

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Berkeley Bowl Produce, Inc. (“Berkeley Bowl”), with Leeman and Berkeley Bowl 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. Berkeley Bowl employs ten or more persons and is a persons 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 that Berkeley Bowl has sold in the State of California, without the requisite Proposition 65 health hazard warning, flame-cooked ground beef causing an exposure to 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 herein as the “Listed Chemicals” or “PAHs.”

1.3 Product Description

The products covered by this Settlement Agreement are flame-cooked ground beef products, including, but not limited to, the *Classic Burger*, containing the Listed Chemicals, that are manufactured, sold, or distributed for sale in California by Berkeley Bowl (collectively “Products”).

1.4 Notice of Violation

On or about October 26, 2012, Leeman served Berkeley Bowl and various public prosecutors with a “60-Day Notice of Violation” (“Notice”), alleging that Berkeley Bowl was in violation of Proposition 65 for failing to warn its customers and consumers in California that

flame-cooked ground beef containing the Listed Chemicals sold by Berkeley Bowl 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

This Settlement Agreement resolves claims that are denied and disputed by Berkeley Bowl. Berkeley Bowl 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, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Berkeley Bowl 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 Berkeley Bowl of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Berkeley Bowl. This Section shall not, however, diminish or otherwise affect Berkeley Bowl'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 22, 2013.

2. INJUNCTIVE RELIEF

2.1 Product Warnings

Commencing upon execution of this agreement and continuing thereafter, Berkeley Bowl shall, for all Products sold in California, provide the warning ("Warning") set forth in this section, except as provided by Section 2.4.

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. A Warning will be displayed on a sign ("Warning Sign"), of substantially the same presentation

(dimensions, text font and size, and colors) as that attached as Exhibit 1, and 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) adjacent to each wall menu, and (2) at each counter where prepared flame-cooked ground beef products are purchased by customers of Berkeley Bowl.

The language of the Warning shall consist of:

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.

2.2 Prohibition against Over-Warning

Berkeley Bowl 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.

2.3 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, Berkeley Bowl shall perform a compliance review, as to each of its locations in California selling any Products, to assess and ensure that each location 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, 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 Berkeley Bowl for at least one year from the date produced, and shall be promptly shared with Leeman, upon Leeman's written request. Each location of Berkeley Bowl shall, within fourteen days of the compliance review or notification of noncompliance by any other means, correct any deficiencies, including replacing damaged or missing Warning Signs.

2.4 Cooking Modification

Berkeley Bowl agrees to investigate methods of cooking or equipment modifications that may substantially reduce or eliminate the Listed Chemicals from its Products. All documentation regarding methods implemented or modifications made shall be retained by

Berkeley Bowl for at least one year, and shall be promptly shared with Leeman, upon Leeman's written request.

Warnings consistent with Section 2.1 must be posted if consumption of a single serving of one flame-cooked ground beef menu item, of normal size and lipid content for that item, cooked to well done, results in an exposure of equal to or greater than 0.033 µg benz(a)anthracene, 0.06 µg benzo(a)pyrene, or 0.096 µg benzo(b)fluoranthene, in a test performed by a laboratory within the United States which is agreed upon by the parties ("Warning Threshold"). A Warning must be provided if one or more menu items contain PAHs in excess of the Warning Threshold.

3. MONETARY PAYMENTS

3.1 Civil Penalties

In settlement of all the claims referred to in this Settlement Agreement, Berkeley Bowl shall pay a total of \$4,000 in civil penalties. Each 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." All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.1 Initial Civil Penalty

On or before the Effective Date Berkeley Bowl shall pay a penalty of \$2,000. The amount of initial civil penalty due shall be reduced by half (to \$1,000), if Berkeley Bowl certifies in writing, received by Leeman on or before the Effective Date, that it shall, within forty-five (45) days, modify its cooking equipment or method to reduce or eliminate consumer exposure to the Listed Chemicals.

3.1.2 Final Civil Penalty

Within ten days of July 1, 2013, Berkeley Bowl shall pay a second civil penalty of \$2,000. The final civil penalty shall be waived in its entirety upon receipt by Leeman, within ten days of July 1, 2013, of written certification from Berkeley Bowl of (1) compliance with Section 2, and (2) that Berkeley Bowl has modified its cooking methods such that none of its flame-cooked ground beef menu items exceeds the Warning Threshold, as defined in Section 2.4.

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, on or before the Effective Date Berkeley Bowl shall pay \$21,000 in complete and total settlement for all Leeman's fees and costs incurred investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. Berkeley Bowl shall deliver payment, in the form of a check payable to "The Chanler Group," on or before the Effective Date, 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

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(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

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, Berkeley Bowl shall issue separate 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 Settlement Agreement is fully executed by the Parties; for each payment in reimbursement of fees and costs, Berkeley Bowl shall issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522).

4. RELEASES

4.1 Leeman’s Release of Berkeley Bowl

This Settlement Agreement is a full, final, and binding resolution between Leeman and Berkeley Bowl 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 Berkeley Bowl, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Berkeley

Bowl directly or indirectly distributes or sells 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 Berkeley Bowl 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 brought by Berkeley Bowl)--limited to and arising under Proposition 65 or any other laws with respect to the Listed Chemicals in the Products sold and/or offered for sale by Berkeley Bowl before the Effective Date (collectively “claims”), against Berkeley Bowl and Releasees.

4.2 Berkeley Bowl’s Release of Leeman

Berkeley Bowl 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. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Berkeley Bowl 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 Berkeley Bowl 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 §§ 1021 and 1021.5, if Berkeley Bowl exercises its right contained in the paragraph above, Berkeley Bowl 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 \$16,000. Berkeley Bowl will remit payment to The Chanler Group, at address provided in Section 3.3.1(a). Such additional fees shall be paid by Berkeley Bowl 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.

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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 Berkeley Bowl:

Glenn Yasuda
President
Berkeley Bowl Produce, Inc.
2020 Oregon Street
Berkeley, CA 94703

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 § 25249.7(f).

11. MODIFICATION

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

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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: 3/14/13

Date: _____

By: Whitney R. Leeman
Whitney R. Leeman

By: _____
Glenn Yasuda
President
Berkeley Bowl Produce, Inc.

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: _____

Date: 3-19, 2013

By: _____
Whitney R. Leeman

By: Glenn Yasuda
Glenn Yasuda
President
Berkeley Bowl Produce, Inc.

Exhibit 1

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.**