

1 Josh Voorhees, State Bar No. 241436
Chris Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 PAUL WOZNIAK

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION
12
13
14

15 PAUL WOZNIAK,
16 Plaintiff,
17 v.
18 DUCK HOUSE, INC., *et al.*,
19 Defendants.

Case No. 114CV270085
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Paul Wozniak (“Wozniak”) and Duck
4 House, Inc. (“Duck House”), with Wozniak and Duck House 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
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC coasters containing DEHP
21 that are manufactured, imported, sold, or distributed for sale in California by Duck House including,
22 but not limited to, the coaster accompanying the product *Duck House Sports Crystal Freezer Mug*
23 *with Free Coaster, Denver Broncos, #04192431, (UPC No. 0 94131 05108 6)* (hereinafter,
24 “Products”).

25 **1.6 Notice of Violation**

26 On or about March 26, 2014, Wozniak served Duck House, Big 5 Corp., dba Big 5 Sporting
27 Goods, erroneously identified in the complaint as “Big 5 Sporting Goods Corporation” (“Big 5”) and
28 certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”)

1 alleging that Duck House violated Proposition 65 by failing to warn its customers and consumers in
2 California that the Products expose users to DEHP.

3 **1.7 Complaint**

4 On August 29, 2014, Wozniak filed the instant action (“Complaint”) naming Duck House and
5 Big 5 as defendants for the alleged violations of Health and Safety Code section 25249.6 that are the
6 subject of the Notice. This Consent Judgment is intended to achieve a full and final resolution of all
7 claims that were made or could have been made in the Complaint or that arise from the Notice.

8 **1.8 No Admission**

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

17 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

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

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date, and continuing thereafter, Duck House shall only
28 purchase for sale, or manufacture for sale in California, “Reformulated Products” or Products sold

1 with a clear and reasonable warning pursuant to Section 2.2. For purposes of this Consent Judgment,
2 Reformulated Products are Products that contain a maximum of 1,000 parts per million DEHP by
3 weight in any accessible component (i.e., any part or feature of a Product that may be touched during
4 use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent
5 methodologies utilized by state and federal agencies to determine DEHP content in a solid substance
6 and suitable for the material being tested

7 **2.2 Clear and Reasonable Warnings**

8 Commencing on the Effective Date, for all Products that are not Reformulated Products, Duck
9 House agrees to provide a clear and reasonable consumer warning in accordance with this Section.
10 Duck House agrees that any warning utilized will be prominently placed with such conspicuousness
11 as compared with other words, statements, designs, or devices as to render it likely to be read and
12 understood by an ordinary individual under customary conditions before purchase or use, consistent
13 with 27 Cal. Code Regs. § 25603.1(c).

14 For purposes of this Consent Judgment, a clear and reasonable warning for DEHP in the
15 Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in
16 California and containing one of the following statements:

17 **WARNING:** This product contains DEHP, a chemical
18 known to the State of California to cause
19 birth defects and other reproductive harm.

20 or

21 **WARNING:** This product contains a chemical known to
22 the State of California to cause cancer, and
23 birth defects or other reproductive harm.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Civil Penalty Payments**

26 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
27 this Consent Judgment, Duck House shall pay a total of \$15,000 in civil penalties (comprised of the
28 “Initial Civil Penalty” and “Final Civil Penalty” below). Each civil penalty payment shall be
allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five

1 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
2 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Wozniak. Wozniak’s counsel
3 shall be responsible for remitting Duck House’s penalty payment(s) under this Consent Judgment to
4 OEHHA.

5 **3.1.1 Initial Civil Penalty**

6 Within fifteen (15) days after the Effective Date, Duck House shall make an initial
7 civil penalty payment of \$5,000. Duck House shall provide its payment in a single check made
8 payable to “Paul Wozniak, Client Trust Account”.

9 **3.1.2 Final Civil Penalty**

10 Within thirty (30) days after the Effective Date, Duck House shall make a final civil
11 penalty payment of \$10,000. Pursuant to title 11 California Code of Regulations, section 3203(c),
12 Wozniak agrees that the final civil penalty payment shall be waived in its entirety if, no later than
13 fifteen (15) business days after the Effective Date, an officer of Duck House provides Wozniak with
14 written certification that all of the Products it is selling or distributing (and will sell or distribute) for
15 sale in California as of the date of such certification are Reformulated Products as defined by Section
16 2.1. The option to make this certification in lieu of making the final civil penalty payment required
17 by this Section is a material term, and with regard to such term, time is of the essence.

18 **3.2 Reimbursement of Attorneys’ Fees and Costs**

19 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, Duck House expressed a desire to resolve Wozniak’s fees
23 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
24 Wozniak and his counsel under general contract principles and the private attorney general doctrine
25 codified at California Code of Civil Procedure section 1021.5. Duck House shall pay \$30,000 (the
26 “Attorneys’ Fees Amount”), in eight (8) monthly installments of three thousand seven hundred fifty
27 dollars (\$3,750) each, beginning on the first day of the month following the Effective Date and
28 continuing on the first day of each month thereafter, until all of the fee and cost reimbursements

1 required by this Consent Judgment have been paid. The Attorney's Fees Amount is in full and
2 complete satisfaction of all fees and costs incurred (and yet to be incurred) by Wozniak by reason of
3 any matter relating to the Notice, the Complaint, the Products, this Consent Judgment, any and all
4 claims herein released and any matter therein or relating thereto, but exclusive of fees and costs for
5 Appeal, if any.

6 **3.2.1 Acceleration of Payments**

7 In the event that Duck House fails to make any payment under this Consent Judgment
8 within 10 days of the date that the obligation is due and owing, all sums payable under this Consent
9 Judgment that have not been paid, including any civil penalty and/or attorneys' fee and cost
10 reimbursement amounts, shall become immediately due.

11 **3.3 Payment Address**

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

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Wozniak's Public Release of Proposition 65 Claims**

19 Wozniak, acting on his own behalf and in the public interest, releases Duck House and its
20 parents, subsidiaries, predecessors, successors, assigns, affiliated entities under common ownership,
21 directors, officers, employees, agents, members, corporations, partnerships, partners, associates,
22 representatives, principles, joint ventures, attorneys, trustees, shareholders past and present and
23 each entity to whom Duck House directly or indirectly distributes or sells the Products, including
24 but not limited to downstream distributors, wholesalers, customers, retailers (including but not
25 limited to Big 5 as well as its parents, subsidiaries, predecessors, successors, assigns, insurance
26 companies, affiliated entities under common ownership, directors, officers, employees, agents,
27 members, corporations, partnerships, partners, associates, representatives, principles, joint ventures,
28 attorneys, trustees and shareholders past and present), franchisers, cooperative members, licensors

1 and licensees (collectively "Releasees") for any and all claims, demands or causes of action arising
2 from alleged violations of Proposition 65 through the Effective Date based on unwarned exposures
3 to DEHP in the Products sold by Duck House, as set forth in the Notice. Compliance with the terms
4 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures
5 and/or failures to warn about exposures to DEHP from the Products sold by Duck House before the
6 Effective Date, as set forth in the Notice.

7 **4.2 Wozniak's Individual Release of Claims**

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

14 **4.3 Duck House' Release of Wozniak**

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

21 **4.4 No Other Known Claims or Violations**

22 Wozniak and his counsel affirm that they are not presently aware of any actual, threatened or
23 alleged violations of Proposition 65 by Duck House other than those alleged violations that are fully
24 resolved by this Consent Judgment.

25 **5. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and shall
27 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
28 has been fully executed by the Parties.

1 **6. SEVERABILITY**

2 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
3 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
4 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 is
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Duck House
9 may provide written notice to Wozniak of any asserted change in the law, and shall have no further
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
11 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Duck House from any
12 obligation to comply with any pertinent state or federal toxics control laws.

13 **8. NOTICE**

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

17
18 For Duck House:

19 Jim Bastian, Esq.
20 Shulman, Hodges & Bastian LLP
21 100 Spectrum Center Drive, Suite 600
22 Irvine, CA 92618

23 For Wozniak:

24 The Chanler Group
25 Attn: Proposition 65 Coordinator
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 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.

1 **9. COUNTERPARTS; FACSIMILE 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 section 25249.7(f).

8 **11. POST EXECUTION ACTIVITIES**

9 **11.1 Court Approval**

10 The Parties agree to support the entry of this agreement as a Consent Judgment and to obtain
11 approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that,
12 pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial
13 approval of the Consent Judgment, which motion Wozniak shall draft and file and Duck House shall
14 support. In furtherance of obtaining such approval, Wozniak and Duck House agree to mutually
15 employ their best efforts, and those of their counsel, to support the entry of this agreement as
16 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
17 Section, “best efforts” shall include, at a minimum, cooperating on the drafting and filing of the
18 necessary moving papers, supporting the motion, and appearing at the hearing before the Court.

19 **11.2 Dismissal of Big 5**

20 Within ten (10) business days of the Court’s entry of an order approving this Consent
21 Judgment, Wozniak shall file a Request for Dismissal, without prejudice, as to Big 5.

22 **12. MODIFICATION/ENFORCEMENT**

23 **12.1 Modification**

24 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
25 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
26 Party, and the entry of a modified consent judgment by the Court.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12.2 Enforcement

The Parties may enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any motion or application to enforce the requirements of this Consent Judgment, Wozniak shall provide Duck House with notice of any alleged violation or breach, along with all relevant information supporting the allegation (e.g. test results, proof of purchase, product information). The Parties shall then meet and confer regarding the basis for Wozniak's allegations in an attempt to resolve the issue informally, including providing Duck House a reasonable opportunity of not less than (30) days to cure any alleged violation. This Consent Judgment may only be enforced by the Parties.

13. AUTHORIZATION

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

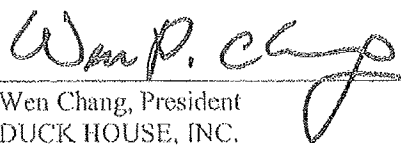
AGREED TO:

AGREED TO:

Date: April 14, 2015

Date: 4/13/15

By: 
PAUL WOZNIAK

By: 
Wen Chang, President
DUCK HOUSE, INC.