

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 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 PAUL WOZNIAK

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
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15 PAUL WOZNIAK,

16 Plaintiff,

17 v.

18 SAM ASH MUSIC CORPORATION; U.S.
MUSIC CORPORATION; WASHBURN
19 INTERNATIONAL, INC.; *et al.*,

20 Defendants.
21

Case No. CIV1402210

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Paul Wozniak (“Wozniak” or
4 “Plaintiff”) and U.S. Music Corporation (“US Music” or “Defendant”), with Wozniak and US Music
5 each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Plaintiff alleges US Music employs ten or more persons and is a “person in the course of
12 doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Wozniak alleges that US Music manufactures, imports, sells, or distributes for sale in
16 California, vinyl/PVC musical instrument cases containing di(2-ethylhexyl)phthalate (“DEHP”)
17 without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause birth defects or other
19 reproductive harm.

20 **1.5 Product Description**

21 The US Music products that are covered by this Consent Judgment are defined as vinyl/PVC
22 musical instrument cases including, but not limited to, *Washburn Banjo Case, WBC82, #32210*,
23 which are manufactured, imported, distributed, sold and/or offered for sale by US Music in the State
24 of California, hereinafter the “Covered Products.”

25 **1.6 Notice of Violation**

26 On or about February 7, 2014, Wozniak served US Music, others, and certain requisite public
27 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that US Music was in
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1 violation of Proposition 65 for failing to warn its customers and consumers in California that the
2 Covered Products expose users to DEHP.

3 **1.7 Complaint**

4 On June 10, 2014 Wozniak filed the instant action (“Complaint”), naming US Music and
5 others as defendants for the alleged violations of Health and Safety Code section 25249.6 that are the
6 subject of the Notice.

7 **1.8 No Admission**

8 US Music and all others named in the Notice and the Complaint deny the material, factual,
9 and legal allegations contained in the Notice and Complaint, and maintain that all of the products
10 they have sold and distributed for sale in California, including the Covered Products, have been, and
11 are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
12 admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
13 compliance with this Consent Judgment constitute or be construed as an admission of any fact,
14 finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
15 diminish or otherwise affect US Music’s obligations, responsibilities, and duties under this Consent
16 Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over US Music as to the allegations in the Complaint, that venue is proper in the County
20 of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date that the
24 Court enters this Consent Judgment as a judgment of the Court, as contemplated by this Consent
25 Judgment.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” for purposes of this Consent Judgment are defined as Covered
4 Products that contain DEHP in accessible components in concentrations of less than 0.1 percent
5 (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing
6 methodologies 3580A and 8270C or any other methodologies selected by US Music that are utilized
7 by federal or state agencies for the purpose of determining the DEHP content in a solid substance
8 and suitable for the material being tested. “Accessible component” as used in this Consent Judgment
9 means a component of a Covered Product that is likely to be touched by a person during normal and
10 reasonably foreseeable use.

11 **2.2 Product Warnings**

12 Although denying any legal obligation to do so, US Music asserts it began taking reasonable
13 steps shortly after receipt of the Notice to label Covered Products intended for sale in California with
14 language that complies with Title 27, California Code of Regulations, § 25603. Commencing on or
15 before the Effective Date, all Covered Products manufactured, imported or acquired for distribution
16 in California by US Music shall either comply with the Reformulation Standards stated in Section
17 2.1 above or shall be provided by US Music with clear and reasonable warnings as set forth in this
18 Section 2.2 after inventories of product with existing warnings are exhausted. There is no obligation
19 to recall or withdraw any Covered Products from the marketplace, or to take any other remedial
20 action with regard to Covered Products already in retail or wholesale distribution. Each warning
21 shall be prominently placed with such conspicuousness as compared with other words, statements,
22 designs, or devices as to render it likely to be read and understood by an ordinary individual under
23 customary conditions before purchase or use, and shall be provided in a manner reasonably
24 calculated to provide notice to the consumer as to which *specific* Covered Product the warning
25 applies, so as to minimize the risk of consumer confusion, in conformity with OEHHA regulations in
26 effect at the time this Consent Judgment is executed. In each of the warnings stated in this Section
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1 2.2, the word “WARNING” may be preceded by ”PROPOSITION 65” or “CALIFORNIA
2 PROPOSITION 65” at the seller’s option.

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

4 **(i) Product Labeling.** US Music shall affix or cause to be affixed a warning to
5 the packaging, labeling, or directly on each Covered Product that US Music intends to be provided
6 for sale in retail outlets in California that states:

7 WARNING: This product contains DEHP, a chemical
8 known to the State of California to cause cancer,
9 birth defects and other reproductive harm.

10 Or

11 WARNING: This product contains phthalate chemicals
12 known to the State of California to cause cancer,
13 birth defects and other reproductive harm.

14 **(ii) Point-of-Sale Warnings.** As an alternative to subparagraph (i) above, US
15 Music may provide or cause to be provided warning signs in the form below to its retailer customers
16 in California with instructions to post the warnings in close proximity to the point of display of the
17 Covered Products. Such instruction sent to US Music’s customers shall be sent by certified mail,
18 return receipt requested.

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

22 Or

23 WARNING: This product contains phthalate chemicals
24 known to the State of California to cause cancer,
25 birth defects and other reproductive harm.

26 Where more than one Product is sold in proximity to other like items or to those that
27 do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following
28 statement shall be used:¹

¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 WARNING: The following products contain DEHP, a chemical known to
2 the State of California to cause cancer, birth defects and other
3 reproductive harm:

4 *[list products for which warning is required]*

5 Or

6 WARNING: This product contains phthalate chemicals
7 known to the State of California to cause cancer,
8 birth defects and other reproductive harm.

9 *[list products for which warning is required]*

10 **(b) Mail Order Catalog and Internet Sales.** In the event that US Music sells Covered
11 Products that are not Reformulated Products via mail order catalog and/or the internet, to customers
12 located in California, US Music shall provide or cause to be provided warnings for such Covered
13 Products sold via mail order catalog or the internet to California residents. Warnings given in the
14 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies
15 as further specified in Sections 2.2(b)(i) and (ii), and shall be provided in the next mail order catalog
16 printed, and shall be provided on the internet no longer than thirty days after the Effective Date.

17 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
18 catalog intended by US Music to offer products for sale in California shall be in the same type size
19 or larger than the Product description text within the catalog. The following warning shall be
20 provided on the same page and in the same location as the display and/or description of the Product:

21 WARNING: This product contains DEHP, a chemical
22 known to the State of California to cause cancer,
23 birth defects and other reproductive harm. Or

24 Or

25 WARNING: This product contains phthalate chemicals
26 known to the State of California to cause cancer,
27 birth defects and other reproductive harm.

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

1 sale or manufactured for sale in California as of the date of such certification are Reformulated
2 Products as defined by Section 2.1, and that US Music will continue to offer only Reformulated
3 Products in California in the future. The option to certify reformulation in lieu of making the final
4 civil penalty payment required by this Section is a material term and time is of the essence.

5 **3.2 Reimbursement of Fees and Costs**

6 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
8 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
9 other settlement terms had been finalized, US Music expressed a desire to resolve Wozniak's fees
10 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
11 Wozniak and his counsel under general contract principles and the private attorney general doctrine
12 codified at California Code of Civil Procedure section 1021.5 for all work, fees and costs incurred by
13 or on behalf of Wozniak investigating, bringing this matter to the attention of Defendants and public
14 officials, negotiating a settlement in the public interest, obtaining the Court's approval of this
15 Consent Judgment and otherwise incurred (and to be incurred) relative to the Notice, this action and
16 this Consent Judgment but not including any fees or costs that may be incurred by Wozniak and his
17 counsel on appeal, if any, or in enforcement of the terms of this Consent Judgment. US Music shall,
18 no more than five calendar days after mutual execution of this Consent Judgment by the parties,
19 issue a check payable to "Duane Morris, LLP" in the amount of fees and costs of \$33,500 to be held
20 in trust by Duane Morris, LLP for The Chanler Group. Duane Morris, LLP shall provide The
21 Chanler Group with written confirmation within five days of receipt that the funds have been
22 deposited in a trust account. Within one week of the Effective Date of this Consent Judgment, Duane
23 Morris, LLP shall issue a check payable to "The Chanler Group" to the address found in Section
24 3.3.1 below.

25 **3.3 Payment Procedures**

26 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
27 this Consent Judgment are to be delivered within five days of the mutual execution of this Consent
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1 Judgment to Duane Morris, LLP, and released within five days of the Effective Date according to
2 the following subsections.

3 **3.3.1 Payment Addresses**

4 (a) All payments and tax documentation for Wozniak and his counsel shall be
5 delivered to:

6 The Chanler Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710

11 (b) All payments and tax documentation for OEHHA shall be delivered to
12 OEHHA (Checks with memo line “Prop 65 Penalties”) at one of the following addresses, as
13 appropriate:

14 For United States Postal Service Delivery:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 P.O. Box 4010
19 Sacramento, CA 95812-4010

20 For Non-United States Postal Service Delivery or Courier:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95812-4010

26 **3.3.2 Proof of Payment to OEHHA**

27 US Music shall provide Wozniak’s counsel with a copy of the checks sent to OEHHA
28 enclosed with the payments to Wozniak and his counsel sent to the address in Section 3.3.1(a).

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak’s Public Release of Proposition 65 Claims

Wozniak, acting on his own behalf and in the public interest, releases US Music, each person or entity named in the Notice or as a defendant in this action, each of their parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,

1 shareholders and attorneys, and each of their predecessors in interest and successors in interest
2 (“Releasees”) and each entity to whom any of them directly or indirectly distributes or sells the
3 Covered Products, including but not limited to their downstream distributors, wholesalers,
4 customers, retailers, franchisers, cooperative members, licensors, and licensees, and each of their
5 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
6 shareholders and attorneys, and each of their predecessors in interest and successors in interest
7 (“Downstream Releasees”) for any and all actual or alleged violations arising under Proposition 65
8 for unwarned exposures to DEHP from Covered Products manufactured, imported, acquired for
9 distribution, distributed or sold, either directly or indirectly, by or on behalf of US Music prior to
10 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
11 constitutes compliance with Proposition 65 with respect to DEHP in Covered Products.

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 to US Music, Releasees, and Downstream Releasees which shall be effective as a full and
15 final 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, arising out of alleged or actual
18 exposures to DEHP from Covered Products manufactured, imported, acquired for distribution,
19 distributed or sold, either directly or indirectly, by or on behalf of US Music before the Effective
20 Date.

21 **4.3 US Music’s Release of Wozniak**

22 US Music, on its own behalf, and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims against Wozniak and his
24 attorneys and other representatives, for any and all actions taken or statements made by Wozniak
25 and his attorneys and other representatives, whether in the course of investigating claims, otherwise
26 seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

1 **4.4 Dismissal of Other Defendants**

2 No later than five days after the Court approves this Consent Judgment Wozniak shall file a
3 Request for Dismissal of this action without prejudice as to all defendants except US Music,
4 including but not limited to Sam Ash Music Corporation, Washburn International, Inc. and all DOE
5 defendants.

6 **4.5 No Other Known Claims or Violations**

7 Wozniak and Wozniak’s counsel affirm that they are not presently aware of any actual or
8 alleged violations of Proposition 65 by US Music any or its affiliated companies other than those
9 that are fully resolved by this Consent Judgment. This Paragraph does not, however, provide a
10 release for any unknown, actual or alleged violations involving other substances and/or product
11 categories, if any, nor does it limit or expand the scope of the release provided by Paragraphs 4.1 and
12 4.2 for Covered Products.

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and shall
15 be null and void if, for any reason, it is not approved and entered by the Court within one year after
16 it has been fully executed by the Parties. If this Consent Judgment is not approved by the Court, (a)
17 this Consent Judgment and any and all prior agreements between the Parties merged herein shall
18 terminate and become null and void, and the action shall revert to the status that existed on the
19 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof,
20 or of the negotiation, documentation, or other part or aspect of the Parties’ settlement discussions,
21 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this
22 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether
23 to modify the terms of the Consent Judgment and to resubmit it for approval.

24 **6. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or
27 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
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1 US Music may provide written notice to Wozniak of any asserted change in the law, and shall have
2 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
3 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
4 US Music from any obligation to comply with any pertinent state or federal toxics control laws.

5 **7. NOTICE**

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

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10 For US Music:

11 Barry Ryan, President
12 U.S. Music Corporation
13 1000 Corporate Grove Drive
14 Buffalo Grove, IL 60089

15 with a copy to:

16 Paul S. Rosenlund, Esq.
17 Duane Morris, LLP
18 One Market Plaza, Spear Tower
19 Suite 2200
20 San Francisco, CA 94105-1127

21 For Wozniak:

22 The Chanler Group
23 Attn: Proposition 65 Coordinator
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

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

29 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **9. POST EXECUTION ACTIVITIES**

2 Wozniak shall comply with the reporting form requirements referenced in Health and Safety
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
5 furtherance of obtaining such approval, Wozniak and US Music agree to mutually employ
6 reasonable best efforts, and that of their counsel, to support the entry of this agreement as judgment,
7 and to obtain judicial approval of their settlement in a timely manner, as stated in this Consent
8 Judgment. For purposes of this Section, “reasonable best efforts” shall include, at a minimum,
9 cooperating with the drafting and filing of the necessary moving papers, and supporting the motion
10 for judicial approval.

11 **10. ENFORCEMENT**

12 Any Party may, by motion, application for an order to show cause, or any other appropriate
13 action before this Court, enforce the terms and conditions contained in this Consent Judgment. A
14 Party may file such a motion, action or application only after that Party first provides 30 days’ notice
15 to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and
16 attempts to resolve such Party’s failure to comply in an open and good faith manner for a period of
17 no less than 30 days, which efforts shall include an open exchange of the evidence pertaining to the
18 claim or alleged violation. Should Plaintiff prevail on any motion, application to show cause, or
19 other available remedy at law to enforce or redress an actual or alleged violation of this Consent
20 Judgment, Plaintiff shall be entitled to his reasonable attorneys’ fees and costs incurred as a result of
21 such motion, application, or other remedy at law. Should US Music prevail on any motion
22 application for an order to show cause or other proceeding, US Music may be awarded its reasonable
23 attorneys’ fees and costs as a result of such motion or application upon a finding by the Court that
24 Plaintiff’s prosecution of the motion or application lacked substantial justification. For the purposes
25 of this Consent Judgment, the term substantial justification shall carry the same meaning as used in
26 the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

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 **AGREED TO:**

AGREED TO:

9
10 Date: December 15, 2014

Date: _____

11
12 By:  _____
13 PAUL WOZNIAK, Plaintiff

By: _____
Barry Ryan, President
U.S. MUSIC CORPORATION

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4 Party, and the entry of a modified consent judgment by the Court.

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8 **AGREED TO:**

AGREED TO:

9
10 Date: _____

Date: December 15, 2014

11
12 By: _____
13 PAUL WOZNIAK, Plaintiff

14 By: Barry Ryan
15 Barry Ryan, President
16 U.S. MUSIC CORPORATION
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