

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Whitney R. Leeman, Ph.D (hereinafter “Leeman”) and Texas Turkeys, Inc. doing business as Armadillo Willy’s (hereinafter “Armadillos”), with Leeman and Armadillos collectively referred to as the “Parties” and is made with reference to the following:

RECITALS

- A. 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 and industrial products.
- B. Armadillos.** Armadillos is a corporation that employs more than 10 persons. Armadillos manufactures, distributes and/or sells products as defined in Section 1.5, in the State of California, or has done so in the past. All references to the actions, activities and/or omissions of Armadillos in this matter, for the purposes of this Agreement include the actions, activities and/or omissions of licensees of Armadillos, if any.
- C. General Allegations.** Leeman alleges that Armadillos has manufactured, distributed and/or sold in the State of California certain flame-broiled hamburgers, including, but not limited to, the Hickory Cheeseburger and the Texas Burger, containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, which are chemicals listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1996, California Health & Safety Code § 25249.5 *et seq.*, also known as Proposition 65, to cause cancer. Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene shall be referred to herein as the “Listed Chemicals.” Leeman alleges that consumption of these flame-broiled hamburgers would thereby expose consumers of that product to the Listed Chemicals in violation of Proposition 65.

D. Product Descriptions. The products that are covered by this Agreement are defined as follows: flame-broiled hamburgers containing the Listed Chemicals, manufactured, sold and/or distributed by Armadillos or any subsidiary, licensee or successor of Armadillos in California. Such products collectively are referred to herein as the “Products.”

E. Notices of Violation. On January 11, 2008, Leeman served Armadillos and various public enforcement agencies with documents, entitled “60-Day Notice of Violation” (“Notice”), that provided Armadillos and such public enforcers with notice that alleged that Armadillos was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain Products that it sold expose users in California to the Listed Chemicals.

AGREEMENT

Now, therefore, for valuable consideration and in consideration of the mutual promises set forth in this Agreement, Leeman and Armadillos agree as follows:

- 1. No Admission.** Armadillos denies the material, factual and legal allegations contained in or related to the Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Armadillos 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 Armadillos of any fact, finding, conclusion, issue of law or violation of law. However, this action shall not diminish or otherwise affect the obligations, responsibilities and duties of Armadillos under this Agreement.

- 2. Effective Date.** For Purposes of this Agreement, the “Effective Date” shall be that date on which Leeman submits to the Attorney General the reporting form required by California Health and Safety Code section 25249.7(f)(1), which shall not be later than five days after the signing of this Agreement.

3. **Preliminary Statement.** This Agreement applies to all restaurants owned and operated in California by Armadillos or any successor (“Company Restaurants”), now or in the future. After the Effective Date, any Products containing the Listed Chemicals shall not be sold in any Company Restaurants unless such Products are sold in compliance with Section 4.

Any warning issued for Products pursuant to section 4 shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices so as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use.

4. **Warnings.**

(a) Warning Message. Armadillos represents and warrants that prior to the execution of this Agreement it posted warnings in the Company Restaurants covered by this Agreement that satisfy and comply with the provisions of section 3 and this section 4 of this Agreement.

The warning message provided under any of the permitted warning methods in section 4(b) shall conform to one of the following:

WARNING

Chemicals known to the State of California to cause cancer, birth defects or other reproductive harm may be present in foods or beverages sold or served here.

WARNING

Chemicals known to the State of California to cause cancer[,] or birth defects or other reproductive harm[,] may be present in foods or beverages sold or served here.

(b) Warning Methods.

(i) Restaurant Interior. A warning shall be provided in the restaurant through the posting of a sign that meets or substantially complies with the criteria set forth below.

A warning shall be set forth on a sign at least 5-1/2 inches high by 8-1/2 inches wide, with the word "WARNING" centered one-half inch from the top of the sign in ITC Garamond bold condensed type face or a similar font in all capital letters of five-sixths of an inch in size. Three-sixteenths of an inch from the base of the words "warning" shall be a line extending from left to right across the width of the sign at least one-sixteenth of an inch in thickness. Centered one-half inch below the line shall be the body of the warning message set forth in Section 4 in ITC Garamond bold condensed type face or a similar font. For the body of the warning message, left and right margins of at least seven-sixteenths of an inch, and a bottom margin of at least one-half inch shall be observed. Larger signs shall bear substantially the same proportions of type size and spacing to sign dimension as the sign 5-1/2 inches high by 8-1/2 inches wide.

At least one sign must be placed in each Company Restaurant as follows:

- (1) located on a wall in the foyer area next to a door that leads into the restaurant such that the top of the warning is between 48 and 72 inches from the ground; or
- (2) located at any other place that is reasonably likely to be seen and read by customers entering the restaurant to order food and by Armadillos employees during the ordinary course of business; and
- (3) not located at any of the following locations: on an entrance or exit door, on a window, on a restroom door, in a restroom, in a hallway that leads only restrooms, or on a refuse container.

(c) Timing. Leeman acknowledges that the warnings specified in Sections 4(a) and (b) regarding Company Restaurants were posted voluntarily before the execution of this Agreement, but following and as a result of the Notice issued to Armadillos. The warnings required by this paragraph shall remain posted indefinitely, except as may be required or allowed by law.

5. **Compliance Review.** Beginning on the Effective Date and continuing for one year thereafter, Armadillos shall perform a compliance review of its Company Restaurants at least twice during the year during which owns or operates any restaurants in California to determine whether it is in compliance with all of the requirements of Sections 3 and 4 of this Agreement with respect to those restaurants. A compliance review shall be documented and shall note at a minimum, on a per restaurant basis: any deficiencies regarding compliance with Section 4, the date those deficiencies were discovered, and the date by which the deficiencies were corrected. All documentation regarding this compliance review shall be retained by Armadillos for at least one year. Armadillos shall be deemed to be in compliance with Sections 3 and 4 if it corrects any deficiencies noted during the review, or otherwise brought to its attention by any person in writing at any time, within thirty (30) days of such notice.
6. **Scope of Warnings.** Nothing in this Agreement requires that warnings be given for Products sold to consumers outside the State of California.
7. **Monetary Payments.**

(a) Payments Pursuant to Health & Safety Code § 25249.7(b). Pursuant to Health & Safety Code Section 25249.7(b), Armadillos shall pay a total of twelve-thousand dollars (\$12,000.00) within ten (10) days of the Execution Date as civil penalties. This payment shall be made payable to “Hirst & Chanler LLP in Trust For Whitney R. Leeman,” and shall be delivered to Leeman’s counsel at the following address:

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

The \$12,000.00 sum shall be apportioned by Leeman in accordance with 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 monies retained by Leeman a

provided by Health & Safety Code § 25249.12(d). Leeman shall bear all responsibility for apportioning and paying to the State of California the appropriate amounts paid in accordance with this section.

(b) The Parties have agreed on the reasonable attorneys' fees and costs to be paid Leeman pursuant to Health & Safety Code §§ 25249.7(f)(4)(B), and 25249.7(j). Specifically, Armadillos shall pay Leeman and her counsel a total of Twenty-five thousand, three hundred and forty-four dollars and forty-eight cents (\$25,344.48). The payment shall be made payable to Hirst & Chanler LLP and shall be delivered to Leeman's counsel within ten (10) days of the Execution Date, at the address listed in sub-section (a) above.

Except as specifically provided in this Agreement, Armadillos shall have no further obligation with regard to the payment of statutory penalties, the reimbursement of Leeman's attorneys' fees and costs or any other available monetary or equitable relief with regard to the Products covered in this Action.

8. Release of All Claims.

(a) Leeman's Release. In further consideration of the representations, warranties and commitments, monetary and otherwise herein contained, Leeman, on behalf of herself, her past and current agents, representatives, attorneys, successors assignees, or any person or entity who may now or in the future claim through her in a derivative manner, 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, obligations, damages, costs, fines, penalties losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Armadillos and each of its distributors, wholesalers, licensors, licensees, franchisees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent company, corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, representatives, insurers and employees (collectively, "Releasees") arising under Proposition 65 or based on the facts alleged in the

Complaint or based on alleged exposures to any of the Listed Chemicals in the Products at any Company Restaurant or licensee (collectively, "Covered Claims").

It is specifically understood and agreed that the Parties intend that compliance with the terms of this Agreement resolves all issues and liability, now and in the future, concerning a Releasee's compliance with the requirements of Proposition 65 as to the Listed Chemicals in or on the Products.

(b) Armadillos Release. Armadillos waives all rights to institute any form of legal action and releases all claims against Leeman, or her attorneys or representatives, for any or all actions taken or statements made by Leeman or her attorneys or representatives, in the course of seeking enforcement of Proposition 65 in association with this Action.

- 9. Severability.** If, subsequent to court approval of this Agreement, any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.
- 10. Attorneys' Fees.** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing Party shall, except as otherwise provided herein, be entitled to recover reasonable and necessary costs and reasonable attorneys' fees incurred from the resolutions of such dispute.
- 11. Governing Law.** The terms of this 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products or Listed Chemicals specifically, then Armadillos shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, those Products are so affected.
- 12. Notices.** All correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail, return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed below. Either Party, from time to

time, may specify a change of address to which all notices and other communications shall be sent.

For Leeman:

Whitney R. Leeman, Ph.D.
C /o Hirst & Chanler LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

For Armadillos:

Stephen C. Gerrish, Esq.
Thoits, Love, Hershberger & McLean
Two Palo Alto Square, Suite 500
3000 El Camino Real
Palo Alto, CA 04306

13. **Counterparts; Facsimile Signatures.** This 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.
14. **Compliance With Health & Safety Code § 25249.9(f).** Leeman agrees to comply with the reporting requirements of Health & Safety Code § 25249.9(f). Pursuant to regulations promulgated under that section, Leeman shall report this Agreement and provide all other necessary or appropriate information and documentation to the California Attorney General's Office within five (5) days after receiving all of the necessary signatures.
15. **Additional Post-Execution Activities.** The Parties shall cooperate diligently and in good faith to obtain any required federal, state or local agency or court approval of the Agreement. Armadillos shall have no additional responsibility to Leeman counsel pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the submittal of any required documentation to the Attorney General's Office.
16. **Modification.** This Agreement may be modified only by a written agreement of the Parties or an order of a court of competent jurisdiction. Leeman shall serve the Attorney General with notice of any such proposed modification to, or court order concerning this Agreement.

17. **Application of Agreement.** This Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors to assigns of and those in privity-of-interest with, any of them.

18. **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:

Date: _____

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

AGREED TO:

Date: _____

By: _____
Robert Deagen, President
Texas Turkeys, Inc.

APPROVED AS TO FORM:

Date: _____

HIRST & CHANLER LLP

By: _____
David S. Lavine
Attorneys for Whitney R. Leeman

APPROVED AS TO FORM:

Date: _____

**THOITS, LOVE, HERSHBERGER &
McLEAN**

By: _____
Stephen C. Gerrish
Attorneys for Texas Turkeys, Inc.