4 and CLT Computers, Inc. (“CLT”), with Wozniak and CLT each individually referred to as a “Party”
5 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
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Wozniak alleges that CLT imports, sells, or distributes for sale in California, headphones with
16 vinyl/PVC cushions that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the
17 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are headphones with vinyl/PVC cushions
21 including, but not limited to, the *Bravo View Automotive Wireless Headphones, Model IH-06A, UPC*
22 *#6 76884 91303 5* that are allegedly manufactured, imported, distributed, sold and/or offered for sale
23 in California by CLT (“Products”).

24 **1.6 Notice of Violation**

25 On March 30, 2017, Wozniak served CLT, and the requisite public enforcement agencies with
26 a 60-Day Notice of Violation (“Notice”) alleging that CLT violated Proposition 65 by failing to warn
27 its customers and consumers in California of the health hazards associated with exposures to DEHP
28

1 from the Products. No public enforcer has commenced and is diligently prosecuting an action to
2 enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On June 6, 2017, Wozniak filed the instant action (“Complaint”), naming CLT as a defendant
5 for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
24 approval of this Consent Judgment.

25 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

27 Commencing on the Effective Date and continuing thereafter, CLT agrees to only
28 manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)

Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and reasonable health hazard warning pursuant to Section 2.3 below.

2.2 Reformulation Standard

For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, CLT shall provide clear and reasonable health hazard warnings for all non-Reformulated Products it sells or distributes in California. CLT agrees that the warning will be prominently placed with such conspicuousness when 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. For purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed to or printed on the packaging, label, tag, or directly to a Product sold in California and containing the following statement:



WARNING:

This product can expose you to chemicals including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims referred to in the Notice, Complaint, and this Consent Judgment, CLT shall pay \$3,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office

1 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent
2 (25%) of the penalty retained by Wozniak. Wozniak’s counsel shall be responsible for delivering
3 OEHHA’s portion of any penalty payment(s) made under this Consent Judgment. Within fifteen (15)
4 days of the Effective Date, CLT shall provide its payment in a check made payable to “Paul
5 Wozniak, Client Trust Account” in the amount of \$750 and a check made payable to “OEHHA” in
6 the amount of \$2,250 to be delivered to the address provided in Section 3.3, below.

7 **3.2 Reimbursement of Attorney’s Fees and Costs**

8 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
10 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
11 other settlement terms had been finalized, the Parties negotiated the compensation due to Wozniak
12 and his counsel under general contract principles and the private attorney general doctrine codified at
13 California Code of Civil Procedure section 1021.5. For all work performed through the mutual
14 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs on
15 appeal, if any, CLT shall reimburse Wozniak and his counsel \$26,000 to be delivered in two (2)
16 installments according to the following schedule: (1) \$13,000 due within fifteen (15) days of the
17 Effective Date; and (2) \$13,000 within sixty (60) days of the Effective Date. Each payment shall be
18 in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and
19 costs incurred by Wozniak investigating, bringing this matter to CLT’s attention, litigating, and
20 negotiating a settlement of the matter in the public interest.

21 **3.3 Payment Timing**

22 In the event that any payment required by this Consent Judgment is untimely, the Parties
23 agree and acknowledge that (a) CLT shall be liable to Wozniak for 10% simple interest per annum
24 on any unpaid amount(s); (b) Wozniak may seek to enforce CLT’s payment obligations under
25 general contract principles and Code of Civil Procedure section 664.6; and (c) Wozniak shall be
26 entitled to reasonable fees incurred recovering such settlement payments pursuant to general contract
27 principles and Code of Civil Procedure section 1021.5.
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1 **3.4 Payment Address**

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

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Wozniak's Public Release of Proposition 65 Claims**

10 Wozniak, acting on his own behalf and in the public interest, releases CLT and its parents,
11 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
12 attorneys ("Releasees"), and each entity to whom CLT directly or indirectly distributes or sells the
13 Products including, without limitation, its downstream customers, distributors, wholesalers, and
14 retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the
15 failure to warn about exposures to DEHP from Products sold or distributed for sale by CLT prior to
16 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
17 constitutes compliance with Proposition 65 with respect to exposures to DEHP from Products sold
18 or distributed for sale by CLT after the Effective Date.

19 **4.2 Wozniak's Individual Release of Claims**

20 Wozniak, in his individual capacity only and *not* in any representative capacity, also provides
21 a release to CLT, Releasees, and Downstream Releasees, which shall be effective as a full and final
22 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
23 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
24 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
25 exposures to DEHP in Products sold or distributed for sale by CLT before the Effective Date.

26 **4.3 CLT's Release of Wozniak**

27 CLT, on its own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and 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,

1 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
2 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and shall
5 be null and void if it is not approved and entered by the Court within one year after it has been fully
6 executed by the Parties, or by such additional time as the Parties may agree in writing.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of California
13 and apply within the state of California. CLT may, in its sole discretion, provide warnings for the
14 Products in accordance with Title 27, California Code of Regulations, Sections 25603, which was
15 adopted on August 30, 2016. In the event that Proposition 65 is repealed, or is otherwise rendered
16 inapplicable by reason of law generally or as to the Products, then CLT may provide written notice to
17 Wozniak of any asserted change in the law, and shall have no further injunctive obligations pursuant
18 to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

19 **8. NOTICE**

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

2 John Han, Director of Business Development
3 CLT Computers, Inc.
4 20153 Paseo Del Prado
Walnut, CA 91789

5 with a copy to:

6 Kevin Hughes, Esq.
7 Foundation Law Group LLP
1999 Avenue of the Stars, Ste 1100
Los Angeles, CA 90067-4618

8 For Wozniak:

9 Proposition 65 Coordinator
10 The Chanler Group
2560 Ninth Street
11 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
18 same document.

19 **10. POST EXECUTION ACTIVITIES**

20 Wozniak agrees to comply with the reporting form requirements referenced in Health and
21 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
22 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
23 which motion Wozniak shall draft and file. In furtherance of obtaining such approval, the Parties
24 agree to mutually employ their best efforts, and those of their counsel, to support the entry of this
25 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
26 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
27 approval, responding to any objection that any third-party may file or lodge, and appearing at the
28 hearing before the Court if so requested.

1 **11. MODIFICATION**

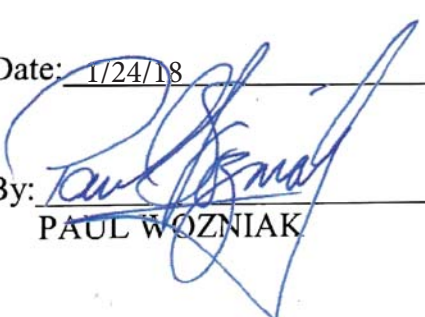
2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
4 of any Party, and the entry of a modified consent judgment thereon by the Court.

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.
8

9 **AGREED TO:**

10
11 Date: 1/24/18

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13 By: 
14 PAUL WOZNIAK

AGREED TO:

15
16 Date: 1/18/2018

17
18 By: 
19 Chang Wei Lee, President
20 CLT COMPUTERS, INC.
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