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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
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12 PAUL WOZNIAK,

13 Plaintiff,

14 v.

15 HAROLD IMPORT CO., INC., *et al.*

16 Defendants.
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Case No. RG15766664

[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 plaintiff Paul Wozniak (“Wozniak”),
4 and Harold Import Co., Inc. (“Harold”), with Wozniak and Harold 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 Harold**

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

14 **1.4 General Allegations**

15 Wozniak alleges that Harold manufactures, imports, sells, or distributes for sale in California,
16 nylon cooking utensils that contain 4,4'-methylenedianiline (“4,4'-MDA”) without first providing the
17 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 containing 4,4'-
21 MDA that are manufactured, imported, sold, or distributed for sale in California by Harold including,
22 but not limited to, *Ladle, #45725, UPC #7 81723 45725 7*, hereinafter the “Products”.

23 **1.6 Notice of Violation**

24 On or about January 23, 2015 Wozniak served Harold, and certain requisite public
25 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Harold violated
26 Proposition 65 by failing to warn it’s customers and consumers in California that the Products expose
27 users to 4,4'-MDA. To the best of the Parties’ knowledge, no public enforcer has commenced and is
28 diligently prosecuting the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On April 16, 2015 Wozniak filed the instant action (“Complaint”) naming Harold as a
3 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
4 the Notice.

5 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

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

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
21 the Motion for Approval of the Consent Judgment is granted by the Court.

22 **2. INJUNCTIVE RELIEF: REFORMULATION**

23 **2.1 Reformulated Products**

24 Commencing on the Effective Date, and continuing thereafter, Harold shall only manufacture,
25 sell, or distribute for sale in or into California Products that are “Reformulated Products.” For
26 purposes of this Consent Judgment, Reformulated Products shall:
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- i. contain less than or equal to 200 parts per million (“ppm”) 4,4’-MDA by weight using validated preparation and analytical methods used to detect the presence of 4,4’-MDA in a solid substance, and;
- ii. produce a leach result of 10 ug/L or less 4,4’-MDA by digesting the food contact end of the product into 100 ml of 3% acetic acid de-ionized water for 2 hours at 100°C, replenishing the acetic acid solution as needed to maintain 100 ml, and analyzing the leachate using a validated method to detect the presence of 4,4’-MDA in a liquid.

The testing shall be conducted in an accredited laboratory with qualified personnel. All analytical reports must contain quality control data that verify the laboratory’s performance for the results in each analytical report.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Harold shall pay \$2,500 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 funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Mr. Wozniak, and twenty-five percent (25%) of the funds remitted to Wozniak. Harold shall make the check for \$2,500 payable to “Paul Wozniak, Client Trust Account” to be delivered in accordance with Sections 3.3 and 3.4.

3.2 Reimbursement of Attorney’s Fees and Costs

The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. The Parties then attempted to (and did) reach an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. Harold shall pay \$15,000 or the fees and costs incurred by Wozniak investigating, bringing this matter to Harold’s attention, litigating and negotiating a settlement in the public interest.

1 Harold shall make the check for \$15,000 payable to “The Chanler Group” to be delivered in
2 accordance with Sections 3.3 and 3.4.

3 **3.3 Payments Held in Trust**

4 All payments due under this Consent Judgment shall be held in trust until such time as the
5 Court approves the Parties’ settlement. All payments due under this agreement shall be delivered
6 within ten (10) days of the date that this Consent Judgment is fully executed by the Parties, and held
7 in trust by Harold’s counsel until the Court grants the motion for approval of this Consent Judgment
8 contemplated by Section 5. Within two business days of the Court’s approval of this Consent
9 Judgment, Harold’s counsel shall tender the initial civil penalty payments and attorneys’ fee and
10 costs reimbursements required by Sections 3.1 and 3.2.

11 **3.4 Payment Address**

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

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 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 Harold and it’s
20 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
21 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
22 Products including, but not limited to, it’s downstream distributors, wholesalers, customers,
23 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
24 any violations arising under Proposition 65 for unwarned exposures to 4,4’-MDA from Products
25 sold by Harold prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
26 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
27 failures to warn about 4,4’-MDA from the Products sold by Harold before the Effective Date, as set
28 forth in the Notice.

1 **4.2 Wozniak’s Individual Release of Claims**

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

9 **4.3 Harold’s Release of Wozniak**

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

16 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
27 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Harold may
28 provide written notice to Wozniak of any asserted change in the law, and shall have no further

1 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
2 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Harold
3 from any obligation to comply with any pertinent state or federal toxics control laws.

4 **8. NOTICE**

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

8 **Harold**

9 Robert Laub, President
10 Harold Import Co., Inc
11 747 Vassar Avenue
Lakewood, NJ 08701

Jura C. Zibas
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker
150 E 42nd Street
New York, NY 10017

12 **Wozniak**

13 Proposition 65 Coordinator
14 The Chanler Group
15 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Wozniak agrees to comply with the reporting form requirements referenced in Health and
25 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
26 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
27 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
28 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial

1 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
2 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 supporting the motion, and appearing at the hearing before the Court.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**

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

11
12 **AGREED TO:**

AGREED TO:

13
14 Date: April 11, 2016

Date: 4-11-16

15
16 By: 

Paul Wozniak

By: 

Robert Laub, President
Harold Import Co., Inc