

SETTLEMENT AGREEMENT

1 INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and The French Gourmet, Inc. (“French Gourmet”), with Leeman and French Gourmet 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. French Gourmet 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Leeman alleges that French Gourmet 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 products, including, but not limited to, the *French Gourmet Burger*, that are sold or offered for sale in California by French Gourmet (collectively “Products”).

1.4 Notice of Violation

On or about August 31, 2012, Leeman served French Gourmet and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”). In the Notice, Leeman alleged that French Gourmet was in violation of Proposition 65 for failing to warn customers, consumers, and employees in California that certain flame cooked ground beef products containing the Listed Chemicals sold by French Gourmet 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

French Gourmet denies the material factual and legal allegations contained in the Notice and maintains that all of the products it has 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 French Gourmet 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 French Gourmet of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by French Gourmet. This Section shall not, however, diminish or otherwise affect French Gourmet's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this agreement, the term "Effective Date" shall mean the date upon which this Settlement Agreement is fully executed by the Parties.

2 INJUNCTIVE RELIEF: WARNINGS

2.1 Warning Language and Method

Commencing within thirty days of the Effective Date and continuing thereafter, French Gourmet shall, for all Products that it sells or offers for sale in California, provide the following Proposition 65 health hazard warning ("Warning"):¹

WARNING: Chemicals known to the State of California to cause cancer [or reproductive harm] are 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].

¹ French Gourmet may add the bracketed language appearing in the Warning, and language regarding additional chemicals and/or products, only if French Gourmet 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, or grounded in facts that are generally accepted by a recognized authoritative body, as that term is defined in Health and Safety Code section 25306(b)—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.

The Warning 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. Specifically, the Warning shall be provided through the posting of a sign that meets or substantially complies with the criteria set forth below.

The Warning 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 included in this Section, 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 thirty 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 ten inches high by ten inches wide.

A Warning Sign must be placed 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) adjacent to each wall menu; and (3) at each counter where food is purchased.

2.2 Compliance Review

Beginning on the date that is thirty days following the Effective Date, and continuing at least once every six months for three years thereafter, French Gourmet shall perform a compliance review, as to each of its restaurants in California selling any Products, to assess and ensure that each location is in compliance with all of the requirements of Section 2.1. The compliance review shall be documented in writing, noting with specificity, at a minimum: any

deficiencies regarding compliance, 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 French Gourmet for at least one year from the date produced, and shall be promptly shared with Leeman, upon Leeman's written request. French Gourmet shall, within fourteen days of the compliance inspection or notification of noncompliance by any other means, correct any deficiencies, including replacing damaged or missing Warning Signs.

2.3 Prohibition against Over-Warning

French Gourmet shall not provide a Proposition 65 health hazard warning for any product it knows, or should know, does not contain at least one chemical listed pursuant to Proposition 65.

3 MONETARY PAYMENTS

3.1 Civil Penalties

In settlement of all the claims referred to in this Settlement Agreement, within thirty days of the Effective Date French Gourmet shall pay a total of \$1,000 in civil penalties, allocated in accordance with California Health & Safety Code section 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." All 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 section 1021.5 for all work performed in this matter. Under these legal principles French Gourmet shall pay \$9,000 for all fees and costs incurred investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. French Gourmet shall deliver payment as follows:

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- a) \$1,000 due within thirty days of the Effective Date;
 - b) \$2,000 due August 1, 2013;
 - c) \$2,000 due September 1, 2013;
 - d) \$2,000 due October 1, 2013; and
 - e) ~~\$2,000 due November 1, 2013.~~
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All payments under this Section shall be made in the form of checks payable to "The Chanler Group," 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 one of the following addresses, as appropriate:

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 3.3.1(a), as proof of payment to OEHHA.

3.3.3 Tax Documentation

Upon each payment required by this Section 3, French Gourmet shall issue separate 1099 forms as follows: For 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 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 Settlement Agreement is fully executed by the Parties; for payment in reimbursement of fees and costs, French Gourmet shall issue a separate 1099 form to "The Chanler Group" (EIN: 94-3171522).

4 RELEASES

4.1 Leeman's Release of French Gourmet

This Settlement Agreement is a full, final, and binding resolution between Leeman and French Gourmet 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 French Gourmet, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom French Gourmet directly or indirectly distributes or sells the Products, including, but not limited to, customers, retailers, franchisees, 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 French Gourmet 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,

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 French Gourmet:

Michel Malecot, President
The French Gourmet
960 Turquoise Street
San Diego, CA 92109

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 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.

9 POST-EXECUTION ACTIVITIES

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

10 CONVERSION TO CONSENT JUDGMENT

After the Effective Date, French Gourmet at its sole option, may send Leeman a written request to draft and file a complaint based on the allegation in the Notice, 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 the court's 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, Leeman and French Gourmet agree to reasonably cooperate and to use their best efforts, and that of their counsel, to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

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 French Gourmet before the Effective Date (collectively "claims"), against French Gourmet and Releasees.

4.2 French Gourmet's Release of Leeman

French Gourmet 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 (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.

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Pursuant to Code of Civil Procedure sections 1021 and 1021.5, French Gourmet will reimburse Leeman and her counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting the terms of the Settlement Agreement pertaining to the Listed Chemicals in the Products 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. French Gourmet will remit payment to The Chanler Group, at the address provided in Section 3.3.1(a). Such additional fees shall be paid by French Gourmet within ten days after its receipt of monthly invoices from Leeman's counsel for work performed under this Section.

11 MODIFICATION

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

12 AUTHORIZATION

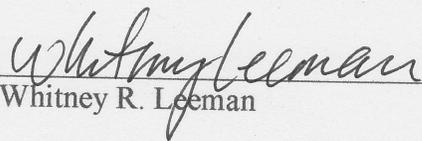
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 6/11/13

Date: _____

By: 
Whitney R. Leeman

By: _____
Michel Malecot
President
The French Gourmet, Inc.

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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 and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

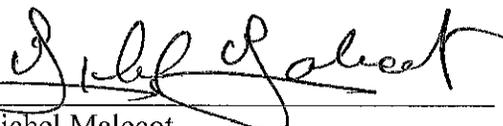
AGREED TO:

AGREED TO:

Date: _____

Date: 6-11-03

By: _____
Whitney R. Leeman

By: 
Michel Malecot
President
The French Gourmet, Inc.