

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and The Homax Group, Inc. (“Homax”), with Leeman and Homax individually referred to as a “Party” and collectively as the “Parties.” Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Homax 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 Homax manufactures, imports, sells, or distributes for sale in the state of California, vinyl/PVC caulking tools that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

1.3 Products Description

The product covered by this Settlement Agreement is a vinyl/PVC caulking tool containing DEHP that was manufactured, sold, or distributed for sale in California by Homax, known as the *Perfect Bead Caulk Finisher Square, Item 2330 (#0 41072 02330 6)*, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about May 31, 2013, Leeman served Homax and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Homax violated Proposition 65 by failing to warn its customers and consumers in California that the Products exposes users to DEHP. 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

Homax denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale 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 Homax 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 Homax of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Homax. This Section shall not, however, diminish or otherwise affect Homax'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 December 10, 2013.

2. INJUNCTIVE RELIEF

2.1 Commitment to Reformulate Products

Commencing on the Effective Date, and continuing thereafter, Homax commits that the Products (as defined herein) that its manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be "Reformulated Products."

2.2 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Homax manufacture for sale or purchase for sale in California, Reformulated Products (as defined herein). For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products (as defined herein) that contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C. Homax may utilize any other testing methodology allowed by state or federal agencies for the purpose of determining DEHP content in a solid substance to determine compliance with this Section.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Homax shall pay a total of \$7,500.00 in civil penalties in accordance with this Section. Each penalty payment will be 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") and the remaining 25% of the penalty remitted to Leeman, as follows:

3.1.1 Initial Civil Penalty

Homax shall pay an initial civil penalty in the amount of \$1,500.00 on or before December 26, 2013. Homax shall issue two separate checks to: (a) "OEHHA" in the amount of \$1,125.00; and (b) "The Chanler Group in Trust for Dr. Whitney R. Leeman" in the amount of \$375.00. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.2 Final Civil Penalty

Homax shall pay a final civil penalty of \$6,000.00 on or before December 31, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than December 31, 2013, an officer of Homax provides Leeman with written certification that, as of the date of such

certification and continuing into the future, Homax has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Homax are Reformulated Products. Leeman must receive any such certification on or before December 31, 2013. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Homax shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$4,500.00; and (b) "The Chanler Group in Trust for Dr. Whitney R. Leeman" in the amount of \$1,500.00.

3.2 Attorney Fees and Costs

The parties acknowledge that 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 issue to be resolved after the material terms of the agreement had been settled. Homax then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. Homax shall pay \$25,500.00 for fees and costs incurred as a result of investigating, bringing this matter to Homax's attention, and negotiating a settlement in the public interest. Homax shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before December 26, 2013, to the address listed in Section 3.3.1 (a) below.

3.3 Payment Procedures

3.3.1 Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Leeman, pursuant to Sections 3.1.1 through 3.1.2, shall be delivered to the following payment address:

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

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

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

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, and on or before December 31, 2013, Homax shall issue separate 1099 forms for each payment to Leeman, whose address and tax identification number will be provided upon request after this Settlement Agreement is fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

4. CLAIMS COVERED AND RELEASED

4.1 Leeman's Release of Homax

This Settlement Agreement is a full, final, and binding resolution between Leeman and Homax of any violation of Proposition 65 that was or could have been asserted by Leeman, on behalf of himself, or on behalf of her past and current agents, representatives, attorneys,

successors, and assignees, against Homax, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Homax directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP contained in Products sold or distributed for sale by Homax in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, on her own behalf and on behalf of 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 he may have against Homax and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwanted exposures to DEHP in Products manufactured, sold, or distributed for sale in California by Homax prior to the Effective Date.

4.2 Homax’s Release of Leeman

Homax, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Homax may request in writing that Leeman draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and 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 requested, Leeman and Homax agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Homax agrees to reimburse Leeman and her counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this Section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Leeman's counsel for work performed under this Section, Homax will remit payment to the address provided in Section 3.3.1(a)

6. SEVERABILITY

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

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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Homax may provide written notice to Leeman of any asserted change in the law, and have no further

obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICES

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

For Homax:

Ross Clawson, President
The Homax Group, Inc.
1835 Barkley Boulevard, Suite 101
Bellingham, WA 98226

With a copy to:

Eric L. Zalud, Esq.
Benesch, Friedlander, Coplan & Aronoff LLP
200 Public Square, Suite 2300
Cleveland, OH 44114-2309

For Leeman: 

The Chanler Group
Attn: Proposition 65 Coordinator
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.

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: 12/2/13

Date: _____

By: Whitney Leeman
Dr. Whitney R. Leeman

By: _____
Ross Clawson, President
The Homax Group, Inc.

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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: 12/20/13

By: _____
Dr. Whitney R. Leeman

By: 
Ross Clawson, President
The Homax Group, Inc.