

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Hard Rock Café International (USA), Inc. (“Hard Rock Café”), with Leeman and Hard Rock Café 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. Hard Rock Café employs ten or more persons and are persons in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Leeman alleges that Hard Rock Café 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.” Hard Rock Café denies these allegations, and specifically denies that any Proposition 65 warning is required for its flame cooked ground beef products.

### 1.3 Product Description

The products covered by this Settlement Agreement are flame cooked ground beef burgers containing the Listed Chemicals that are manufactured, sold, or distributed for sale in California by the Hard Rock Entities, including, but not limited to, the *The Big Cheese* (collectively “Products”).

#### **1.4 Notice of Violation**

On or about August 16, 2012, Leeman served Hard Rock Café and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that Hard Rock Café was in violation of Proposition 65 for failing to warn its customers and consumers in California that flame cooked ground beef burgers containing the Listed Chemicals sold by Hard Rock Café 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**

Hard Rock Café denies the material factual and legal allegations contained in the Notice and maintains that all of the Products it has manufactured, imported, distributed, and/or sold in California have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Hard Rock Café 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 Hard Rock Café of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Hard Rock Café. This Section shall not, however, diminish or otherwise affect Hard Rock Café’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 February 12, 2013.

### **2. INJUNCTIVE RELIEF**

#### **2.1 Product Warnings**

Commencing within thirty (30) calendar days of execution of this agreement and continuing thereafter, the Hard Rock Entities shall, for all Products sold in California, select from and provide one of the three Warning Messages set forth in subsections 2.1.1 through 2.1.3. Regardless of which warning option is selected, each Warning Message 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 consumption.

The selected Warning Message will be displayed on a sign (“Warning Sign”) that is at least ten inches by ten inches (10 x 10), containing only the Warning Language, with the word “WARNING” centered three-quarters of an inch from the top of the Warning Sign in Times New Roman bold type face, Garamond bold type face, or similar font, in all capital letters that are at least one-inch in height. 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 Message, which shall appear in Times New Roman bold type face, Garamond bold type face, or a similar font, of font size 30 point or larger. For the body of the Warning Message, 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. Larger signs shall bear substantially the same proportions of type size and spacing to sign dimensions as the sign 10 inches high by 10 inches wide.

The Warning Sign will be posted so that it is clearly visible to consumers in each of the following locations if such location exists now or in the future: (1) at each take-away or to-go doorway or window; (2) at the hostess station; and (3) at each counter where food is purchased.

Further, Hard Rock Café agrees that at six (6) month intervals commencing thirty (30) days after the execution of this Agreement, it shall perform a compliance review of each of their restaurants to assess and ensure that each location is in compliance with all of the requirements of this Section 2.2. The compliance review shall be documented in writing, noting with specificity at a minimum: any deficiencies regarding compliance with Section 2.2, 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 the Hard Rock Café for at least one year from the date produced, and shall be promptly shared with Leeman, upon Leeman’s written request. Hard Rock Café shall, within fourteen (14) calendar days of the

compliance inspection or notification of noncompliance by any other means, correct any deficiencies, including replacing damaged or missing Warning Signs and updating the Warning Message to include any new Products or removal of any discontinued or reformulated Product.

The Warning Message shall consist of one of the following:<sup>1</sup>

#### **2.1.1 First Option**

**WARNING:** The foods and beverages listed below contain chemicals known to the State of California to cause cancer [or birth defects and other reproductive harm], including polycyclic aromatic hydrocarbons (PAHs) [may add additional chemicals known to be present].

*[list specific food and beverage products for which warning is required]*

#### **2.1.2 Second Option**

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

#### **2.1.3 Third Option**

**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.

### **3. MONETARY PAYMENTS**

#### **3.1 Civil Penalties**

Payments of all penalties by the Hard Rock Café under this Agreement shall be apportioned in accordance with Health & Safety Code section 25249.12(c)(1) and (d). In each instance, payments equal to 75% of the civil penalty shall be earmarked for the State of

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<sup>1</sup> Hard Rock Café may add the bracketed language appearing in the Warning Message, and language regarding additional chemicals and/or products, only if Hard Rock Café has knowledge—either based on testing conducted by a U.S.-based laboratory employing methods for detection and analysis of chemicals authorized by state or federal agencies, or grounded in facts that are generally accepted by relevant regulatory agencies—that that chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm are present in food products it sells, offers for sale, or distributes in California

California's Office of Environmental Health Hazard Assessment ("OEHHA") made payable to "The Chanler Group in Trust for OEHHA," and the remaining 25% of the penalty monies shall be earmarked for Brimer made payable to "The Chanler Group in Trust for Whitney R. Leeman."

Upon payment of each penalty, Hard Rock Café shall issue two 1099 forms, one to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-0284486) for the civil penalties payable to OEHHA, and a second to Leeman, whose address and tax identification number shall be furnished upon request, for the civil penalties payable to Leeman.

### **3.1.1 Initial Civil Penalty**

On or before the Effective Date Hard Rock Café shall notify Leeman in writing which Warning Method that Hard Rock Café has chosen and pay a penalty as follows: \$10,000 upon election of the First Option (Section 2.1.1); \$17,000 upon election of the Second Option (Section 2.1.2); or \$30,000 upon election of the Third Option (Section 2.1.3).

#### **(a) Second Civil Penalty**

Within ten days of July 1, 2013, Hard Rock Café shall notify Leeman in writing which warning option is in operation and shall pay a penalty as follows: \$5,000 if the First Option is in operation as of that date (Section 2.1.1); \$15,000 if the Second Option is in operation as of that date (Section 2.1.2); or \$60,000 if the Third Option is in operation as of that date (Section 2.1.3).

### **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 section 1021.5 for all work performed in this matter. Under these legal principles, on or before the Effective Date, Hard Rock Café shall pay \$43,000 for all fees and costs incurred investigating, bringing this matter to their attention, and negotiating a settlement in the public interest. Hard Rock Café shall provide their payment in the form of a check payable to "The Chanler Group," issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver

payment upon execution and delivery of this Agreement at the Payment Address provided in Section 3.3.

**3.3 Payment Address**

All payments and tax documentation required by this Section 3 shall be delivered to Leeman's counsel at the following address:

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

**4. RELEASES**

**4.1 Leeman's Release of Hard Rock Café**

This Settlement Agreement is a full, final, and binding resolution between Leeman and Hard Rock Café 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 Hard Rock Café, its parents, subsidiaries, affiliated entities, directors, officers, employees, attorneys, and each entity to whom the Hard Rock Café directly or indirectly distribute or sell the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to the Listed Chemicals contained in the Products that were sold and/or offered for sale by Hard Rock Café 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, 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--limited to and

arising under Proposition 65 with respect to the Listed Chemicals in the Products sold and/or offered for sale by Hard Rock Café before the Effective Date (collectively “claims”), against Hard Rock Café and Releasees.

#### **4.2 Hard Rock Café’s Release of Leeman**

Hard Rock Café on behalf of itself, its 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 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. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve (12) months of the execution of this Settlement Agreement, Hard Rock Café 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 section 25249.7, or as may be otherwise allowed by law. If so requested, in furtherance of obtaining approval of the consent judgment, Leeman and Hard Rock Café and their respective counsel agree to mutually employ their best efforts to support the entry of the proposed consent judgment and obtain approval of the consent judgment by the Court in a timely manner. For purposes of this Section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if Hard Rock Café exercises its right contained in the paragraph above, Hard Rock Café will reimburse Leeman and her counsel for their reasonable fees and costs incurred in drafting and filing the complaint,

converting the Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the consent judgment, in an amount not to exceed \$18,000, exclusive of fees and costs incurred on appeal, if any. Hard Rock Café will remit payment to The Chanler Group, at the Payment Address provided in Section 3.3. Such additional fees shall be paid by Hard Rock Café within thirty (30) calendar days after its receipt of monthly invoices from Leeman's counsel for work performed under this Section.

## **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.

## **8. 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 Hard Rock:

William F. Tarantino  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482

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.

## **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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



**10. POST-EXECUTION ACTIVITIES**

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

**11. MODIFICATION**

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

**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: 2/7/13

Date: 2-6-13

By: Whitney Leeman  
Whitney R. Leeman

By: Jay Wolszczak  
Jay Wolszczak, Vice President and Director  
Hard Rock Café International (USA), Inc.