

SETTLEMENT AGREEMENT

I. INTRODUCTION

1.1 Dr. Whitney R. Leeman and Koch Industries, Inc.

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman ("Leeman") and Koch Industries, Inc. ("Koch"), with Leeman and Koch collectively referred to as the "Parties." Leeman is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Koch employs ten or more persons and is in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

1.2 General Allegations

Leeman alleges that Koch has manufactured, imported, distributed, sold, and/or offered for sale in the State of California coated wire clotheslines containing di (2-ethylhexyl) phthalate ("DEHP"), without the requisite Proposition 65 health hazard warnings. DEHP is known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are in a category of products referred to as coated wire clotheslines, which include, but are not limited to, the *Heavy Duty Vinyl Coated Wire Clothesline, Item Number 5630515 (#7 19961 45238 3)*, manufactured, imported, distributed, shipped, sold and/or offered for sale or shipment by Koch in the State of California, hereinafter "Products."

1.4 Notice of Violation

On May 31, 2013, Leeman served Koch and various public enforcement agencies with a document entitled, "60-Day Notice of Violation" ("Notice"), which provided the recipients with notice of alleged violations regarding the product of California Health &

Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Koch denies the material, factual and legal allegations contained in Leeman's Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered 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 Koch of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Koch of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Koch'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 5, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate Products

Commencing on the Effective Date, and continuing thereafter, Koch commits that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be Reformulated Products per the standards set forth in Paragraph 2.2 herein.

2.2 Reformulation Standards

For purposes of this Settlement Agreement, Reformulated Products comply with the following content limits: DEHP in concentration less than 1,000 parts per million ("ppm") by weight in any Accessible Component (i.e. any component that may be

touched or handled during a reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

3. PAYMENT OF PENALTIES

Pursuant to Health & Safety Code §25249.7(b), Koch shall pay a total of \$10,000.00 in civil penalties under the terms set forth herein.

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, Koch shall pay an initial civil penalty in the amount of \$2,500.00. The civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Dr. Whitney R. Leeman. Koch shall issue two separate checks for the penalty payment: (a) one check made payable to OEHHA in the amount of \$1,875.00 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Dr. Whitney R. Leeman" in the amount of \$625.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Pursuant to Health & Safety Code § 25249.7(b), on April 1, 2014, Koch shall pay a final civil penalty in the amount \$7,500.00. The final civil penalty shall be waived in its entirety, if, on or before March 15, 2014, an officer of Koch certifies to Leeman's counsel, in writing, that all Products sold or offered for sale by Koch in California after December 31, 2013, are Reformulated Products, and that Koch will continue to do so after the date of certification.

Unless waived, the final civil penalty shall be allocated according to Health &

Safety Code § 25249.7(c)(1) and (d), with 75% of the penalty payment earmarked for OEHHA, and the remaining 25% of the penalty earmarked for Leeman. Koch shall issue two separate checks for the final penalty payment: (a) one check made payable to OEHHA in the amount of \$5,625.00 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Dr. Whitney R. Leeman" in the amount of \$1,875.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 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 through 3.2, 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 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
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 Gyurics

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

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

3.3.2 Issuance of 1099 Forms. After each penalty payment, Koch shall issue separate 1099 forms for each payment to, (a) Leeman, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and (b) OEHHA, at the addresses listed for each in Section 3.3.1 above.

4. REIMBURSEMENT OF ATTORNEY'S 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 issue to be resolved after the parties had reached agreement as to the material terms of the agreement. Koch 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 ("CCP") § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Koch shall reimburse Leeman and her counsel \$27,000.00 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement. Koch 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 the Effective Date to the following address:

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

5. **RELEASES**

5.1 **Leeman's Release of Koch**

This Settlement Agreement is a full, final and binding resolution between Leeman and Koch 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, assignees against Koch, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Koch directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by Koch in California prior to 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 DEHP in the Products manufactured, distributed, shipped, sold and/or offered for sale or shipment by Koch prior to the Effective Date (collectively "claims"), against Koch and Releasees.

5.2 Koch's Release of Leeman

Koch on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives 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 it in this matter, or with respect to the Products.

6. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Koch may ask Leeman, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a consent judgment, and seek the court's approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may otherwise be allowed by law. If so requested, Leeman agrees to reasonably cooperate with Koch, and the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Koch will reimburse Leeman and her counsel for their reasonable fees and costs incurred in 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 \$15,000.00, exclusive of fees and costs that may be incurred on appeal. Koch will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Koch within ten days (10) after its receipt of monthly invoices from Leeman and her counsel for work performed under this paragraph.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the

validity of the enforceable provisions remaining shall not be adversely affected.

8. 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, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Koch shall provide written notice to Leeman of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Koch from an obligation to comply with any pertinent state or federal toxic control laws.

9. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

10. NOTICES

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

To Koch:

Paul H. Burleigh
LeClairRyan
725 S. Figueroa Street, Suite 350
Los Angeles, California 90017

To Leeman:

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

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

11. 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. A facsimile or pdf signature shall be as valid as the original.

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Leeman and her attorneys agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

13. MODIFICATION

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

14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 11/25/13

Date: _____

By: Whitney Leeman
Dr. Whitney R. Leeman

By: _____
Jay Tuominen
President
Koch Industries, Inc.

To Koch:

Paul H. Burleigh
LeClairRyan
725 S. Figueroa Street, Suite 350
Los Angeles, California 90017

To Leeman:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
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The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: _____

Date: 12/9/13

By: _____

By: Jay Tuominen

Dr. Whitney R. Leeman

Jay Tuominen
President
Koch Industries, Inc.