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6 PAUL WOZNIAK

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 PAUL WOZNIAK, )

13 Plaintiff, )

14 v. )

15 JOHNSON OUTDOORS GEAR, INC.; *et al.*, )

16 Defendants. )

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Case No. RG14740779

**[PROPOSED] CONSENT JUDGMENT**

Action Filed: September 16, 2014

1       **1. INTRODUCTION**

2               **1.1 Paul Wozniak and Johnson Outdoors Gear, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”  
4               or “Plaintiff”) and defendant Johnson Outdoors Gear, Inc. (“Johnson” or “Defendant”) with  
5               Plaintiff and Defendant collectively referred to as the “parties.”

6               **1.2 Paul Wozniak**

7               Wozniak is an individual residing in the State of California who seeks to promote awareness  
8               of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous  
9               substances contained in consumer and commercial products.

10              **1.3 Johnson Outdoors Gear, Inc.**

11              Wozniak alleges that Defendant employs ten or more persons and is a person in the course  
12              of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
13              California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14              **1.4 General Allegations**

15              Wozniak alleges that Defendant manufactured, imported, distributed and/or sold in the State  
16              of California tools with vinyl/PVC grips containing lead. Lead is listed pursuant to Proposition 65  
17              as a chemical known to the State of California to cause birth defects and other reproductive harm.

18              **1.5 Product Description**

19              The products that are covered by this Consent Judgment are defined as tools with vinyl/PVC  
20              grips containing lead including, but not limited to, *Eureka! Tent Mallet Accessory, UPC #0 83826*  
21              *60115 6*, which are manufactured, imported, distributed, sold and/or offered for sale by Defendant  
22              in the State of California, hereinafter the “Products.”

23              **1.6 Notices of Violation**

24              On February 7, 2014, Wozniak served Johnson Outdoors Inc. and various public  
25              enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the  
26              recipients with notice that it was in violation of California Health & Safety Code § 25249.6 for  
27              failing to warn consumers that their tools with vinyl/PVC grips exposed users in California to lead.  
28

1 On May 21, 2014, Wozniak served Johnson Outdoors Gear, Inc., Johnson Outdoors Gear  
2 LLC and various public enforcement agencies with a document entitled “60-Day Notice of  
3 Violation” that provided the recipients with notice that Johnson was in violation of California  
4 Health & Safety Code § 25249.6 for failing to warn consumers that its tools with vinyl/PVC grips  
5 exposed users in California to lead. Johnson asserts that Johnson Outdoors Inc. never  
6 manufactured, imported, distributed or sold any Products, and that Johnson Outdoors LLC is no  
7 longer in existence.

8 The February 7, 2014, Notice and the May 21, 2014, Notice shall be collectively referred to  
9 as the “Notices.”

### 10 **1.7 Complaints**

11 On September 16, 2014, Wozniak filed a complaint in the Superior Court in and for the  
12 County of Alameda against Johnson Outdoors Inc. and Does 1 through 150, *Wozniak v. Johnson*  
13 *Outdoors Inc., et al.*, Case No. RG14740779 (the “Action”), alleging violations of California  
14 Health & Safety Code § 25249.6, based on the alleged exposures to lead contained in certain tools  
15 with vinyl/PVC grips sold by Defendant in the State of California. On November 21, 2014,  
16 Wozniak filed a *first amended* complaint in the Superior Court in and for the County of Alameda  
17 against Johnson and Does 1 through 150, *Wozniak v. Johnson Outdoors, Inc., et al.*, Case No.  
18 RG14740779.

### 19 **1.8 No Admission**

20 Defendant denies the material, factual and legal allegations contained in Wozniak’s Notices  
21 and Complaint and maintain that all products that they have sold, manufactured, imported and/or  
22 distributed in California, including the Products, have been and are in compliance with all laws.  
23 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
24 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute  
25 or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or  
26 violation of law. However, this section shall not diminish or otherwise affect Defendant’s  
27 obligations, responsibilities and duties under this Consent Judgment.

1           **1.9 Consent to Jurisdiction**

2           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
3 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
4 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of  
5 this Consent Judgment.

6           **1.10 Effective Date**

7           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date upon  
8 which the Court approves this Consent Judgment, including any unopposed Tentative Ruling.

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

10          **2.1 Reformulation Standards**

11          “Reformulated Products” are defined as those Products containing a maximum of 100 parts  
12 per million (“ppm”) of lead by weight in any accessible component (i.e., any component that can be  
13 touched or handled during reasonably foreseeable use) when analyzed pursuant to Environmental  
14 Protection Agency testing methodologies 3050B and/or 6010B, *and* that yield a result of more than  
15 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol.

16          **2.2 Reformulation Commitment**

17          As of the Effective Date all Products manufactured for sale and/or purchased for sale in the  
18 State of California by Defendant shall be Products that qualify as Reformulated Products as defined  
19 in Section 2.1 above or shall carry the Proposition 65 warnings specified in Section 2.3 below.

20          **2.3 Product Warnings**

21          As of the Effective Date, Johnson shall provide clear and reasonable warnings for all  
22 Products as set forth in subsections 2.3(a) and (b) (as to subsection 2.3(b), only if Johnson sells  
23 Products directly to consumers via mail order or the internet) for all Products that do not qualify as  
24 Reformulated Products. Each warning shall be prominently placed with such conspicuousness as  
25 compared with other words, statements, designs, or devices as to render it likely to be read and  
26 understood by an ordinary individual under customary conditions before purchase or use. Each  
27 warning shall be provided in a manner such that the consumer or user understands to which *specific*  
28 Product the warning applies, so as to minimize the risk of consumer confusion.

1                   **(a) Product Warning Options.**

2                   **(i) Product Labeling.** Johnson shall affix a warning to the packaging,  
3 labeling, or directly on each Product provided for sale in retail outlets in California that states (with  
4 use of the bracketed text at Johnson’s option):

5                   WARNING: This product contains lead, a chemical  
6   known to the State of California to cause  
7   [cancer and,] birth defects or other reproductive  
8   harm.

9   Or

10                   WARNING: This product contains chemicals, including lead,  
11   known to the State of California to cause [cancer  
12   and,] birth defects or other reproductive harm..

13                   **(b) Mail Order Catalog and Internet Sales.** In the event that Johnson sells  
14 Products via mail order catalog and/or the internet, to end user customers located in California, after  
15 the Effective Date, that are not Reformulated Products, Johnson shall provide warnings for such  
16 Products sold via mail order catalog or the internet to California residents. Warnings given in the  
17 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies  
18 as further specified in Sections 2.3(b)(i) and (ii). Nothing herein shall require Defendant to impose  
19 any requirement on its retailer customers regarding mail order catalog or internet warnings.

20                   **(i) Mail Order Catalog Warning.** Any warning provided in a mail  
21 order catalog shall be in the same type size or larger than the Product description text within the  
22 catalog. The following warning (with use of the bracketed text at Johnson’s option] shall be  
23 provided on the same page and in the same location as the display and/or description of the Product:

24                   WARNING: This product contains lead, a chemical  
25   known to the State of California to cause  
26   [cancer and,] birth defects or other reproductive harm.

27   Or

28                   WARNING: This product contains chemicals, including lead,  
   known to the State of California to cause [cancer  
   and,] birth defects or other reproductive harm.

                  Where it is impracticable to provide the warning on the same page and in the same location  
as the display and/or description of the Product, Johnson may utilize a designated symbol to cross

1 reference the applicable warning and shall define the term “designated symbol” with the following  
2 language on the inside of the front cover of the catalog or on the same page as any order form for  
3 the Product(s) (with use of the bracketed text at Johnson’s option):

4                   WARNING: Certain products identified with this symbol ▼  
5                                   and offered for sale in this catalog contain lead,  
6                                   a chemical known to the State of California to  
7                                   cause [cancer and,] birth defects or other reproductive harm.

8                                   Or:

9                   WARNING: Certain products identified with this symbol ▼  
10                                   and offered for sale in this catalog contain chemicals,  
11                                   including lead, known to the State of California to cause  
12                                   [cancer and,] birth defects or other reproductive harm

13                   The designated symbol must appear on the same page and in close proximity to the display  
14                   and/or description of the Product. On each page where the designated symbol appears, Johnson  
15                   must provide a header or footer directing the consumer to the warning language and definition of  
16                   the designated symbol.

17                                   **(ii) Internet Website Warning.** A warning shall be given in conjunction  
18                   with the sale of the Products via the internet, which warning shall appear either: (a) on the same  
19                   web page on which a Product is displayed; (b) on the same web page as the order form for a  
20                   Product; (c) on the same page as the price for any Product; or (d) on one or more web pages  
21                   displayed to a purchaser during the checkout process. The following warning statement (with use  
22                   of the bracketed text at Johnson’s option) shall be used and shall appear in any of the above  
23                   instances adjacent to or immediately following the display, description, or price of the Product for  
24                   which it is given in the same type size or larger than the Product description text:

25                                   WARNING: This product contains lead, a chemical  
26                                   known to the State of California to cause [cancer and,] birth  
27                                   defects or other reproductive harm.

28                                   Or

                                  WARNING: This product contains chemicals, including lead,  
                                  known to the State of California to cause [cancer  
                                  and,] birth defects or other reproductive harm.

                  Alternatively, the designated symbol may appear adjacent to or immediately following the  
display, description, or price of the Product for which a warning is being given, provided that the

1 following warning statement (with use of the bracketed text below at Johnson’s option) also appears  
2 elsewhere on the same web page, as follows:

3                   WARNING: This product contains lead, a chemical  
4   known to the State of California to cause [cancer  
5   and,] birth defects or other reproductive harm.

6   Or

7                   WARNING: This product contains chemicals, including lead,  
8   known to the State of California to cause [cancer  
9   and,] birth defects or other reproductive harm

9       **3. MONETARY PAYMENTS**

10           **3.1 Civil Penalty Payments**

11           In settlement of all the claims referred to in this Consent Judgment, Defendant has been  
12 assessed a total of \$11,500 in civil penalties in accordance with this Section. Each penalty payment  
13 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with  
14 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment  
15 (“OEHHA”) by Wozniak. All penalty payments shall be delivered to the address listed in Section  
16 3.3 below.

17                   **3.1.1 Initial Civil Penalty**

18           Defendant shall pay an initial civil penalty in the amount of \$4,000 within five days  
19 of the Effective Date. Defendant shall issue a check payable to “Paul Wozniak, Client Trust  
20 Account” in the amount of \$4,000.

21                   **3.1.2 Final Civil Penalty**

22           Defendant shall pay a final civil penalty of \$7,500 on or before May 15, 2015. The  
23 final civil penalty shall be waived in its entirety, however, if, no later than May 1, 2015, an officer  
24 of Defendant provides Wozniak with written certification that, as of the date of such certification  
25 and continuing into the future, all Products manufactured, imported, distributed, sold and offered for  
26 sale in California by Defendant qualify as Reformulated Products. Wozniak must receive any such  
27 certification on or before May 15, 2015. The certification in lieu of a final civil penalty payment  
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1 provided by this Section is a material term, and time is of the essence. Defendant shall issue a  
2 check for its final civil penalty payment to “Paul Wozniak, Client Trust Account” in the amount of  
3 \$7,500.

### 4 **3.2 Reimbursement of Fees and Costs**

5 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute  
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
7 this fee issue to be resolved after the material terms of the agreement had been settled. Wozniak  
8 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
9 been finalized. The parties then attempted to (and did) reach an accord on the compensation due to  
10 Wozniak and his counsel under general contract principles and the private attorney general  
11 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through  
12 the mutual execution of this agreement. Defendant shall pay \$31,000 for fees and costs incurred as  
13 a result of investigating, bringing this matter to Defendant’s attention, and negotiating a settlement  
14 in the public interest. Within five days of the Effective Date, Johnson shall issue a check payable  
15 to “The Chanler Group” in the amount of \$31,000 to the address found in Section 3.3 below.

### 16 **3.3 Payment Procedures**

17 All payments owed to Wozniak and his counsel, pursuant to Sections 3.1 and 3.2,  
18 shall be delivered to the following payment address:

19 The Chanler Group  
20 Attn: Proposition 65 Controller  
21 2560 Ninth Street  
22 Parker Plaza, Suite 214  
23 Berkeley, CA 94710

## 24 **4. CLAIMS COVERED AND RELEASED**

### 25 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

26 This Consent Judgment is a full, final and binding resolution of all claims that were or could  
27 have been asserted in the Action arising out of Defendant’s alleged failure to provide Proposition 65  
28 warnings for the Products. Wozniak, acting on his own behalf and in the public interest, releases  
defendants Johnson Outdoors Gear, Inc., Johnson Outdoors Inc., Johnson Outdoors Gear LLC and



1 their respective parents, subsidiaries, affiliated entities under common ownership, directors,  
2 officers, employees, and attorneys (“Releasees”) and each entity to whom they directly or indirectly  
3 distribute or sell the Products including, but not limited to, their downstream distributors,  
4 wholesalers, customers, retailers (including but not limited to Dick’s Sporting Goods), franchisers,  
5 cooperative members, licensors and licensees (“Downstream Releasees”) for any violations arising  
6 under Proposition 65 for unwarned exposures to lead from the Products sold by Defendant prior to  
7 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment  
8 constitutes compliance with Proposition 65 with respect to exposures to lead from the Products.

9 **4.2 Wozniak’s Individual Release of Claims**

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

17 **4.3 Johnson’s Release of Wozniak**

18 Defendant on behalf of itself, its past and current agents, representatives, attorneys,  
19 successors and/or assignees, hereby waives any and all claims against Wozniak, his attorneys and  
20 other representatives, for any and all actions taken or statements made (or those that could have  
21 been taken or made) by Wozniak and his attorneys and other representatives, whether in the course  
22 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
23 respect to the Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and  
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
27 after it has been fully executed by all parties.  
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1       **6. SEVERABILITY**

2           If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
3       Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
4       remaining shall not be 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  
8       is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this  
9       Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or  
10       preemption or rendered inapplicable by reason of law or regulations generally as to the Products,  
11       then Defendant shall provide written notice to Wozniak of any asserted change in the law, and shall  
12       have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
13       the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
14       Defendant from any obligation to comply with any pertinent state or federal toxics control law.

15       **8. NOTICES**

16           Unless specified herein, all correspondence and notices required to be provided pursuant to  
17       this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
18       (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
19       other party at the following addresses:

20           To Johnson:

21           Alisa Swire, Esq.  
22           Vice President and General Counsel  
23           Johnson Outdoors Inc.  
24           555 Main St.  
25           Racine, WI 54303

20           To Paul Wozniak:

21           Proposition 65 Coordinator  
22           The Chanler Group  
23           2560 Ninth Street  
24           Parker Plaza, Suite 214  
25           Berkeley, CA 94710-2565

26           Ann G. Grimaldi, Esq.  
27           Grimaldi Law Offices  
28           50 California Street #1500  
              San Francisco, CA 94111

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

1       **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

2               This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
3 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
4 one and the same document. A facsimile or pdf signature shall be as valid as the original.

5       **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6               Wozniak and his attorneys agree to comply with the reporting form requirements referenced  
7 in California Health & Safety Code § 25249.7(f).

8       **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9               Wozniak and Defendant agree to mutually employ their best efforts to support the entry of  
10 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in  
11 a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code  
12 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
13 Wozniak shall draft and file, and Defendant shall join. If any third party objection to the noticed  
14 motion is filed, Wozniak and Defendant shall work together to file a joint reply and appear at any  
15 hearing before the Court. This provision is a material component of the Consent Judgment and  
16 shall be treated as such in the event of a breach.

17       **13. MODIFICATION**

18               This Consent Judgment may be modified only: (1) by written agreement of the parties and  
19 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
20 of any party and entry of a modified Consent Judgment by the Court.

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14. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.


AGREED TO:

AGREED TO:

Date: February 26, 2015

Date: 2/20/15

By:   
Paul Wozniak

By:   
Donald P. Sesterhenn  
Secretary and Treasurer  
Johnson Outdoors Gear, Inc.