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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION

13
14 PAUL WOZNIAK,
15 Plaintiff,
16 v.
17 HERMAN PEARL COMPANY, *et al.*
18 Defendants.

19 Case No.: 114CV270753
20 **[PROPOSED] CONSENT JUDGMENT**
21 (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
4 Herman Pearl Company (“Herman Pearl”), with Wozniak and Herman Pearl each individually
5 referred to as a “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 Herman Pearl 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 Herman Pearl manufactures, imports, sells, or distributes for sale in
16 California, vinyl/PVC aprons 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 aprons containing DEHP that
21 are manufactured, imported, sold, or distributed for sale in California by Herman Pearl including, but
22 not limited to, the *Design Imports The Clean Collection Printed Apron, #26308, (UPC No. 7 38215*
23 *26308 7)* (collectively, “Products”).

24 **1.6 Notice of Violation**

25 On or about March 26, 2014, Wozniak served Herman Pearl and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Herman Pearl
27 violated Proposition 65 by failing to warn its customers and consumers in California that the Products
28 expose users to DEHP.

1 **1.7 Complaint**

2 On September 18, 2014, Wozniak filed the instant action (“Complaint”) naming Herman
3 Pearl as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the
4 subject of the Notice.

5 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Herman Pearl as to the allegations in the Complaint, that venue is proper in Santa
17 Clara County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
18 Judgment.

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 AND WARNINGS**

23 **2.1 Reformulated Products**

24 Commencing on the Effective Date, and continuing thereafter, Herman Pearl shall only
25 purchase for sale, or manufacture for sale in California, “Reformulated Products.” For purposes of
26 this Consent Judgment, Reformulated Products are products that contain a maximum of 1,000 parts
27 per million DEHP by weight in any accessible component (i.e., any part or feature of a Product that
28 may be touched during use) when analyzed pursuant to EPA testing methodologies 3580A and

1 8270C, or equivalent methodologies utilized by state and federal agencies to determine DEHP
2 content in a solid substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
6 this Consent Judgment, Herman Pearl shall pay \$10,000 in civil penalties. Each civil penalty
7 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with
8 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
9 Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Wozniak.

10 **3.1.1 Initial Civil Penalty**

11 Within five days of the Effective Date, Herman Pearl shall make an initial civil
12 penalty payment of \$2,000. Herman Pearl shall provide its payment in two checks for the following
13 amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Paul Wozniak, Client
14 Trust Account” in the amount of \$500.

15 **3.1.2 Final Civil Penalty**

16 On December 30, 2014, Herman Pearl shall make a final civil penalty payment of
17 \$8,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Wozniak agrees that the
18 final civil penalty payment shall be waived in its entirety if, no later than December 15, 2014, an
19 officer of Herman Pearl provides Wozniak with written certification that all of the Products it is
20 selling or distributing for sale in California as of the date of such certification are Reformulated
21 Products as defined by Section 2.1, and that Herman Pearl will continue to offer only Reformulated
22 Products in California in the future. The option to certify reformulation in lieu of making the final
23 civil penalty payment required by this Section is a material term, and with regard to such term, time
24 is of the essence.

25 **3.2 Reimbursement of Fees and Costs**

26 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
28 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the

1 other settlement terms had been finalized, Herman Pearl expressed a desire to resolve Wozniak's fees
2 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
3 Wozniak and his counsel under general contract principles and the private attorney general doctrine
4 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
5 mutual execution of this Consent Judgment. On or before the Effective Date, Herman Pearl shall pay
6 \$28,000 for the fees and costs incurred by Wozniak investigating, bringing this matter to Herman
7 Pearls' attention, litigating and negotiating a settlement in the public interest.

8 **3.3 Payment Procedures**

9 All payments due under this Consent Judgment shall be paid and delivered according to the
10 following subsections.

11 **3.3.1 Payment Addresses**

12 (a) All payments and tax documentation for Wozniak and his counsel shall be
13 delivered to:

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

19 (b) All payments and tax documentation for OEHHA shall be delivered directly
20 to OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
21 appropriate:

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

1 **3.3.2 Proof of Payment to OEHHA**

2 Herman Pearl shall provide Wozniak’s counsel with a copy of the check(s) sent to
3 OEHHA enclosed with the penalty payment(s) to Wozniak.

4 **3.3.3 Payments Held in Trust**

5 All payments due under this Consent Judgment shall be tendered to Herman Pearl’s counsel
6 on or before January 5, 2015, and held in trust until such time as the Court grants the motion for
7 approval contemplated by Section 5. Within five days of the Court’s approval of this Consent
8 Judgment, Herman Pearl’s counsel shall deliver the Herman Pearl’s Settlement Payments to
9 Wozniak’s counsel at the address provided in Section 3.3.2

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

12 Wozniak, acting on his own behalf and in the public interest, releases Herman Pearl and its
13 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
14 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
15 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
16 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
17 violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by
18 Herman Pearl prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
19 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
20 failures to warn about DEHP from the Products sold by Herman Pearl before the Effective Date, as
21 set forth in the Notice.

22 **4.2 Wozniak’s Individual Release of Claims**

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

3 **4.3 Herman Pearls' Release of Wozniak**

4 Herman Pearl, on its own behalf, and on behalf of its past and current agents,
5 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
6 Wozniak and his attorneys and other representatives(or those that could have been taken or made),
7 for any and all actions taken or statements made by Wozniak and his attorneys and other
8 representatives, whether in the course of investigating claims, otherwise seeking to enforce
9 Proposition 65 against it in this matter, or with respect to the Products.

10 **5. COURT APPROVAL**

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

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California
20 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
21 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Herman Pearl
22 may provide written notice to Wozniak of any asserted change in the law, and shall have no further
23 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
24 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Herman Pearl from any
25 obligation to comply with any pertinent state or federal toxics control laws.

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1 **8. NOTICE**

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

5 For Herman Pearl:

6 Thomas Haass, President
7 Herman Pearl Company
8 6700 Riverside Drive
9 Tukwila, WA 98188

10 with a copy to:

11 Dan Gandara, Esq.
12 Vandeberg, Johnson & Gandara, LLP
13 999 Third Avenue, Suite 3000
14 Seattle, WA 98104-1192

15 For Wozniak:

16 The Chanler Group
17 Attn: Proposition 65 Coordinator
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **10. POST EXECUTION ACTIVITIES**

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

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

4 **12. 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 **13. 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.

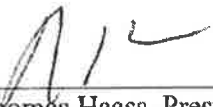
11 **AGREED TO:**

AGREED TO:

12
13 Date: January 6, 2015

Date: 12-5-14

14 By: 
15 PAUL WOZNIAK

14 By: 
15 Thomas Haass, President
16 HERMAN PEARL COMPANY

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