

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”), and Carolina Beverage Corporation (“Carolina Beverage”) as of April 20, 2007 (the “Effective Date”). Leeman and Carolina Beverage are collectively referred to herein as “the Parties.” The Parties agree to the following terms and conditions:

WHEREAS:

A. **Noticing Party.** Leeman is an individual residing in Sacramento, California, who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products;

B. **Noticed Party.** Carolina Beverage is a North Carolina corporation that employs ten or more persons and formulates and authorizes for bottling, distribution and sale, glass bottled sodas known as “Cheerwine” and “Diet Cheerwine” (the “Products”);

C. **Notice of Violation.** On January 12, 2007, Leeman served Carolina Beverage, the California Attorney General, and other public enforcement agencies with a document entitled “60-Day Notice of Violation” which provided Carolina Beverage, the California Attorney General and such other public enforcers with notice that Carolina Beverage was in alleged violation of California Health & Safety Code §25249.6 (“Proposition 65”) by virtue of allegedly failing to warn purchasers that colored artwork or designs on the exterior of the Products offered for sale in California contained and exposed users to lead (the “Listed Chemical”); and

D. **No Admission.** Nothing in this Agreement shall be construed as an admission by Carolina Beverage of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Carolina Beverage of any fact,

finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Carolina Beverage under this Agreement.

NOW THEREFORE, WHITNEY R. LEEMAN, PH.D., AND CAROLINA BEVERAGE CORPORATION, AGREE AS FOLLOWS:

1. **Injunctive Relief.** Carolina Beverage represents and warrants that it previously has taken steps with regard to the alleged violations set forth in the 60-Day Notice of Violation by requiring those that bottle and/or distribute the Products (“Customers”) in California to address the specifications for the Listed Chemical set forth in section 1.2.1 below, and by informing such Customers that the sale in California of any inventory of previously bottled Products which do not meet such specifications is not authorized.¹ Products bottled in glass containers satisfying all conditions set forth in section 1.2 below qualify as “Reformulated Products,” and need not contain a Proposition 65 warning. Pursuant to section 2.1 Carolina Beverage shall, within thirty (30) days of the Effective Date, require all of its Customers that bottle and/or distribute the Products in the United States to address all the specifications set forth in section 1.2 below and shall inform such Customers that the sale in United States of any inventory of previously bottled Products which do not qualify as Reformulated Products is strictly unauthorized. Carolina Beverage shall also, within thirty (30) days of the Effective Date, provide written notification to Real Sodas and Galco's Soda Pop Stop, Inc. (“Galco’s”) that Products not meeting the specifications set forth in section 1.2 below can be exchanged for

¹ Carolina Beverage further represents and warrants that it previously instructed CBI, Inc. to destroy certain Products that J & R Bottling and Distribution, Inc. bottled prior to the adoption of the specifications set forth in section 1.2.1 below because they were otherwise past their expiration date, but understands that these products were subsequently distributed by CBI, Inc. to Real Sodas in Real Bottles, Ltd. (“Real Sodas”) in late June of 2006.

Products that do comply with section 1.2 below at no charge.²

1.1 **Definitions.** The following definitions apply to the Reformulation Standards set forth in section 1.2 below:

(a) “Exterior Decorations” is defined as all colored artwork, designs and/or markings on the exterior surface of the Product.

(b) “Lip and Rim Area” is defined as the exterior top 20 millimeters of a Product, as defined by American Society of Testing and Materials Standard Test Method C927-99.

1.2 **Reformulation Standards.**

1.2.1 Exterior Decorations on The Products. Colored artwork or designs on the exterior of the Products must utilize paints, decals, or other materials containing six-hundredths of one percent (0.06%) lead by weight or less and forty eight one-hundredths of one percent (0.48%) cadmium by weight or less as measured at Carolina Beverage’s option either before or after the material is fired onto (or otherwise) affixed to the glass bottle containing the Product using a sample size of the material in question measuring at least 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than 600 parts per million (“ppm”). For Products with decorations within the Lip and Rim Area, the paints, decals, or other materials shall contain two one-hundredths of one percent (0.02%) lead by weight or less and eight one-hundredths of one percent (0.08%) cadmium by weight or less as measured at Carolina Beverage’s option either before or after the material is fired onto (or otherwise) affixed to the glass bottle containing the Product using a sample size of the material in question measuring at least 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished

² Carolina Beverage represents and warrants that Real Sodas and Galco’s are the only Customers that it has reason to believe may have Products that do not comply with the requirements set forth in section 1.2 below remaining in their inventories.

from detection) of less than 200 ppm.

1.2.2 Metal Crown Caps. For Products sealed with metal crown caps, the caps utilized must contain two one-hundredths of one percent (0.02%) lead by weight or less and eight one-hundredths of one percent (0.08%) cadmium by weight or less using a sample size of the material in question measuring at least 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than 200 ppm; this requirement shall not apply if the lead and cadmium is embedded or encased in a manner such that it would not be reasonably anticipated that a user of the Product would come into contact with the lead and/or cadmium present in the metal crown caps.

2. **Settlement Payment**. In partial consideration for this Agreement and the release of liability set forth in section 4 below, Carolina Beverage shall pay a total of \$10,000 within ten (10) days of the Effective Date. The payment is to be made payable to “Hirst & Chanler LLP In Trust For Whitney R. Leeman” and delivered to Hirst & Chanler LLP, Attn. Proposition 65 Controller, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California 94710. These monies shall then be apportioned by Leeman’s counsel such that seventy-five percent (75%) of these funds will be remitted by Leeman to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies will be apportioned to Leeman. The \$10,000 settlement payment reflects a \$35,000 reduction which was granted to Carolina Beverage for the following commitments, above and beyond those set forth in section 1.2, as follows:

2.1 Nationwide Reformulation. Carolina Beverage shall require all of its Customers that bottle and/or distribute the Products in the United States (i.e., beyond those in California) to address all the specifications set forth in section 1.2 above and to inform such Customers that the sale in United States of any inventory of previously bottled Products which do

not qualify as Reformulated Products is strictly unauthorized.

2.2 Exchange Program. Carolina Beverage shall provide written notification to each of its Customers that it has reason to believe may have Products that do not comply with section 1.2 above, that such Products can be exchanged at no charge for Products that do comply with section 1.2 above.

3. **Reimbursement Of Fees And Costs.** The Parties acknowledge that Leeman and her 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. Carolina Beverage 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 Leeman's counsel under the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5 and contractual principles of law for all work performed through execution of this Agreement (including in investigation, bringing this matter to Carolina Beverage's attention through the 60-Day Notice of Violation, and negotiating a settlement in the public interest) and its subsequent submission to the California Attorney General's Office by Leeman's counsel. Specifically, within ten (10) days of the Effective Date, Carolina Beverage shall pay \$30,000 for all attorneys' fees, expert and investigation fees incurred by Leeman and her counsel. This payment should be made payable to "Hirst & Chanler LLP" and delivered to Hirst & Chanler LLP, Attn. Proposition 65 Controller, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California 94710. Except as set forth herein, Carolina Beverage shall have no obligation with regard to reimbursement of Leeman or her counsel's attorneys' fees and costs.

4. **Release Of Carolina Beverage Corporation.** In consideration of the promises and agreements contained herein and for the payments to be made pursuant to Sections 2 and 3

above, Leeman, on behalf of herself, her agents, representatives, attorneys, assigns and in the interest of the general public (“Releasing Parties”), waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims (including, without limitation, all actions and causes of action in law or in equity), liabilities, fines, penalties, demands obligations, losses, costs, and expenses against Carolina Beverage and its directors, officers, employees, and corporate successors and assigns (“Releasees”), based on Carolina Beverage’s alleged failure to warn about exposure to the Listed Chemicals contained in any of the Products or their containers. This release shall not extend to bottlers or distributors of the Products (i.e., other than the Releasees as defined above) or to [manufacturers of the glass bottles] containing the Exterior Decorations which are the subject of Leeman’s 60-Day Notice of Violation.

5. **Carolina Beverage’s Release Of Whitney R. Leeman, Ph.D.** Carolina Beverage, by this Agreement, waives all rights to institute any form of legal action against Whitney R. Leeman, Ph.D., and her attorneys or representatives, for any action or statement made by Whitney R. Leeman, Ph.D., or her attorneys or representatives, in the course of seeking enforcement of Proposition 65 against Carolina Beverage with respect to the Products.

6. **Severability.** In the event that any provision of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

7. **Attorney’s Fees.** In the event that a dispute arises with respect to any provision(s) of this Agreement (including, but not limited to, payments to be made under this Agreement), the prevailing party shall be entitled to recover costs and reasonable attorneys’ fees.

8. **Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

9. **Notices.** All correspondence to Leeman shall be mailed to:

Hirst & Chanler LLP
Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

All correspondence to Carolina Beverage shall be mailed to:

Cliff Ritchie
Carolina Beverage Corporation
P.O. Box 697
Salisbury, NC 28145-0697

and

Alan M. Ruley, Esq.
Bell, Davis & Pitt, P.A.
100 N. Cherry Street, Suite 600
Winston-Salem, NC 27101

10. **Notice of Subsequent Violation.** In the event that Leeman and/or her attorneys, agents, or assigns identify an alleged violation of Section 1 of this Agreement for which they believe Carolina Beverage is responsible after the Effective Date, they shall notify Carolina Beverage of such alleged violation in writing via Certified Mail, Return Receipt Requested within sixty (60) days of the date the alleged violation was discovered. The notice shall identify the date that the alleged violation was discovered and the nature of the alleged violation with sufficient detail so as to allow Carolina Beverage to determine the basis of the alleged violation being claimed and the identities of the bottlers and/or distributors of the Products and/or containers involved. After thirty (30) days has passed from the receipt of the notice, Carolina Beverage shall provide Leeman and her counsel with a declaration or affidavit stating the results of its investigation and what corrective efforts it made, if any, to address the alleged violation. Leeman and her counsel shall not seek enforcement against Carolina Beverage or initiate a claim

for breach of this Agreement if such declaration or affidavit is timely provided and provides reasonable explanation of the situation and reasonable assurance that corrective action has been implemented. Carolina Beverage shall only be entitled to the invoke the procedure set forth in this paragraph once with respect to Products bottled more than thirty (30) days after the Effective Date.

11. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

AGREED TO:

AGREED TO:

DATE: _____

DATE: 4/20/07

Noticing Party, Whitney R. Leeman, Ph.D.


Noticed Party, Carolina Beverage Corporation

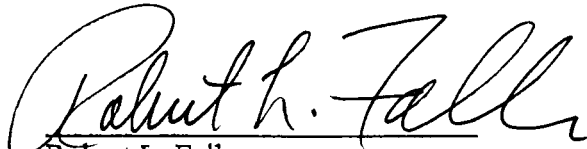
APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: 4-20-07

D. Joshua Voorhees
Hirst & Chanler LLP
Attorneys for Noticing Party
WHITNEY R. LEEMAN, PH.D.


Robert L. Falk
Morrison & Foerster LLP
Attorneys for Noticed Party
CAROLINA BEVERAGE CORPORATION

SETTLEMENT AGREEMENT AND RELEASE

for breach of this Agreement if such declaration or affidavit is timely provided and provides reasonable explanation of the situation and reasonable assurance that corrective action has been implemented. Carolina Beverage shall only be entitled to the invoke the procedure set forth in this paragraph once with respect to Products bottled more than thirty (30) days after the Effective Date.

11. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

AGREED TO:

AGREED TO:

DATE: 4/20/07

DATE: _____



Noticing Party, Whitney R. Leeman, Ph.D.


Noticed Party, Carolina Beverage Corporation

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: 4/20/2007

DATE: _____



D. Joshua Voorhees
Hirst & Chanler LLP
Attorneys for Noticing Party
WHITNEY R. LEEMAN, PH.D.

Robert L. Falk
Morrison & Foerster LLP
Attorneys for Noticed Party
CAROLINA BEVERAGE CORPORATION