

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Independent Brewers United Corporation (“Brewery”), with Leeman and Brewery collectively referred to as the “Parties.” 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. Independent Brewers United Corporation 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, Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2. General Allegations

Leeman alleges Brewery has sold in the State of California, without the requisite Proposition 65 warning, flame cooked ground beef burgers containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, which are cancer-causing chemicals listed pursuant to Proposition 65. Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene shall be referred to as the “Listed Chemicals.”

1.3. Product Description

The products covered by this Settlement Agreement are flame cooked ground beef burgers that contain the Listed Chemicals that are sold or offered for sale in California by Brewery, including, but not limited to, *Brewer’s Burger* (collectively, the “Products”).

1.4. Notice of Violation

On or about July 11, 2012, Leeman served Brewery and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that Brewery was in violation of Proposition 65 for failing to warn its customers and consumers in California that the flame cooked ground beef burgers containing the Listed Chemicals sold by Brewery in California

exposed consumers to the Listed Chemicals. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

Brewery denies the material factual and legal allegations contained in the Notice and maintain that all of the products that it sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Brewery of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Brewery of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Brewery. This Section shall not, however, diminish or otherwise affect Brewery's obligations, responsibilities, and duties under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 15, 2013.

2. INJUNCTIVE RELIEF

2.1. Product Warnings

Commencing within 30 calendar days of execution of this agreement and continuing thereafter, Brewery shall, for all Products sold in California, provide the warning message ("Warning") set forth below. Brewery agrees that the Warning will 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 consumption.

The Warning will be displayed on a sign ("Warning Sign") that is at least ten inches by ten inches (10 x 10), with the word "WARNING" centered three-quarters of an inch from the top of the sign in ITC Garamond bold condensed type face all in one-inch capital letters. Three-sixteenths of an inch from the base of the word "WARNING" shall be a line extending from left to right across the width of the sign one-sixteenth of an inch in thickness. Centered one-half inch

below the line shall be the body of the Warning in ITC Garamond bold condensed type face. For the body of the Warning, left and right margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. A Warning Sign will be posted in the immediate vicinity of the hostess station so that it is clearly visible to consumers in each retail establishment owned or operated by Brewery in the State of California where any Product is sold.

The language of the Warning shall consist of the following language:¹

WARNING: Chemicals known to the State of California to cause cancer[and reproductive harm] may be present in the food or beverages sold here. For example, many grilled foods, such as flame cooked beef, contain polycyclic aromatic hydrocarbons (PAHs)[, and many browned foods, like fried potatoes, contain acrylamide] which are formed as a byproduct of grilling[and browning].

2.2. Compliance Review

Brewery agrees that beginning on the date that is thirty (30) days following the Effective date and continuing at least once every six months for two years thereafter, at each establishment owned or operated in the State of California where any Product is sold, Brewery shall perform a compliance review to assess and ensure that it is in compliance with all of the requirements of this Section 2. The compliance review shall be documented in writing, noting with specificity at a minimum: any deficiencies regarding compliance with this Section, 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 Brewery for at least one year from the date produced, and shall be promptly shared with Leeman, upon Leeman's written request. Brewery shall, within fourteen (14) days of the compliance inspection or notification of noncompliance by any other means, correct any deficiencies, including replacing damaged or missing signs.

¹ Brewery may add the bracketed language appearing in the Warning, and language regarding additional chemicals and/or products, only if Brewery has knowledge—based on testing conducted by a U.S.-based laboratory employing methods for detection and analysis of chemicals authorized by state or federal agencies—that chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm are contained in food products it sells, offers for sale, or distributes in California.

3. MONETARY PAYMENTS

3.1. Civil Penalties

In settlement of all the claims referred to in this Settlement Agreement, within thirty (30) days of the Effective Date, Brewery shall pay a penalty of \$26,950. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), in the form of a check issued to “OEHHA,” and the remaining 25% of the penalty remitted to Leeman, in the form of a check made payable to “The Chanler Group in Trust for Whitney R. Leeman.” The penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2. Reimbursement of Fees and Costs

The Parties reached an accord on the compensation due Leeman and her counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, within thirty days of the Effective Date Brewery shall pay \$28,700 for all fees and costs incurred investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. Brewery shall deliver payment in the form of a check payable to “The Chanler Group,” upon execution and delivery of this Agreement at the address provided in Section 3.3.1(a).

3.3. Payment Procedures

3.3.1. Issuance of Payments

(a) All payments owed to Leeman, pursuant to Sections 3.1 and 3.2, shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) All payments owed to OEHHA pursuant to Sections 3.1, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

3.3.2. Proof of Payment

A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

3.3.3. Tax Documentation

Upon each payment required by this Section 3, Brewery shall issue 1099 forms as follows: For each penalty payment to OEHHA, a 1099 shall be issued to the Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486); for each penalty payment to Whitney Leeman, a 1099 shall be issued to “Whitney R. Leeman ,” whose address and tax identification number shall be furnished upon request after this Consent Judgment is fully executed by the Parties; for each payment in reimbursement of fees and costs, Brewery shall issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522).

4. RELEASES

4.1. Leeman’s Release of Brewery

This Settlement Agreement is a full, final, and binding resolution between Leeman and Brewery of any violation of Proposition 65 that was or could have been asserted by Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees against Brewery, its parents, subsidiaries, affiliated entities under common ownership,

directors, officers, employees, attorneys, and each entity to whom the Brewery directly or indirectly distributed or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on its failure to warn about alleged exposures to the Listed Chemicals contained in the Products that were sold and/or offered for sale by Brewery in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and any person or entity who may now or in the future claim through her in a derivative manner, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that Leeman may have, 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, but exclusive of fees and costs on appeal--whether known or unknown, fixed or contingent, against Brewery and Releasees arising under Proposition 65 or based on alleged exposure to the Listed Chemicals in or on the Products sold and/or offered for sale by Brewery before the Effective Date (collectively “Claims”), against Brewery and Releasees.

4.2. Breweries’ Release of Leeman

Breweries on behalf of themselves, their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against Leeman and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against them in this matter, or with respect to the Products.

5. SEVERABILITY

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

6. 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.

7. NOTICES

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

For Independent Brewers United Corporation

Richard Lozyniak, Chief Executive Officer
North American Breweries, Inc.
445 Saint Paul Street
Rochester, NY 14605

For Leeman:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

8. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within 12 months of the execution of this Settlement Agreement, Brewery may send Leeman a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and to seek court approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, in furtherance of obtaining approval of the consent judgment, Leeman and Brewery and their respective counsel agree to mutually employ their best efforts to support the entry of the proposed consent judgment and

12. 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.

AGREED TO:

AGREED TO:

Date: March 7, 2013

Date: _____

By: Whitney R. Leeman
Whitney R. Leeman

By: _____
Richard Lozyniak
Chief Executive Officer
North American Breweries, Inc.
On Behalf of Independent Brewers United
Corporation

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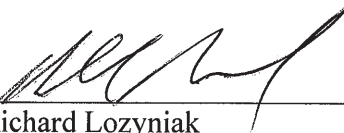
AGREED TO:

AGREED TO:

Date: _____

Date: 3/13/13

By: _____
Whitney R. Leeman

By: 
Richard Lozyniak
Chief Executive Officer
North American Breweries, Inc.
On Behalf of Independent Brewers United
Corporation