

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 Whitney R. Leeman, Ph.D. and Turner Retail, Inc.** This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (hereafter "Leeman") and Turner Retail Company (hereafter "Turner Retail"), with Leeman and Turner Retail collectively referred to as the "parties" and with Leeman and Turner Retail each being a "party."

**1.2 Leeman.** Leeman is an individual residing in 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.

**1.3 Turner Retail.** Turner Retail employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

**1.4 Products.** The products that are covered by this Settlement Agreement are: glass and ceramic mugs intended for the consumption of food or beverages with colored artwork or designs (containing lead) on the exterior, including, but not limited to, *CNN Building Porthole Mug and CN – Multi-Character Mug*. All such products shall be referred to herein as the "Products."

**1.5 General Allegations.** Leeman alleges that Turner Retail has manufactured, imported, distributed and/or offered for use or sale in the State of California Products with colored artwork or designs (containing lead) on the exterior. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.*, also known as Proposition 65, as a

chemical known to the State of California to cause birth defects and other reproductive harm. Lead shall be referred to herein as the "Listed Chemical."

**1.6 Notice of Violation.** On May 4, 2007, Leeman served Turner Retail and various public enforcement agencies with a document, entitled "60-Day Notice of Violation" ("Notice") that provided Turner Retail and the public enforcers with notice that, according to Leeman, Turner Retail was allegedly in violation of California Health & Safety Code §25249.6 for failing to warn individuals that Products it sold in California exposed consumers to lead contained in the exterior decorations on the Products.

**1.7 No Admission.** Turner Retail denies the material factual and legal allegations contained in Leeman's Notice. Turner Retail further denies that it has or had any knowledge that any of the products it has manufactured, imported, distributed, licensed, and/or offered for use or sale contain any chemicals known to the state of California to cause reproductive harm, cancer or birth defects, or failed to include adequate warnings, and maintains that all products, including without limitation the Products, that it has manufactured, imported, distributed, licensed and/or offered for use or sale in California have been and are in compliance with all laws. Nothing in this Settlement Agreement, including, without limitation, any payments made by Turner Retail, shall be construed as an admission by Turner Retail of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Turner Retail of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Turner Retail under this Settlement Agreement.

**1.8 Effective Date.** For purposes of this Settlement Agreement, the "Effective Date" shall be the date that all of the following have occurred: (a) the

Settlement Agreement has been executed by all of the parties thereto; (b) a copy signed by Leeman has been received by Turner Retail; and (c) a form W-9 has been provided to Turner Retail.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

**2.1 Product Warnings.** Within ten (10) days after the Effective Date and continuing unless and until Proposition 65 or applicable implementing regulations are repealed or otherwise amended in a manner that impacts the following obligations, Turner Retail shall not knowingly and intentionally manufacture, import, distribute and/or offer for use or sale in California any Products containing the Listed Chemical unless such Products are (a) sold with a clear and reasonable warning which complies with the provisions of Proposition 65, its implementing regulations including 22 C.C.R. §12601, or, as applicable, the provisions set forth in ¶2.1(a) and (b) below or (b), comply, as applicable, with the reformulation standard set forth in ¶2.3 below, or are otherwise exempt from the warning requirements as set forth in Proposition 65 or its implementing regulations.

Any warning issued for Products pursuant to this Section 2.1 shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Any warning issued pursuant to this Section 2.1 shall be provided in a manner that is reasonably likely to provide notice to a consumer or user regarding the *specific* product to which the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

Section 2.1(a)-(b) describes options for satisfying Turner Retail's warning obligations with regard to Products sold to consumers in California.

(a) **Retail Store Sales.** If the Product is sold at a retail outlet in California, and is subject to Proposition 65, Turner Retail shall comply with the warning requirements set forth in 22 C.C.R. §12601.

(b) **Internet Sales.** Turner Retail shall satisfy its warning obligations for Products that are sold by the Internet to California residents, and is subject to Proposition 65, by arranging for the provision of a warning containing the following language:

**WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

Such language shall be: (i) included on the product detail web page which contains detailed information about a specific Product and gives the user the opportunity to purchase that Product and (ii) on the packing slip or customer invoice specifically identifying the Product in lettering of the same size as the description of the Product. Turner Retail may also comply with the warning requirements, if any, by providing any other internet sales warning methods specifically authorized by Proposition 65 (and/or any amendments thereto), its implementing regulations, or the Amended Stipulation and Order Re: Consent Judgment in Russell Brimer v. The Boelter Companies et al. dated August 10, 2005.

**2.2 Exceptions To Warning Requirements.** The warning requirements set forth in Section 2.1 shall not apply to:

- (i) Any Products shipped before the Effective Date; or
- (ii) Reformulated Products (as defined in Section 2.3 below).

**2.3 Reformulation Standards.** Reformulated Products are defined as follows: (a) any Product with exterior decorations containing less than or equal to six one-hundredths of one percent (0.06%) of lead by weight or less, as measured either before or after the material is fired onto (or otherwise affixed to) the Product using EPA test methodology 3050B.<sup>1</sup> Products with decorations within the lip-and-rim area<sup>2</sup> must *also* contain less than or equal to two one-hundredths of one percent (0.02%) of lead by weight or less using a sample size of the material in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm and (b) Products which meet the Reformulation Standards set forth in the Amended Stipulation and Order Re: Consent Judgment in Russell Brimer v. The Boelter Companies et al. dated August 10, 2005.

**2.4 Reformulation Goal.** Turner Retail seeks to sell only Lead-Free Products. In order to accomplish this and to encourage compliance with the requirements of Proposition 65, Turner Retail has sent and/or will send, within 30 days of the Effective Date, letters to its vendors that provide the Products to Turner Retail, informing them of the requirements of Proposition 65 and (a) asking for a representation that the Products supplied do not contain any Proposition 65 chemicals or, (b) if such Products contain the Listed Chemical, requiring the vendors to comply with Proposition 65's warning requirements.

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<sup>1</sup>If the decoration is tested after it is affixed to the Reformulated Product, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributable to non-decorating material (*e.g.*, the glass substrate).

<sup>2</sup>Lip-and-rim area is defined as the exterior top 20 millimeters of a hollowware food or beverage Reformulated Product.

### **3. MONETARY PAYMENTS**

**3.1** In settlement of all of the claims referred to in this Settlement Agreement against Turner Retail, it shall pay \$1,500 in civil penalties to be apportioned by Leeman in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by Leeman as provided by California Health & Safety Code §25249.12(d). Leeman shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this section and for complying with any applicable tax laws or regulations relating to this payment.

**3.2 Payment Schedule.** The payment set forth in this paragraph shall be made payable to "HIRST & CHANLER LLP in Trust For Whitney R. Leeman, Ph.D." and sent no later than December 26, 2007 via overnight express delivery to Leeman's counsel at the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

### **4. REIMBURSEMENT OF FEES AND COSTS**

**4.1** The parties reached an accord on the compensation due to Leeman and her counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed on this matter. Under the private attorney general doctrine, Turner Retail shall reimburse Leeman and her counsel for fees and costs, incurred as a result of investigating, bringing this alleged matter to Turner Retail's

attention and negotiating a settlement in the public interest. Turner Retail shall pay Leeman and her counsel \$15,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made payable to the "Hirst & Chanler, LLP in Trust for Whitney R. Leeman, Ph.D." and shall be sent to Leeman's counsel no later than December 26, 2007, via express overnight delivery, at the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Except as specifically provided above, Turner Retail shall have no further obligation with regard to reimbursement of Leeman's attorneys' fees and costs with regard to the Products and/or this matter. Leeman shall be responsible for complying with all applicable tax laws and regulations relating to this payment.

## **5. RELEASE OF ALL CLAIMS**

**5.1 Leeman's Release of Turner Retail** In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to sections 3 and 4, Leeman, on behalf of herself, her past and current agents, representatives, attorneys, including, without limitation, Hirst & Chanler, successors and/or assignees ("Releasers"), and in the interest of the general public hereby 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, causes of action, in law or in equity, suits, liabilities, demands, or obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Turner Retail and its past and current distributors,

wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent companies, including, without limitation, Turner Broadcasting System, Inc., corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, insurers, and employees, (collectively, "Turner Retail's Releasees") arising under or derived from Proposition 65, related to any issues that were asserted in the Notice including, without limitation, Turner Retail or Turner Retail's Releasees' manufacture, distribution, licensing, offer for use, sale and/or alleged failure to warn about exposures to or identification of lead contained in the Products manufactured, decorated, imported, licensed, distributed and/or offered for use or sale from the beginning of time through and including 10 days following the Effective Date, by Turner Retail. Releasors, agree that they will not bring any further claims against Turner Retail's Releasees without first complying with section 8, below.

The parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Turner Retail.

Releasors hereby represent and warrant that they have authority to provide the releases contained herein.

**5.2 Turner Retail's Release of Leeman.** Turner Retail waives all rights to institute any form of legal action against Leeman, or her undersigned attorneys, for all actions taken or statements made, prior to December 13, 2007, by Leeman and her attorneys or representatives, in the course of investigating and/or seeking enforcement of the Notice. Releasors agree not to make any public statements regarding the Notice or this Settlement after December 13, 2007.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement or application thereof, other than Section 5.1, are held by a court to be unenforceable, the validity of the enforceable provisions or applications remaining shall not be adversely affected to the extent such remaining provisions can be given effect without the unenforceable provision or application.

**7. 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, amended or is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then Turner Retail and Turner Retail's Releasees shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, those Products are so affected.

**8. RIGHT TO CURE**

**Releasors** (including, without limitation, Hirst & Chanler), shall be prohibited from filing any action or issuing a 60 Day Notice of Violation against any Turner Retail Releasees without first providing written notice of the alleged occurrence of any violation of Proposition 65 after the Effective Date.

In the event that Leeman and/or Releasors find any products being sold by any Turner Retail Releasees in alleged violation of Proposition 65 or the terms of this agreement in the future, they shall notify Turner Retail Releasees in writing as required by section 9 below. Upon receipt of the notification, the relevant Turner Retail Releasee shall have thirty (30) days to cure the alleged violation by either providing a compliant warning for products to be sold after the thirty (30) day period expires, ceasing to sell the

product in California within that period, or providing evidence that the Turner Retail Releasee is in compliance with Proposition 65 or that Proposition 65 is otherwise inapplicable (“Cure”). Within this thirty day period, the Turner Retail Releasee shall notify Leeman and/or her Releasers in writing as required by section 9 below, what measures it has undertaken to Cure the alleged violation. If the Turner Retail Releasee Cures the alleged violation within the 30-day period, then Leeman and/or Releasers shall not bring any Proposition 65 claim against the Turner Retail Releasee with regard to the products which were the subject of the notice and Cure, including, without limitation, any products that were sold without a required warning before the thirty (30) day period expired.

If the Turner Retail Releasee elects to not respond to Leeman’s and/or Releasers’ notice in accordance with the terms of this section, on the thirty-first (31<sup>st</sup>) day following the receipt of the written notice, Leeman and/or Releasers can issue a 60 Day Notice of Violation and commence full proceedings against the Turner Retail Releasees as provided under Proposition 65. All communications pursuant to this provision, including, without limitation, the written notice and any responses by the Turner Retail Releasee, shall be kept strictly confidential unless and until Leeman and/or Releasers are permitted to issue a 60 Day Notice of Violation pursuant to this paragraph.

## **9. NOTICES**

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

<b>To Turner Retail:</b> General Counsel Turner Broadcasting System, Inc. One CNN Center Atlanta, GA 30303	Albert Cohen, Esq. Loeb & Loeb LLP 10100 Santa Monica Boulevard Suite 2200 Los Angeles, CA 90067
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**To Leeman:**

Proposition 65 Coordinator  
 HIRST & CHANLER LLP  
 2560 Ninth Street  
 Parker Plaza, Suite 214  
 Berkeley, CA 94710-2565

**10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

**12. MODIFICATION**

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

**13. 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.

**14. FULLY INTEGRATED AGREEMENT.**

This Settlement Agreement constitutes the entire agreement between the Parties pertaining to the resolution of the issues addressed herein and any and all prior discussions, negotiations, commitments and understandings related thereto, are hereby merged herein and superseded by this Settlement Agreement. No representations, oral or otherwise, express or implied, other than those contained in this Settlement Agreement shall be deemed to exist or bind any of the Parties hereto.

**AGREED TO:**

Date: 12/19/07

By: Whitney R. Leeman  
Whitney R. Leeman, Ph.D.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Turner Retail Company

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

Date: 12/21/07

HIRST & CHANLER, LLP

By: George W. Dowell  
George W. Dowell, Esq.  
Attorneys for WHITNEY R. LEEMAN

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

LOEB & LOEB LLP

By: \_\_\_\_\_  
Albert Cohen, Esq.  
Attorneys for TURNER RETAIL  
COMPANY.

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**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Whitney R. Leeman, Ph.D.

**AGREED TO:**

Date: \_\_\_\_\_

By:   
Turner Retail Company

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

HIRST & CHANLER, LLP

By: \_\_\_\_\_  
George W. Dowell, Esq.  
Attorneys for WHITNEY R. LEEMAN

**APPROVED AS TO FORM:**

Date: 1/9/08

LOEB & LOEB LLP

By:   
Albert Cohen, Esq.  
Attorneys for TURNER RETAIL  
COMPANY.