

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 Josh@chanler.com
Troy@chanler.com

6 Attorneys for Plaintiff
7 PAUL WOZNIAK

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

12
13 PAUL WOZNIAK,
14 Plaintiff,
15 v.
16 THEXTON MANUFACTURING
COMPANY; and DOES 1-150, inclusive,
17 Defendants.
18

Case No. CIV-1702209
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”)
4 and defendant Thexton Manufacturing Company (“Thexton”), with Wozniak and Thexton each
5 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 Thexton 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 Thexton manufactures, imports, sells and/or distributes for sale in
16 California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without
17 providing the health hazard warning that Wozniak alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are circuit testers with vinyl/PVC cords and
20 clamp handle grips including, but not limited to, *Thexton Wirehawk Circuit Tester, Part No. 121,*
21 *TH121, UPC #0 08721 00121 4*, that are manufactured, imported, distributed, sold and/or offered
22 for sale in California by Thexton (“Products”).

23 **1.6 Notice of Violation**

24 On February 23, 2017, Wozniak served Thexton and the requisite public enforcement
25 agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Thexton 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.

1 **1.7 Complaint**

2 On June 19, 2017, Wozniak commenced the instant action, naming Thexton as one of the
3 defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

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

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
21 including any unopposed tentative ruling.

22 **2. INJUNCTIVE SETTLEMENT TERMS**

23 **2.1 Reformulation Standards**

24 "Reformulated Products" are defined as those Products containing DEHP in concentrations
25 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
26 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
27 federal or state government agencies for the purpose of determining DEHP content in a solid
28 substance.

1 **2.2 Reformulation Commitment**

2 As of the Effective Date all Products manufactured, imported, distributed, sold and/or
3 offered for sale in the State of California by Thexton shall be Products that qualify as Reformulated
4 Products as defined in Section 2.1 above or carry the Proposition 65 warnings specified in Section
5 2.3 below.

6 **2.3 Product Warnings**

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


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

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


17 ⚠ **WARNING:** This product can expose you to DEHP, which is known to
18 the State of California to cause cancer and birth defects or
19 other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

20 **(b) Mail Order Catalog and Internet Sales.** In the event that Thexton sells Products
21 via mail order catalog and/or the internet, to customers located in California, after the Effective
22 Date, that are not Reformulated Products, Thexton shall provide warnings for such Products sold
23 via mail order catalog or the internet to California residents. Warnings given in the mail order
24 catalog or on the internet shall identify the *specific* Product to which the warning applies as further
25 specified in Sections 2.3(b)(i) and (ii).
26
27
28

1 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
2 catalog shall be in the same type size or larger than the Product description text within the catalog.
3 The following warning shall be provided on the same page and in the same location as the display
4 and/or description of the Product:

5  **WARNING:** This product can expose you to DEHP, which is known to
6 the State of California to cause cancer and birth defects or
7 other reproductive harm. For more information go to
www.P65Warnings.ca.gov.


8 Where it is impracticable to provide the warning on the same page and in the same location
9 as the display and/or description of the Product, Thexton may utilize a designated symbol to cross
10 reference the applicable warning and shall define the term “designated symbol” with the following
11 language on the inside of the front cover of the catalog or on the same page as any order form for
12 the Product(s):

13  **WARNING:** Certain products identified with this symbol ▼ and offered
14 for sale in this catalog can expose you to DEHP, which is
15 known to the State of California to cause cancer and birth
16 defects or other reproductive harm. For more information
go to www.P65Warnings.ca.gov.


17 The designated symbol must appear on the same page and in close proximity to the display
18 and/or description of the Product. On each page where the designated symbol appears, Thexton
19 must provide a header or footer directing the consumer to the warning language and definition of
20 the designated symbol.

21 (ii) **Internet Website Warning.** A warning shall be given in conjunction with
22 the sale of the Products via the internet, which warning shall appear either: (a) on the same web
23 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
24 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
25 purchaser during the checkout process. The following warning statement shall be used and shall
26 appear in any of the above instances adjacent to or immediately following the display, description,
27
28

1 or price of the Product for which it is given in the same type size or larger than the Product
2 description text:

3  **WARNING:** This product can expose you DEHP, which is known to the
4 State of California to cause cancer and birth defects or
5 other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

6 Alternatively, where it is impracticable to provide the warning on the same page and in the
7 same location as the display and/or description of the Product, Thexton may utilize a designated
8 symbol to cross reference the applicable warning with a “designated symbol” which may appear
9 adjacent to or immediately following the display, description, or price of the Product for which a
10 warning is being given, provided that the following warning statement also appears elsewhere on
11 the same web page, as follows:

12  **WARNING:** Certain products identified with this symbol ▼ and offered
13 for sale in this website can expose you to DEHP, which is
14 known to the State of California to cause cancer and birth
15 defects or other reproductive harm. For more information
go to www.P65Warnings.ca.gov.

16 **2.3 Product Warning Pass Through**

17 Notwithstanding the above, Products that were labeled with the following
18 warning, prior to the Effective Date of this Consent Judgment, are deemed to be in
19 compliance with this agreement.

20 **WARNING:** This product contains one or more chemicals, including lead,
21 known to the State of California to cause cancer and birth defects or other
reproductive harm. *Wash hands after handling.*

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

24 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
25 claims referred to in this Consent Judgment, Thexton shall pay a total of \$3,000 in civil penalties in
26 accordance with this Section. The penalty payment will be allocated in accordance with California
27 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
28

1 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
2 penalty remitted to Wozniak, as follows: Thexton shall, on or before April 30, 2018, issue two
3 checks as follows: (1) to “Paul Wozniak, Client Trust Account” totaling \$750; and (2) to the
4 “Office of Environmental Health Hazard Assessment” totaling \$2,250. Upon receipt, Wozniak and
5 his counsel will then ensure payment to OEHHA. All penalty payments shall be delivered to the
6 address listed in Section 3.3 below.

7 **3.2 Reimbursement of Attorneys’ Fees and Costs**

8 The Parties acknowledge that Wozniak and his counsel offered to resolve this dispute
9 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
10 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
11 the other settlement terms had been finalized, Thexton expressed a desire to resolve Wozniak’s
12 fees and costs. The Parties then negotiated a resolution of the compensation due to Wozniak and
13 his counsel under general contract principles and the private attorney general doctrine codified at
14 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
15 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs
16 on appeal, if any, Thexton shall reimburse Wozniak and his counsel \$24,000. Thexton shall, on
17 or before April 30, 2018, issue a check payable to “The Chanler Group” in the amount of
18 \$15,000, to be held in trust by The Chanler Group until the Effective Date. On or before May
19 30, 2018, Thexton shall issue an additional check to “The Chanler Group” in the amount of
20 \$9,000. All payments under this section shall be delivered to the address listed in Section 3.3
21 below. The reimbursements shall cover all fees and costs incurred by Wozniak investigating,
22 bringing this matter to Thexton’s attention, litigating, and negotiating a settlement of the matter in
23 the public interest.

24 **3.3 Payment Address**

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

27 The Chanler Group
28 Attn: Proposition 65 Controller
2560 Ninth Street

1
2
3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Wozniak's Release of Proposition 65 Claims**

5 Wozniak, acting on his own behalf and in the public interest, releases Thexton and its
6 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
7 and attorneys ("Releasees") and each entity to whom Thexton directly or indirectly distributes or
8 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,
9 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
10 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
11 manufactured, imported, distributed or sold by Thexton prior to the Effective Date, as set forth in
12 the Notice.

13 **4.2 Wozniak's Individual Release of Claims**

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

21
22 **4.3 Thexton's Release of Wozniak**

23 Thexton, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees, hereby waives 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 Thexton agree to support the entry of
5 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 Thexton shall support, appearing at the hearing if so
9 requested. If any third-party objection to the motion is filed, Wozniak and Thexton agree to work
10 together to file a reply and appear at any hearing. This provision is a material component of the
11 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 Thexton
20 may provide Wozniak with written notice of any asserted change in the law, and shall have no
21 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 Thexton
23 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:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To Thexton:

Monica J. Baumann, Esq.
Bruce Nye, Esq.
The Scali Law Firm
980 9th Street,
16th Floor
Sacramento, CA 95814

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.

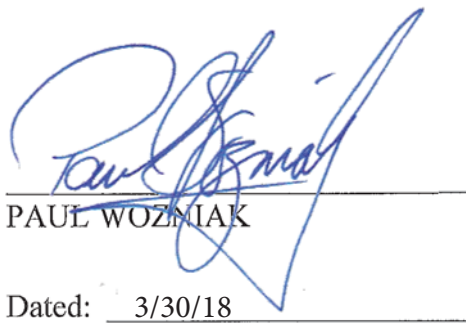
12. AUTHORIZATION

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


AGREED TO:

AGREED TO:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



PAUL WOZNAK
Dated: 3/30/18



THEXTON MANUFACTURING COMPANY
By: BRIAN N. TICHY

(Print Name)
Its: PRESIDENT

(Title)
Dated: 3/28/18