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14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR MARIN COUNTY  
17 UNLIMITED CIVIL JURISDICTION

18 PAUL WOZNIAK,  
19 Plaintiff,  
20  
21 v.  
22 SERVICE TOOL COMPANY, L.L.C.,  
23 Defendants.

Case No. CIV1901325

**CONSENT JUDGMENT**

(Health & Safety Code § 25249.5 *et seq.*, and  
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Paul Wozniak (Wozniak) and Service  
4 Tool Company, L.L.C. (STC) with Wozniak and STC collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

10 STC employs ten or more persons and is a person in the course of doing business for purposes  
11 of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code  
12 §§ 25249.5 *et seq.* (Proposition 65).

13 **1.4 General Allegations**

14 Wozniak alleges that STC manufactures, imports, sells and/or distributes for sale in  
15 California, products containing di(2-ethylhexyl)phthalate (DEHP), diisononyl phthalate (DINP), di-n-  
16 butyl phthalate (DBP), and/or Lead, and is required by Proposition 65 to provide a health hazard  
17 warning that Wozniak alleges was not provided to consumers. DEHP, DBP, and Lead are listed  
18 pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects and  
19 other reproductive harm. DEHP, DINP and Lead are listed pursuant to Proposition 65 as chemicals  
20 known to the State of California to cause cancer. DEHP, DINP, DBP and Lead are collectively  
21 referred to herein as the “Listed Chemicals.”

22 **1.5 Products Defined**

23 The products allegedly manufactured, imported, distributed, sold, and/or offered for sale in  
24 the State of California by STC that are covered by this Consent Judgment are: (i) electrical test kits  
25 with vinyl/PVC wires containing DEHP, including, but not limited to, *REGAL 3pc Electrical Test*  
26 *Kit, #39850, UPC #0 82021 39850 2*; (ii) vinyl/PVC electrical tape containing DEHP, including, but  
27 not limited to, the *Tool Cache Electrical Tape Set, 3PC, Model No. 19846, UPC #0 82021 19846 1*;  
28

1 (iii) voltage testers with vinyl/PVC cords containing DEHP and Lead including, but not limited to,  
2 *Tool Cache AC/DC Multi Tester, 51217, UPC #0 42374 89282 9*; and (iv) the categories of products  
3 listed in Exhibit A to this Consent Judgment containing DEHP, DINP, DBP, and/or Lead  
4 (collectively hereinafter, the “Products”).

#### 5 **1.6 Notices of Violation**

6 On or about February 23, 2017, Wozniak served STC, and certain requisite public  
7 enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that STC violated  
8 Proposition 65 when it failed to warn consumers in California that its electrical test kits with  
9 vinyl/PVC wires and vinyl/PVC electrical tape products expose users to DEHP.

10 On or about April 9, 2018, Wozniak served STC, and certain requisite public enforcement  
11 agencies with a Supplemental 60-Day Notice of Violation (Supplemental Notice), alleging that STC  
12 violated Proposition 65 when it failed to warn its customers and consumers in California that its  
13 (i) electrical test kits with vinyl/PVC wires containing DEHP; (ii) vinyl/PVC electrical tape  
14 containing DEHP; and (iii) voltage testers with vinyl/PVC cords containing DEHP and lead expose  
15 users to the Listed Chemicals.

16 On May \_\_, 2019, Wozniak served STC, and certain requisite public enforcement agencies  
17 with a Second Supplemental 60-Day Notice of Violation (Second Supplemental Notice), alleging that  
18 STC violated Proposition 65 when it failed to warn its customers and consumers in California that its  
19 (i) electrical test kits with vinyl/PVC wires containing DEHP and lead; (ii) vinyl/PVC electrical tape  
20 containing DEHP and lead; (iii) voltage testers with vinyl/PVC cords containing DEHP and lead;  
21 (iv) hand tools & parts (wrenches, soldering irons, torches/lighters and pocket knives with plastic  
22 grips) containing lead, DEHP, DINP and DBP; (v) interior hardware and supplies (plastic tapes,  
23 adhesives, hinges and mounts) containing lead, DEHP, DINP and DBP; (vi) fasteners (nuts, bolts and  
24 O-rings) containing lead, DEHP, DINP and DBP; (vii) apparel, eyewear and accessories (vinyl safety  
25 gloves, camo gear, safety glasses and dust masks) containing lead, DEHP, DINP and DBP;  
26 (viii) tableware (indoor and outdoor glassware and utensils such as plastic spatulas, knives and  
27 tumblers) containing lead, DEHP, DINP and DBP; (ix) lighting and electrical equipment (chip-on-

1 board lights and electrical switches with plastic components) containing lead, DEHP, DINP and  
2 DBP; and (x) cell phone accessories (plastic cases, screen protectors and chargers) containing lead,  
3 DEHP, DINP and DBP expose users to the Listed Chemicals. The Notice, Supplemental Notice, and  
4 Second Supplemental Notice are collectively referred to herein as the “Notices.”

5 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently  
6 prosecuting the allegations set forth in the Notices.

7 **1.7 Complaint**

8 On April 5, 2019, Wozniak filed the instant action (“Complaint”), naming STC as a defendant  
9 for the alleged violations that are the subject of the Notice and Supplemental Notice. As of the  
10 Effective Date (as defined below), the Parties stipulate and agree that the Complaint shall be deemed  
11 amended *nunc pro tunc* to include all Products and all claims and allegations that are the subject of  
12 the Notices. The Parties further stipulate and agree that the Court has authority to take this action  
13 based on the Second Supplemental Notice.

14 **1.8 No Admission**

15 STC denies the material, factual and legal allegations contained in the Notices and maintains  
16 that all products that it has sold and distributed in California, including the Products, have been and  
17 are in compliance with all laws. Notwithstanding such allegations, STC maintains that it has not  
18 knowingly manufactured, or caused to be manufactured, the Products for sale in California in  
19 violation of Proposition 65. Nothing in this Consent Judgment shall be construed as, nor shall  
20 compliance with this Consent Judgment constitute or be construed as, an admission by STC of any  
21 fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish  
22 or otherwise affect the obligations, responsibilities and duties under this Consent Judgment.

23 **1.9 Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that the Court has  
25 jurisdiction over Wozniak as to the allegations in the Complaint and Notices, that venue is proper in  
26 Marin County, and that this Court has exclusive jurisdiction to enter and enforce the provisions of  
27 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.  
28

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” means the date Notice of  
3 Entry of this Consent Judgment is served via email on STC’s counsel.

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

5           **2.1 Reformulation Standards**

6           “Reformulated Products” are defined as those Products containing (a) DEHP, diisononyl  
7 phthalate (“DINP”), and di-n-butyl (“DBP”) each in concentrations of less than 0.1 percent (1,000  
8 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing  
9 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for  
10 the purpose of determining the DEHP, DINP or DBP content in a solid substance; and (b) Lead in a  
11 concentration not greater than 100 parts per million by weight in any Accessible Component when  
12 analyzed pursuant to EPA testing methodologies 3050B and/or 6010B, and that yield a result of less  
13 than 1.0 micrograms of Lead when analyzed pursuant to the NIOSH 9100 testing protocol.

14           **2.2** As of the Effective Date, STC shall not manufacture, import, distribute, sell or offer  
15 the Products for sale in the State of California unless they are Reformulated Products, as defined by  
16 Section 2.1, or a warning is provided in compliance with this Consent Judgment. Each warning shall  
17 be prominently placed with such conspicuousness as compared with other words, statements, designs,  
18 or devices as to render it likely to be read and understood by an ordinary individual under customary  
19 conditions before purchase or use. Each warning shall be provided in a manner clearly associated  
20 with the specific Product to which the warning applies, so as to reasonably minimize the risk of  
21 consumer confusion.

22           **2.3** STC shall provide the following warning statement (consistent with applicable  
23 regulations governing such warnings) on the unit packaging of such Product, on the Labeling (as  
24 defined in 27 Cal. Code Reg. section 25600.1) of such Product, or affixed to the Product, as  
25 applicable:

26                     For products that contain DEHP, DBP and/or Lead:  
27  
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1 web page on which a Product is displayed; (b) on the same web page as the order form for a Product;  
2 (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a  
3 purchaser during the checkout process. The warning statement shall appear in any of the above  
4 instances in the same type size or larger than other warning text.

5 **2.5** For all warnings in Section 2 of this Consent Judgment, “cancer and” shall be included  
6 in the warning if STC has reason to believe the Product at issue contains DEHP, DINP, and/or Lead  
7 at levels that are likely to lead to an exposure requiring a cancer warning under Proposition 65.

8 Where a warning is provided for a potential exposure to a single chemical, the words “chemicals  
9 including” may be deleted from the warning content in the warnings in Section 2 of this Consent  
10 Judgment. Where the text on other labeling is printed in black and white, the yellow warning symbol  
11 may also be printed in black and white.

12 **2.6** Notwithstanding any other provision of this Consent Judgment, any Products  
13 manufactured or assembled prior to or within three months of the Effective Date that possess a pre-  
14 existing warning that substantially complies with existing or prior regulations may continue to use  
15 that warning and may continue to be sold or offered for sale in the State of California regardless of  
16 whether that pre-existing warning complies with this Consent Judgment.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

19 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims  
20 referred to in this Consent Judgment, STC shall pay \$5,000 in civil penalties in accordance with this  
21 Section. The penalty payment will be allocated in accordance with California Health & Safety Code  
22 § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
23 Health Hazard Assessment (“OEHHA”) by Wozniak. Wozniak’s counsel shall be responsible for  
24 remitting STC’s penalty payment(s) under this Consent Judgment to OEHHA. Within 5 calendar  
25 days of the Effective Date, STC shall provide its payment in a check made payable to “OEHHA” in  
26 the amount of \$3,750 and a check made payable to “Paul Wozniak, Client Trust Account” in the  
27 amount of \$1,250 to be delivered to the address provided in Section 3.4.  
28

1           **3.2     Reimbursement of Attorneys' Fees and Costs**

2           The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute without  
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
4 be resolved after the material terms of the agreement had been settled. Shortly after the other  
5 settlement terms had been finalized, STC expressed a desire to resolve Wozniak's fees and costs.  
6 The Parties then negotiated a resolution of the compensation due to Wozniak and his counsel under  
7 general contract principles and the private attorney general doctrine codified at California Code of  
8 Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement, as  
9 well as work reasonably to be incurred in the future, STC shall reimburse Wozniak and his counsel  
10 \$37,600. STC's payment shall be delivered to the address in Section 3.4, within 5 calendar days of  
11 the Effective Date, in the form of a check payable to "The Chanler Group." The reimbursement shall  
12 cover all fees and costs incurred by Wozniak investigating, bringing this matter to STC's attention  
13 and negotiating a settlement of the matter.

14           **3.3     Payment Timing; Penalty for Late Payments**

15           All payments due under this Consent Judgment shall be delivered to Wozniak's counsel  
16 within 5 calendar days after the Effective Date on the condition that STC is provided with the  
17 necessary tax documents. Timing of the settlement payment is of the essence. STC agrees and  
18 represents that should any settlement payment required by this Consent Judgment not be received by  
19 Wozniak's counsel within five (5) calendar days after the Effective Date, Wozniak may seek to  
20 enforce STC's payment obligations under general contract principles and Code of Civil Procedure  
21 section 664.6, and Wozniak shall be entitled to the reasonable fees incurred recovering any unpaid or  
22 untimely settlement payments pursuant to general contract principles and Code of Civil Procedure §  
23 1021.5.

24           **3.4     Payment Address**

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

26                           The Chanler Group  
27                           Attn: Proposition 65 Controller  
28                           2550 Ninth Street, Suite 205  
                              Berkeley, CA 94710

1     **4. CLAIMS COVERED AND RELEASED**

2             **4.1 Wozniak’s Public Release of Proposition 65 Claims**

3             Wozniak, acting on his own behalf and on behalf of his past and current agents,  
4 representatives, attorneys, successors, and assignees, and in the public interest, releases STC and its  
5 parents, subsidiaries, affiliated entities, shareholders, directors, members, officers, agents, employees,  
6 and attorneys (“STC Releasees”), and each entity to whom STC directly or indirectly distributes or  
7 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
8 retailers, franchisees, cooperative members, and licensees, including Amazon.com, LLC and its  
9 affiliates (collectively, “Releasees”), from all claims arising under Proposition 65 based on unwarned  
10 exposures to DEHP, DINP, DBP, and/or Lead in Products manufactured, assembled, imported,  
11 distributed, sold, and/or offered for sale in the State of California by STC before the Effective Date.

12             **4.2 Wozniak’s Individual Release of Claims**

13             Wozniak, in his individual capacity only and *not* in his representative capacity, also provides  
14 a release hereinto STC, STC Releasees, and Releasees, which shall be effective as a full and final  
15 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
16 attorneys’ fees, damages, losses, claims, liabilities, and demands of Wozniak of any nature, character  
17 or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged  
18 or actual exposures to DEHP, DINP, DBP and/or Lead in Products manufactured, imported,  
19 distributed, sold, and/or offered for sale in the State of California by STC prior to the Effective Date.  
20 The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any  
21 entities that manufactured the Products, or any component parts thereof, or any distributors or  
22 suppliers who sold the Products, or any component parts thereof to STC. Nothing in this Section  
23 affects Wozniak’s right to commence or prosecute an action under Proposition 65 against a Releasee  
24 that does not involve STC’s Products.

25             **4.3 STC’s Release of Wozniak**

26             STC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and  
27 assignees, hereby waives any and all claims against Wozniak and his attorneys and other  
28

1 representatives, for any and all actions taken or statements made (or those that could have been taken  
2 or made) by Wozniak and his attorneys and other representatives, whether in the course of  
3 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
4 respect to the Products.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California  
15 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
16 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment  
17 are rendered inapplicable or no longer required as a result of any such repeal or preemption or  
18 rendered inapplicable by reason of law generally as to the Products, then STC may provide Wozniak  
19 with written notice of any asserted change in the law. The Parties shall then meet and confer for 30  
20 days regarding STCs injunctive obligations pursuant to this Consent Judgment with respect to, and to  
21 the extent that, the Products are so affected.

22 **8. NOTICE**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to  
24 this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class  
25 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party  
26 by the other party at the following addresses:

27 ///

1 For STC:

For Wozniak:

2 Thomas Le Blanc, President  
3 Service Tool Company, L.L.C.  
4 2501 South Lewis Street  
5 New Iberia, LA 70560

Proposition 65 Coordinator  
The Chanler Group  
2550 Ninth Street, Suite 205  
Berkeley, CA 94710

6 With a Copy to:

7 George Gigounas  
8 Gregory G. Sperla  
9 DLA PIPER LLP (US)  
10 555 Mission Street, Suite 2400  
11 San Francisco, CA 94105

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

14 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES; INTEGRATION**

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

18 This Consent Judgment contains the entire agreement between the Parties as to all matters to  
19 which it pertains, and supersedes any and all prior or contemporaneous agreements, terms, promises,  
20 or other arrangements made or discussed between the parties or current or former counsel for the  
21 parties, or proposed before the execution of this Consent Judgment by either party or that party's  
22 current or former counsel, whether written, oral, or otherwise.

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 this Consent  
27 Judgment, which Wozniak shall draft, file, and support, and which STC shall support, including  
28 appearing at the settlement approval hearing if 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 by the Court; or (ii) a successful motion or application of any  
4 Party, and the entry of a modified consent judgment by the Court.

5 **12. AUTHORIZATION**

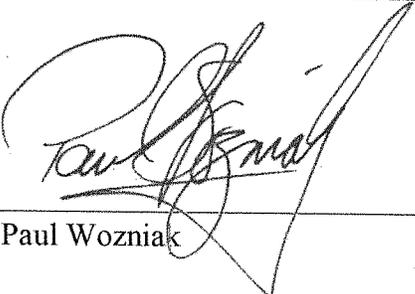
6 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
7 and agree to all of the terms and conditions contained herein.

8  
9  
10 **AGREED TO:**

**AGREED TO:**

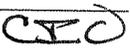
11  
12 Date: 5/7/19

Date: 5/7/19

13  
14  
15 By: 

Paul Wozniak

By: 

Thomas Le Blanc, President  
Service Tool Company, L.L.C. 

## EXHIBIT A

1  
2 In addition to the categories listed in Paragraph 1.5 of this Consent Judgment, the products  
3 covered by this Consent Judgment shall also include the following categories:

- 4 1. Hand tools and parts containing lead, DEHP, DINP and DBP, including,  
5 but not limited to, wrenches, soldering irons, and pocket knives with  
6 plastic grips;
- 7 2. Interior hardware and supplies containing lead, DEHP, DINP and DBP,  
8 including, but not limited to, plastic tapes, adhesives, hinges, and mounts;
- 9 3. Fasteners containing lead, DEHP, DINP and DBP, including, but not  
10 limited to, nuts, bolts, and O-rings;
- 11 4. Apparel, eyewear, and accessories containing lead, DEHP, DINP and  
12 DBP, including, but not limited to, vinyl safety gloves, camo gear, safety  
13 glasses, and dust masks;
- 14 5. Tableware containing lead, DEHP, DINP and DBP, including, but not  
15 limited to, indoor and outdoor glassware and utensils such as plastic  
16 spatulas, knives, and tumblers;
- 17 6. Lighting and electrical equipment containing lead, DEHP, DINP and DBP,  
18 including, but not limited to, chip-on-board lights and electrical switches  
19 with plastic components; and
- 20 7. Cellular telephone accessories containing lead, DEHP, DINP and DBP,  
21 including, but not limited to, plastic cases, screen protectors, and chargers.  
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