

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Sunjeen, Inc. (“Sunjeen”) and Paul Wozniak (“Wozniak”), with Wozniak and Sunjeen collectively referred to as the “Parties.” Wozniak is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Sunjeen 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 & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Wozniak alleges that Sunjeen has manufactured, distributed and/or sold in the State of California vinyl sheet music folders and musical instrument cases containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined as vinyl/PVC sheet music folders containing DEHP including, but not limited to, *Protec Deluxe Music Folder*, Model: F2BK, #12143-96585 (UPC #7 50793 17002 1), and vinyl/PVC musical instrument cases containing DEHP including, but not limited to, *Protec Stonewood Classical Guitar Case*, Model: SW231CT, #12123-77786 (UPC #7 50793 61347 4), manufactured, imported and/or distributed for sale in the State of California by Sunjeen.

1.4 Notice of Violation

On or about February 7, 2014, Wozniak served Sunjeen and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Sunjeen’s failure to warn consumers that

the Products exposed users in the State of California to DEHP. To the best of the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1.5 No Admission

Sunjeen denies all factual and legal allegations contained in Wozniak's Notice, and maintains that all of the products it has sold and/or offered for sale in the State of 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 Sunjeen 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 Sunjeen of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect Sunjeen'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 30 calendar days after the date this Settlement Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD

2.1 Reformulation Standard

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl ("DBP") and butyl benzyl phthalate ("BBP") in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, NVLAP (National Volunteer Laboratory Accreditation Program), American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar nationally recognized accrediting organization (such laboratory referred hereinafter as an "Accredited Lab") pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of

determining DEHP, DBP or BBP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Sunjeen by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Sunjeen under laws other than Proposition 65.

2.2 Vendor Notification Requirement

To the extent it has not already done so, on or before the Effective Date, Sunjeen shall provide the reformulation standard specified in Section 2.1 to each of its then-current Vendors of Products that will be sold or offered for sale to California citizens and shall instruct each Vendor to use reasonable efforts to provide Products that comply with the reformulation standard for Reformulated Products in Section 2.1 above. For purposes of this Settlement Agreement, the term "Vendor" means a person or entity that manufactures, imports, distributes, sells, or otherwise supplies the Products or component parts of the Products to Sunjeen, its parents, assignees, subsidiaries and/or affiliated entities under common ownership.

2.3 Warnings Required: Product Labeling

Commencing on the Effective Date, for all Products other than Reformulated Products, Sunjeen shall provide clear and reasonable warnings that state:

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

Sunjeen may affix this warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale to institutional or individual consumers within the State of California and institutional customers with nationwide distribution. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product(s) the warning applies, so as to minimize the risk of consumer confusion.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Sunjeen shall pay a total of \$12,500 in accordance with this Section. Each penalty payment will be allocated by Wozniak in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty retained by Wozniak

3.1 Initial Civil Penalty

Sunjeen shall pay an initial civil penalty in the amount of \$2,500 on or before the Effective Date in one check made payable as follows: “Paul Wozniak, Client Trust Account. All penalty payments shall be delivered to the addresses listed in Section 3.5.1 below.

3.2 Final Civil Penalty

Sunjeen shall pay a final civil penalty of \$10,000 on or before June 30, 2015. The final civil penalty shall be waived in its entirety if an officer of Sunjeen provides Wozniak with written certification that Sunjeen has met and continues to meet the Reformulation Standard specified in Section 2.1 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in State of California as of the Effective Date and continuing into the future are Reformulated Products. Wozniak must receive any such certification on or before June 15, 2015; time is of the essence.

Unless waived in its entirety, Sunjeen shall issue a check for the final civil penalty made payable to “Paul Wozniak, Client Trust Account.” In accordance with California Health & Safety Code § 25249.12(c)(1) & (d), Wozniak will remit 75% of the funds to OEHHA and retain 25% of the funds. Sunjeen shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

3.3 Representations

Sunjeen represents that the sales data and other information concerning its Product sales information, knowledge of DEHP, prior reformulation and/or warning efforts, that it provided to

Wozniak in negotiating this Settlement Agreement was truthful to its knowledge at the time of execution of this Settlement Agreement and a material factor upon which Wozniak relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within twelve months of the Effective Date, Wozniak discovers and presents to Sunjeen, competent and admissible evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Sunjeen shall have 30 days to meet and confer regarding Wozniak's contention. Should this 30 day period pass without any such resolution between Wozniak and Sunjeen, Wozniak shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

3.4 Reimbursement of 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 this fee issue to be resolved after the material terms of the agreement had been settled. Wozniak then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on 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 § 1021.5, for all work performed through the mutual execution of this agreement. Sunjeen shall pay Twenty Four Thousand Dollars (\$24,000.00) for fees and costs incurred as a result of investigating, bringing this matter to Sunjeen's attention, and negotiating a settlement in the public interest. Sunjeen shall tender a check payable to "The Chanler Group," on or before the Effective Date.

3.5 Payment Procedures

3.5.1 Issuance of Payments. All payments owed to Wozniak and his attorneys pursuant to Sections 3.1 through 3.4, shall be delivered to the following payment address:

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

4. RELEASE OF ALL CLAIMS

4.1 Wozniak's Release of Sunjeen

This Settlement Agreement is a full, final, and binding resolution between Wozniak and Sunjeen of any violation of Proposition 65 that was or could have been asserted by Wozniak on behalf of herself, his past and current agents, representatives, attorneys, successors and/or assignees, against Sunjeen, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Sunjeen directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers ("Releasees"), based on the alleged failure to warn about potential exposures to DEHP, DBP and BBP contained in the Products sold and/or offered for sale by Sunjeen in the State of California before the Effective Date as set forth in the Notice.

In further consideration of the promises and agreements herein contained, Wozniak on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Sunjeen and Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP, DBP and BBP in the Products sold and/or offered for sale by Sunjeen before the Effective Date.

4.2 Sunjeen's Release of Wozniak

Sunjeen waives any and all claims against Wozniak, 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, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

5. NOTICE AND CURE / MEET AND CONFER

Any Party may, after meeting and conferring, may enforce the terms and conditions contained in this Consent Judgment. Any action to enforce the terms of Sections 2.1 and 2.3 of this Consent Judgment shall first comply with the terms of this Section 5.

5.1 In the event after receipt of Sunjeen's certification pursuant to Section 3.2, Wozniak identifies one or more Products that he believes in good faith are not Reformulated Products, Wozniak may issue a Notice of Violation to enforce Section 2.1. The Notice of Violation shall be served on Sunjeen.

5.2 Any Notice of Violation shall be sent to the person(s) identified in Section 8 to receive notices for Sunjeen and must be served within forty-five (45) days of the date the alleged violation is observed.

5.3 The Sunjeen shall provide to Wozniak within forty-five (45) days written notice whether it elects to contest the allegations contained in a Notice of Violation ("Notice of Election").

5.4 If a Notice of Violation is contested, the Notice of Election shall include all then-available documentary evidence regarding the alleged violation, including all test data, if any. Any Party may file a motion or application pursuant to Section 5.1 above should the contested Notice of Violation not be resolved through the meet and confer process.

If a Notice of Violation is not contested, the Notice of Election delivered by Sunjeen shall include a detailed description of the corrective action that Sunjeen has taken or proposes to undertake to address the alleged violation with respect to the Product. Any such corrective action shall, at a minimum, provide reasonable assurance that the Product will no longer be offered by Sunjeen for sale in California and such corrective action shall be initiated within thirty (30) days after serving its Notice of Election. In addition to the corrective action, Sunjeen shall reimburse Wozniak for his attorneys' fees and costs in the amount of \$10,000 unless Sunjeen, prior to receiving and accepting for distribution or sale the Product identified in the Notice of Violation, obtained test results demonstrating that all of the Accessible Components in the Product identified

in the Notice of Violation complied with the reformulation standard set forth in Section 2.1 above.

5.5 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in Court for a period of no more than thirty (30) days.

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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products and/or DEHP, then Sunjeen shall provide written notice to Wozniak 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.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Sunjeen:

Sunjeen Choe, President
Sunjeen, Inc.
1340 Manhattan Avenue
Fullerton, CA 92831

With a copy to:

J. T. Wells Blaxter
Blaxter Law, a professional corporation
One Bush Street, Suite 650
San Francisco, California 94104

For Wozniak:

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

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.

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8. COUNTERPARTS; FACSIMILE/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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Wozniak agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

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


AGREED TO:

Date: February 18, 2015

By: 
Paul Wozniak

AGREED TO:

Date: 2/15/15

By: 
Christina Oh, Vice President
Sunjeen, Inc.