

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Confidential Settlement Agreement and Mutual Release ("Settlement Agreement") is entered into by, between and among Dr Pepper/Seven Up, Inc. ("DPSU"), Whitney R. Leeman, Ph.D. ("Leeman"), Russell Brimer, ("Brimer"), and Hirst & Chanler LLP ("H&C"), Leeman's and Brimer's counsel of record. DPSU, Leeman, Brimer, and H&C are collectively referred to as "the Parties."

RECITALS

1. On September 25, 2005, Leeman through her counsel issued two sixty-day notices alleging violations of California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65") to DPSU for its sale of glass-bottled soda containing lead in the exterior decorations.

2. On September 25, 2005, Brimer through his counsel issued a sixty-day notice alleging violations of Proposition 65 to Fuddrucker's, Inc. and King Cannon, Inc. for their sale of glass-bottled soda containing lead in the exterior decorations.

3. The California Attorney General's Office and the Los Angeles City Attorney's Office ("Public Prosecutors") exercised their primary standing to prosecute the violations alleged in Leeman's notices by filing a complaint entitled *People v. Dr Pepper/Seven Up, Inc. et al.*, Los Angeles Superior Court Case No. BC363378 on December 14, 2006, alleging violations of Proposition 65 based, in part, on the allegations raised in Leeman's sixty-day notices.

4. The Public Prosecutors and DPSU finalized a Consent Judgment dated January 17, 2007, which resolved DPSU's liability for its alleged violations of Proposition 65. A true and correct copy of the Consent Judgment is attached hereto as Exhibit A.

5. The Consent Judgment provides, among other things, that DPSU abide by certain terms of injunctive relief with regard to future sales in California of certain glass-bottled sodas and that DPSU pay certain statutory civil fines and other payments allowed under California law. The Consent Judgment was approved by the Court on March 23, 2007.

6. Leeman and Brimer are not parties to *People v. Dr Pepper/Seven Up, Inc. et al.*, Los Angeles Superior Court Case No. BC363378. This Settlement Agreement does not resolve any alleged violation of Proposition 65. The alleged violations of Proposition 65 were exclusively and diligently prosecuted by the Public Prosecutors and fully resolved by the Consent Judgment.

7. Leeman and H&C contend that they undertook significant efforts to investigate and document exposures lead and cadmium on DPSU's glass-bottled sodas and assisted the Public Prosecutors throughout the enforcement process.

8. The Consent Judgment awards Leeman \$20,000 towards her personal consulting time and costs incurred assisting the Public Prosecutors with their Proposition 65 action.

9. Section 6.6 of the Consent Judgment states: "Plaintiffs contend that Dr. Leeman is entitled to an award of attorneys' fees and costs but the amount of that award has not been determined." Section 6.6 of the Consent Judgment acknowledges Leeman's intent to file a California Code of Civil Procedure § 1021.5 motion for fees.

10. The Parties seek to avoid the cost, delay and uncertainty associated with a California Code of Civil Procedure § 1021.5 fee application, as well as the unnecessary use of the Court's resources adjudicating a motion for fee and costs, where the alleged violations of Proposition 65 have been resolved in the public interest.

11. The Parties have now agreed to resolve all pending disputes between them by this Settlement Agreement.

12. This Settlement Agreement is the result of good-faith negotiations and compromise. The Parties enter into this Settlement Agreement recognizing that nothing in this Settlement Agreement is intended to or will constitute an admission by any of the Parties as to its liability to any other party.

AGREEMENT

The Parties agree as follows:

13. **Settlement Amount:** DPSU shall, within five (5) business days of the execution of this Settlement Agreement by the final signatory hereto, or within five (5) business days of the Court's approval of the Consent Judgment in the matter of *People v. Dr. Pepper/Seven Up, Inc. et al.*, Los Angeles Superior Court Case No. BC363378, whichever occurs later, pay a total of \$410,000 ("Payment") by wire transfer of funds to H&C.

14. **Full and Final Resolution of Claims:** DPSU shall have no additional responsibility to H&C, Leeman, and Brimer pursuant to California Code of Civil Procedure § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred by H&C in connection with the allegations set forth in Leeman's notices of violation issued to DPSU, Brimer's notice of violation issued to Fuddrucker's, Inc. or the matter of *People v. Dr Pepper/Seven Up, Inc. et al.*, Los Angeles Superior Court Case No. BC363378.

15. **Best Efforts:** Each party to this Settlement Agreement shall use its best efforts to support and defend this Settlement Agreement if challenged by any third party.

16. **Mutual Release and Discharge:** Upon full receipt of the Payment set forth in Paragraph 13, above, DPSU, on the one hand, and H&C, Leeman, and Brimer, on the other hand, on behalf of and for themselves and their subsidiaries, parents, affiliates, divisions, employees, officers, directors, shareholders, partners, owners, heirs, executors, successors and assigns, hereby fully and unconditionally release, acquit and forever discharge the other, and each other's predecessors and successors in interest, heirs, assigns, past, present, and future officers, directors, shareholders, agents, employees, parent and subsidiary organizations, affiliates, divisions, and partners of and from, and do hereby relinquish, any and all past and present, claims, demands, obligations, or causes of action for compensatory, general or punitive damages, attorneys' fees, costs, losses, expenses, and compensation, whether based on tort, contract, statutory or other theories of recovery, which either has or which may later accrue to or be acquired by either against the other arising from the allegations set forth in Leeman's sixty-day notices to DPSU, Brimer's sixty-day notice to Fuddrucker's, Inc., and the matter of *People v. Dr Pepper/Seven Up, Inc. et al.*, Los Angeles Superior Court Case No. BC363378. The Parties each represent and warrant to the other that each has not heretofore assigned or transferred, or purported to assign or transfer, any claim, demand, debt, liability, or cause of action herein released.

17. **Covenant Not to Sue:** The Parties covenant and agree that with regard to those matters that the Parties have released as described above in Paragraph 16, the Parties will not ever institute a lawsuit, appeal or administrative proceeding, nor will they assert any claim of any nature against any person or entity hereby released with regard to any such matters which have been released.

18. **General Provisions**

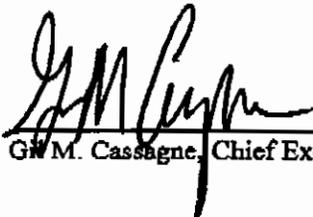
- a. **Integration:** The Parties declare and represent that no promise, inducement or other agreement has been made conferring any benefit upon any party except those contained herein. The Parties further declare and represent that the Settlement Agreement contains the entire agreement pertaining to the subject matter thereof, and that the Settlement Agreement supersedes any prior or contemporaneous negotiations, representations, agreements, and understandings of the Parties with respect to such matters, whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or among the Parties to any term or condition contrary to or in addition to the terms and conditions contained in the Agreement. The Parties acknowledge that each has not relied on any promise, representation or warranty, expressed or implied, not contained in this Settlement Agreement.
- b. **Challenges:** The Parties agree that they will not seek to challenge or to have determined invalid, void or unenforceable any provision of this Settlement Agreement or the Settlement Agreement itself. The Parties understand that this Settlement Agreement contains the relinquishment of

legal rights and each has, as each has deemed appropriate, sought the advice of legal counsel, which each of the Parties has encouraged the other to seek. Further, the Parties have not reposed such trust or confidence in the other party so as to create a fiduciary, agency or confidential relationship.

- c. Choice of Law: This Settlement Agreement is made under and will in all respects be interpreted, enforced and governed by the laws of the State of California without regard to rules regarding conflicts or choice of law.
- d. Amendment: This Settlement Agreement cannot be altered, amended or modified in any respect, except by a writing duly executed by all of the Parties.
- e. Construction: The Settlement Agreement has been jointly negotiated and drafted. The language of this Settlement Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties.
- f. Further Assurances: The Parties hereby agree to execute such other documents and to take such other actions as may be necessary to further the purposes and fulfill the terms of this Settlement Agreement.
- g. Counterparts: This Settlement Agreement may be executed in counterparts and has the same force and effect as if all the signatures were obtained in one document.
- h. Authority: Each of the Parties represents and warrants that it has all requisite power, authority and legal right necessary to execute and deliver this Settlement Agreement and to perform and carry out the transactions contemplated by the Settlement Agreement upon the terms and subject to the conditions of this Settlement Agreement. Each of the individuals executing this Settlement Agreement represents that each has been duly authorized to execute this Settlement Agreement. No other or further authorization or approval from any person will be required for the validity or enforceability of the provisions of this Settlement Agreement.

Dated: March 23 2007

DR PEPPER/SEVEN UP, INC.


G. M. Cassagne, Chief Executive Officer

Dated: March , 2007
April 7, 2007

NOTICING PARTY

Whitney R. Leeman
Whitney R. Leeman, Ph.D.

Dated: March 27, 2007

Russell Refner
Russell Refner

Dated: March 27, 2007

HIRST & CHANLER LLP

Clifford A. Chanler
Clifford A. Chanler

APPROVED AS TO FORM AND CONTENT:

Dated: March 27, 2007

ORRICK HERRINGTON & SUTCLIFFE,
LLP

Margaret Crew Toledo
Margaret Crew Toledo

Dated: March 27, 2007

HIRST & CHANLER LLP

Clifford A. Chanler
Clifford A. Chanler