

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Whitney R. Leeman, Ph.D. and P.C. Woo, Inc., a California corporation dba Megatoys

This Settlement Agreement is entered into by and between private enforcer, Whitney R. Leeman, Ph.D., (“Dr. Leeman”) and noticed parties, P.C. Woo, Inc., a California corporation dba Megatoys (referred to herein as “Megatoys” or “Noticed Party”), with Dr. Leeman and Megatoys referred to as the “Parties” and with Dr. Leeman and Megatoys each being a “Party.”

1.2 Dr. Leeman

Dr. Leeman is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Megatoys

Megatoys employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

Dr. Leeman alleges that Megatoys has manufactured, distributed and sold cosmetics kits containing lead in the State of California without the requisite health hazard warnings. Lead is a substance known to cause birth defects and other reproductive harm and is listed pursuant to Proposition 65. Lead shall be referred to hereinafter as the “Listed Chemical.”

1.5 Product Description

The products that are covered by this Settlement Agreement are defined as follows: cosmetic kits containing a combination of eye shadow and/or lipstick (or lip gloss) containing lead, including but not limited to, *Pretty Miss High Cosmetic Series (#0 13253 89188 2)*. All such products shall be referred to hereinafter as the “Products.”

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1.6 Notice of Violation

On July 10, 2008, Dr. Leeman served Megatoys and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice"). This Notice provided Megatoys and public enforcers with notice that alleged that Megatoys was in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products that Megatoys sold exposed users in California to the Listed Chemical.

1.7 Complaint

Dr. Leeman, acting in the interest of the general public in California, could have filed a complaint in the Superior Court in and for the County of Alameda against Megatoys, alleging violations of California Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the Products sold by Megatoys. However, in order to focus the parties' efforts toward informal resolution of the issues raised in the notice, the parties entered into an agreement which tolls the statute of limitations.

1.8 No Admission

Megatoys denies the material factual and legal allegations contained in Dr. Leeman's Notice and maintains that the Products it sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Megatoys 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 Megatoys of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Megatoys. However, this Section shall not diminish or otherwise affect Megatoys' obligations, responsibilities, and duties under this Settlement Agreement.

1.9 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 15, 2009.

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2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

After the Effective Date, Megatoys shall not sell, ship, or offer to be shipped for sale in California Products containing the Listed Chemical unless such Products are Reformulated Products in compliance with the reformulation standards set forth in Section 2.2 below.

2.2 Reformulation Standards

Reformulated Products are Products that meet the following lead level standards (1) any lipstick (and/or lip liner) in the Product contains less than or equal to 0.35 parts per million (“ppm”) of lead; and (2) any other cosmetic item, including eye shadows, eyeliners and blush, in the Product contain less than or equal to 0.50 ppm of lead.

Megatoys shall use Environmental Protection Agency (“EPA”) testing methodology 6020 or 6010 to determine whether the respective levels have been exceeded in their Products. A modified test method may be used so long as the method is approved under California Code of Regulations, title 27, §25900.

Megatoys hereby commits that all Products it offers for sale in California after May 1, 2009 shall qualify as Reformulated Products as defined in this Section.

2.3 Recall of Past Products

Megatoys hereby agrees to recall all cosmetic kits containing a combination of eye shadow and/or lipstick (or lip gloss) containing lead, but not limited to, *Pretty Miss High Cosmetic Series (#0 13253 89188 2)*, sold in California by sending each of its downstream distributors and retailers a recall notice via certified mail. Each recall notice shall request that each distributor or retailer of Megatoys’ Products return its full inventory of Megatoys’ Products to P.C. Woo, Inc., dba Megatoys, 905 East 2nd Street, Los Angeles, CA 90012 for a full refund payable within 30 days of the date of mailing. Each recall notice shall be mailed within 15 days of the date of execution of this agreement and shall be made available to Dr. Leeman upon written request.

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3. MONETARY PAYMENTS

3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Megatoys shall pay \$4,000 in civil penalties to be apportioned 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 remitted to Dr. Leeman as provided by California Health & Safety Code §25249.12(d). Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$3,000, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for (plaintiff) in the amount of \$1,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$3,000. The second 1099 shall be issued to Dr. Leeman in the amount of \$1,000, whose address and tax identification number shall be furnished, upon request, five (5) calendar days before payment is due. All payments made pursuant to this Section 3.1 shall be sent to the offices of Hirst and Chanler by an overnight service such as FedEx within seven (7) business days of either all parties signing the agreement and Megatoys' receipt of a copy of the agreement signed by Dr. Leeman and her counsel or receipt by Megatoys' counsel of the required tax ID numbers, whichever is later.

3.2 Reimbursement of Fees and Costs

The parties reached an accord on the compensation due to Dr. Leeman and her counsel under the private attorney general doctrine and principles of contract law. The Parties acknowledge that Dr. 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 and cost issue to be resolved after the material terms of the agreement had been settled. Megatoys then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had

been finalized. The Parties then reached an accord on the compensation due to Dr. Leeman and her counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed in reaching and finalizing this Settlement. Under the private attorney general doctrine, Megatoys shall reimburse Dr. Leeman and her counsel for fees and costs incurred as a result of investigating, bringing this matter to Megatoys' attention, and negotiating a settlement in the public interest. Megatoys shall pay Dr. Leeman and her counsel \$24,300.00 for all attorneys' fees, expert and investigation fees, litigation, and related costs. Together with payment, Megatoys shall issue a separate 1099 for fees and cost paid to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710-2565 (EIN: 20-3929984). The payment shall be *sent* to the offices of Hirst & Chanler LLP by an overnight service such as, Federal Express, within seven (7) business days of either all parties signing the agreement and Megatoys' receipt of a copy of the agreement signed by Dr. Leeman and her counsel or receipt by Megatoys' counsel of the required tax ID numbers, whichever is later.

4 RELEASE OF ALL CLAIMS

4.1 Dr. Leeman's Release of Megatoys

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Dr. Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and as an enforcer of the public's interest in Proposition 65 pursuant to California Health & Safety Code § 25249.7(d), 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, and 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 the Noticed Party and each of its downstream customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, insurers and employees, and sister and parent

entities (collectively “releasees”) relating to the Products. This release includes those claims that arise under Proposition 65 and any other applicable California regulations, and/or claims that arise from personal harm, to the extent that such claims relate to the Noticed Parties’ alleged failure to warn about exposures to the Listed Chemical contained in the Products.

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 Megatoys other than Megatoys’ subsidiary trading company, Mega Toys (HK), Ltd.

4.2 Megatoys’ Release of Dr. Leeman

Megatoys waives any and all claims against Dr. Leeman, her attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Dr. Leeman and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products identified in Section 1.5.

4.3 No Transfer of Claims

Dr. Leeman and Megatoys represent and warrant that she and it have not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm or corporation whatsoever any claim, liability, demand, obligation, cost, expense, damage, action or cause of action herein released.

4. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

5. 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then

Megatoys shall provide written notice to Dr. Leeman of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

6. 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 courier on any Party by the other Party at the following addresses:

To Noticed Party:	To Dr. Leeman:
Anthony O. Cormier, Esq. 5850 Canoga Avenue, Suite 400 Woodland Hills, CA 91367	Proposition 65 Coordinator HIRST & CHANLER LLP 2560 Ninth Street, Suite 214 Berkeley, CA 94710-2565

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

7. 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.

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

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

9. MODIFICATION

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

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10. 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.

<p>AGREED TO: Date: <u>4/20/09</u> By: <u>Whitney Leeman</u> WHITNEY R. LEE MAN, Ph.D.</p>	<p>AGREED TO: Date: _____ By: _____ P.C. WOO, INC., a California corporation dba MEGATOYS</p>
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10. **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.

<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ WHITNEY R. LEEMAN, Ph.D.</p>	<p>AGREED TO:</p> <p>Date: <u>4/20/2009</u></p> <p>By: <u>Charles Woo</u> P.C. WOO, INC., a California corporation dba MEGATOYS</p>
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