

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 The Parties**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Paul Wozniak (“Wozniak”) and Stone Mountain USA (“Stone Mountain”) with Wozniak and Stone Mountain each referred to individually as a “Party” and collectively as the “Parties.” Wozniak is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products. Stone Mountain employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Wozniak alleges that Stone Mountain manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning required by Proposition 65.

### **1.3 Product Description**

The products covered by this Settlement Agreement are vinyl/PVC wallets including, but not limited to, *Stone Mountain USA Leather Mega Wallet, 8AF189-1, UPC #8 4829706954 2* that are manufactured, imported, distributed, sold and/or offered for sale in California by Stone Mountain (“Products”).

### **1.4 Notice of Violation**

On or about March 30, 2017, Wozniak served Stone Mountain and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Stone Mountain violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no

public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

**1.5 No Admission**

Stone Mountain denies the material, factual, and legal allegations contained in the Notice 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 Settlement Agreement shall be construed as an admission by Stone Mountain of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Stone Mountain of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Stone Mountain's obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 30, 2017.

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

**2.2 Reformulation Commitment**

As of the Effective Date all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by Stone Mountain shall be Products that qualify as Reformulated Products as defined in Section 2.1.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Payments Pursuant to Health and Safety Code Section 25249.7(b)(2)**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, Stone Mountain shall pay civil penalties in the amount of \$4,500. The penalty payments shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Wozniak. On or before the Effective Date, Stone Mountain shall issue two separate checks, the first check payable to “Paul Wozniak, Client Trust Account” in the amount of \$1,125, and the second check payable to “OEHHA” in the amount of \$3,375. Wozniak’s counsel shall be responsible for remitting Stone Mountain’s penalty payment under this Settlement Agreement to OEHHA.

#### **3.2 Reimbursement of Attorneys’ 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 the agreement had been settled. Shortly after the other settlement terms had been finalized, Stone Mountain expressed a desire to resolve Wozniak’s fees and costs. The Parties then negotiated a resolution of 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 agreement, Stone Mountain shall reimburse Wozniak and his counsel \$19,000 to be delivered in two (2) installments according to the following schedule: (1) \$8,000 due on or before June 30, 2017; and (2) \$11,000 on or before August 30, 2017. Stone Mountain’s payment shall be delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to Stone Mountain’s attention and negotiating a settlement of the matter in the public interest.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

### **4.1 Wozniak's Release of Proposition 65 Claims**

Wozniak, acting on his own behalf and *not* on behalf of the public, releases Stone Mountain and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom Stone Mountain directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees, ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by Stone Mountain prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by Stone Mountain with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by Stone Mountain after the Effective Date.

### **4.2 Wozniak's Individual Release of Claims**

Wozniak, in his individual capacity only and *not* in his representative capacity, also provides a release to Stone Mountain, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character or kind, whether known or unknown, suspected or

unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed or sold by Stone Mountain prior to the Effective Date.

**4.3 Stone Mountain's Release of Wozniak**

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

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

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

7. **NOTICE**

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

For Stone Mountain USA Corp:  
Kenneth Orr, President  
Stone Mountain USA Corp.  
10 West 33rd Street, Suite 728  
New York, NY 10001

With copy to:  
Mark Brutzkus  
Brutzkus Gubner Rozansky Seror Weber LLP  
21650 Oxnard St., Suite 500  
Woodland Hills, CA 91367-4911

For Wozniak:  
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.

8. **COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

This Settlement Agreement 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.

9. **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).

10. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**11. AUTHORIZATION**

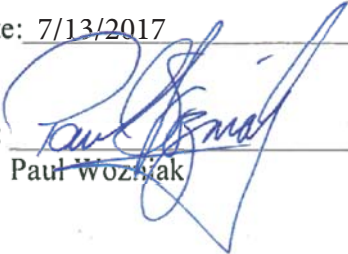
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 7/13/2017

By: \_\_\_\_\_

Paul Wozniak



**AGREED TO:**

Date: 7/10/17

By: \_\_\_\_\_

Kenneth Orr, President  
Stone Mountain USA Corp.

