

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 Attorneys for Plaintiff
10 PAUL WOZNIAK

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

11
12 PAUL WOZNIAK,
13 Plaintiff,
14 v.
15 SPORT CHALET, INC.; and DOES 1-150,
16 inclusive,
17 Defendants.

Case No. RG14730696
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”)
4 and defendant Sport Chalet, LLC f/k/a Sport Chalet, Inc. (“Sport Chalet”), with Wozniak and Sport
5 Chalet each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Wozniak is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Wozniak alleges that Sport Chalet manufactures, imports, sells and/or distributes for sale in
16 California, tongs with vinyl/PVC grips containing DEHP containing di(2-ethylhexyl)phthalate
17 (“DEHP”), and that it does so without providing the health hazard warning that Wozniak alleges is
18 required by Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are tongs with vinyl/PVC grips containing
21 DEHP including, but not limited to, *Rome’s Supertong Combo, RC6097, UPC #0 29794 42002 3*
22 (“Products”) manufactured, imported, distributed or sold in California by Sport Chalet.

23 **1.6 Notice of Violation**

24 On February 7, 2014, Wozniak served Sport Chalet and the requisite public enforcement
25 agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Sport Chalet violated
26 Proposition 65 when it failed to warn its customers and consumers in California that the Products
27 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced
28 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

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1.7 Complaint

On June 26, 2014, Wozniak commenced the instant action, naming Sport Chalet as one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

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

1.9 Jurisdiction

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

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that this Settlement is approved by the Court, including any unopposed tentative rulings.

2. INJUNCTIVE SETTLEMENT TERMS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by

1 federal or state government agencies for the purpose of determining DEHP content in a solid
2 substance.

3 **2.2 Reformulation Commitment**

4 As of the Effective Date all Products manufactured, imported, distributed, sold and/or
5 offered for sale in the State of California by Sport Chalet shall be Products that qualify as
6 Reformulated Products as defined in Section 2.1, or shall carry appropriate health hazard warnings
7 per section 2.3, below.

8 **2.3 Product Warnings**

9 Commencing on or before the Effective Date, Sport Chalet shall provide clear and
10 reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that
11 do not qualify as Reformulated Products. Each warning shall be prominently placed with such
12 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
13 to be read and understood by an ordinary individual under customary conditions before purchase or
14 use. Each warning shall be provided in a manner such that the consumer or user understands to
15 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

16 **(a) Retail Store Sales.**

17 **(i) Product Labeling.** Sport Chalet shall affix a warning to the packaging,
18 labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

22 **(ii) Point-of-Sale Warnings.** Alternatively, Sport Chalet may provide warning
23 signs in the form below to its customers in California with instructions to post the warnings in close
24 proximity to the point of display of the Products. Such instruction sent to Sport Chalet's customers
25 shall be sent by certified mail, return receipt requested.

26 WARNING: This product contains DEHP, a phthalate
27 chemical known to the State of California
28 to cause birth defects and other reproductive harm.

1 The designated symbol must appear on the same page and in close proximity to the display
2 and/or description of the Product. On each page where the designated symbol appears, Sport Chalet
3 must provide a header or footer directing the consumer to the warning language and definition of
4 the designated symbol.

5 (ii) **Internet Website Warning.** A warning shall be given in conjunction with
6 the sale of the Products via the internet, which warning shall appear either: (a) on the same web
7 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
8 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
9 purchaser during the checkout process. The following warning statement shall be used and shall
10 appear in any of the above instances adjacent to or immediately following the display, description,
11 or price of the Product for which it is given in the same type size or larger than the Product
12 description text:

13 WARNING: This product contains DEHP, a phthalate
14 chemical known to the State of California
15 to cause birth defects and other reproductive harm.

16 Alternatively, the designated symbol may appear adjacent to or immediately following the
17 display, description, or price of the Product for which a warning is being given, provided that the
18 following warning statement also appears elsewhere on the same web page, as follows:

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

21 **3. MONETARY SETTLEMENT TERMS**

22 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

23 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
24 claims referred to in this Consent Judgment, Sport Chalet has been assessed \$5,000 in civil
25 penalties in accordance with this Section. Each penalty payment will be allocated in accordance
26 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to
27 the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Wozniak.
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1 Wozniak’s counsel shall be responsible for remitting Sport Chalet’s penalty payment(s) under this
2 Consent Judgment to OEHHA.

3 **3.1.1 Initial Civil Penalty.** Sport Chalet shall pay an initial civil penalty in the
4 amount of \$2,500. Within five business days of executing this Consent Judgment, Sport Chalet
5 shall issue a check payable to “SLMC Law” in the amount of \$2,500 to be held in trust by SLMC
6 Law. SLMC Law shall provide The Chanler Group with written confirmation within five days of
7 receipt that the funds have been deposited in a trust account. Within two business days of the
8 Effective Date, SLMC Law shall issue a check to “Paul Wozniak, Client Trust Account” in the
9 amount of \$2,500. All penalty payments shall be delivered to the addresses listed in Section 3.3,
10 below.

11 **3.1.2 Final Civil Penalty.** On August 15, 2016, Sport Chalet shall make a final
12 civil penalty payment of \$2,500. Pursuant to title 11 California Code of Regulations, section
13 3203(c), Wozniak agrees that the final civil penalty payment shall be waived in its entirety if, no
14 later than August 1, 2016, an officer of Sport Chalet provide Wozniak with a signed declaration
15 certifying that all of the Products it ships for sale or distributes for sale in California as of the date
16 of its declaration are Reformulated Products, and that Sport Chalet will continue to offer only
17 Reformulated Products in California in the future. The option to certify reformulation in lieu of
18 warning, and making the final civil penalty payment otherwise required by this Section is a material
19 term, and time is of the essence. To obtain a waiver of the final civil penalty, Sport Chalet must
20 deliver its declaration certifying reformulation to Wozniak’s counsel at the address provided in
21 Section 3.3, below. In the event that Sport Chalet does not timely certify its compliance or make
22 the final civil penalty payment required by this Section, the Parties agree that Wozniak may file a
23 motion or application seeking an order compelling Sport Chalet’s compliance with this Section. If
24 successful, the Parties further agree that Wozniak shall be entitled to his reasonable attorneys’ fees
25 and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.
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1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
4 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
5 Sport Chalet then expressed a desire to resolve the fee and cost issue shortly after the other
6 settlement terms had been finalized. The parties then attempted to (and did) reach an accord
7 on the compensation due to Wozniak and his counsel under general contract principles and the
8 private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for
9 all work performed through the mutual execution of this agreement. Sport Chalet shall pay
10 \$27,000 for fees and costs incurred as a result of investigating, bringing this matter to
11 Defendant’s attention, and negotiating a settlement in the public interest. Within five business
12 days of executing this Consent Judgment, Sport Chalet shall issue a check payable to “SLMC
13 Law” in the amount of \$27,000 to be held in trust by SLMC Law for The Chanler Group.
14 SLMC Law shall provide The Chanler Group with written confirmation within five days of
15 receipt that the funds have been deposited in a trust account. Within two business days of the
16 Effective Date, SLMC Law shall issue a check payable to “The Chanler Group” to the address
17 found in Section 3.3 below.

18 **3.3 Payment Address**

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

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710
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1 **4. CLAIMS COVERED AND RELEASED**

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

3 Wozniak, acting on his own behalf and in the public interest, releases Sport Chalet and its
4 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
5 and attorneys (“Releasees”) and each entity to whom Sport Chalet directly or indirectly distributes
6 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
7 customers, retailers, franchisers, cooperative members, licensors and licensees (“Downstream
8 Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DEHP from
9 the Products manufactured, imported, distributed or sold by Sport Chalet prior to the Effective
10 Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
11 compliance with Proposition 65 by Sport Chalet with respect to the alleged or actual failure to warn
12 about exposures to DEHP from Products manufactured, sold or distributed for sale by Sport Chalet
13 after the Effective Date.

14 **4.2 Wozniak’s Individual Release of Claims**

15 Wozniak, in his individual capacity only and *not* in his representative capacity, also
16 provides a release to Sport Chalet, Releasees, and Downstream Releasees which shall be effective
17 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
18 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Wozniak of any
19 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
20 alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by
21 Sport Chalet before the Effective Date.

22 **4.3 Sport Chalet’s Release of Wozniak**

23 Sport Chalet, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees, hereby waive any and all claims against Wozniak and his
25 attorneys and other representatives, for any and all actions taken or statements made (or those that
26 could have been taken or made) by Wozniak and his attorneys and other representatives in the
27 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
28 respect to the Products.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
4 after it has been fully executed by all Parties. Wozniak and Sport Chalet agree to support the entry
5 of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely
6 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
7 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
8 motion Wozniak shall draft and file and Sport Chalet shall support, appearing at the hearing if so
9 requested. If any third-party objection to the motion is filed, Wozniak and Sport Chalet agree to
10 work together to file a reply and appear at any hearing. This provision is a material component of
11 the Consent Judgment and shall be treated as such in the event of a breach.

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

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

24 **8. NOTICE**

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

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To Sport Chalet:
Jill A. Franklin, Esq.
Schaffer, Lax, McNaughton & Chen
515 South Figueroa Street, Suite 1400
Los Angeles, CA 90071

To Wozniak:
Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

Wozniak and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

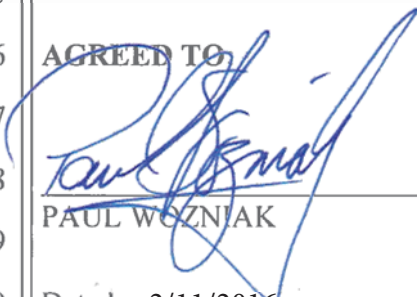
11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.


1 **12. AUTHORIZATION**

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

5
6 **AGREED TO:**

7 
8 _____
9 PAUL WOZNIAK
10 Dated: 2/11/2016

AGREED TO:


_____ **SPORT CHALET, INC.**
By: Tim Numbus
(Print Name)
Its: Senior LP Manager
(Title)
Dated: 2/4/16

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