

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (the "Settlement Agreement") is entered into by and between Dr. Whitney R. Leeman ("Leeman") and Poolmaster, Inc. ("Poolmaster"), with Leeman and Poolmaster 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. Poolmaster 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, California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65").

1.2 General Allegations

Leeman alleges that Poolmaster manufactures, distributes, sells, and/or offers for sale in California vinyl/PVC long-handled tool grips that cause an exposure to di(2-ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical 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 defined as vinyl/PVC long handled tool grips containing DEHP including, but not limited to, the *Pool Shop Telescopic Pole 8' (#0 85334 61209 9)*, which are manufactured, distributed, sold and/or offered for sale in California by Poolmaster, hereinafter referred to as the "Products."

1.4 Notice of Violation

On or about May 31, 2013, Leeman served Poolmaster and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice"), alleging that Poolmaster was in violation of Proposition 65 for failing to warn its customers in California that the Products exposed users to DEHP. To the best of the Parties' knowledge, no public enforcer

VIA FAX

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 Poolmaster. The Parties enter into this Settlement Agreement pursuant to a full and final settlement of claims related to DEHP in the Products manufactured, imported, distributed, and/or sold before the Effective Date, as defined below, between the Parties for the purpose of avoiding litigation. Poolmaster 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. Poolmaster further maintains that the Products are completely safe for use despite the alleged presence of DEHP. Nothing in this Settlement Agreement shall be construed as an admission by Poolmaster 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 Poolmaster of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Poolmaster. This Section shall not, however, diminish or otherwise affect Poolmaster'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 15, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards and Commitment

Commencing on the Effective Date and continuing thereafter, Poolmaster shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain no more than 1,000 parts per million (0.1%) DEHP in each Accessible Component 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. For purposes of this agreement, "Accessible Components" shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Poolmaster shall pay a total of \$10,000 in civil penalties in accordance with this Section. 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") and the remaining 25% of the penalty remitted to Leeman, as follows:

3.1 Initial Civil Penalty

Poolmaster shall pay an initial civil penalty in the amount of \$3,500 within two days of the Effective Date. Poolmaster shall issue two separate checks to: (a) "OEHHA" in the amount of \$2,625; and (b) "The Chanler Group in Trust for Whitney R. Leeman" in the amount of \$875. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Poolmaster shall pay a final civil penalty of \$6,500 on or before January 15, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than January 1, 2014, an officer of Poolmaster provides Leeman with written certification that, as of the date of such certification and continuing into the future, Poolmaster has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Poolmaster are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. If not waived, Poolmaster shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$4,875; and (b) "The Chanler Group in Trust for Whitney R. Leeman" in the amount of \$1,625.

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 and 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 and 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

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

4. REIMBURSEMENT OF 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. Leeman 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 § 1021.5, for all work performed through the mutual execution of this agreement. Poolmaster shall pay \$28,000 for fees and costs incurred as a result of investigating, bringing this matter to Poolmaster's attention, and negotiating a settlement in the public interest. Poolmaster 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 within two days of the Effective Date, to the address listed in Section 3.3.1 above.

5. RELEASES

5.1 Leeman's Release of Poolmaster

This Settlement Agreement is a full, final and binding resolution between Leeman and Poolmaster, 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 Poolmaster, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Poolmaster directly or indirectly distributes or sells 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 DEHP contained in the Products that were manufactured, distributed, sold, and/or offered for sale by Poolmaster 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 her rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she 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 -- limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Poolmaster before the Effective Date, against Poolmaster and the Releasees.

Leeman further acknowledges that she is familiar with Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Leeman, on behalf of herself, and her past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to any violation of Proposition 65 with respect to the Products manufactured, distributed, or sold by Poolmaster and the Releasees prior to the Effective Date..

5.2 Poolmaster's Release of Leeman

Poolmaster, 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 Leeman's claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

Poolmaster also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,

attorneys' fees, damages, losses, claims, liabilities and demands of Poolmaster of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice.

Poolmaster further acknowledges that it is familiar with Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Poolmaster, on behalf of itself, and its past and current owners, subsidiaries, affiliates, sister and related companies, employees, shareholders, directors, insurers, attorneys, successors, and assigns expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by, the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to any violation of Proposition 65 with respect to the Products manufactured, distributed, or sold by Poolmaster and the Releasees prior to the Effective Date.

6. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Poolmaster may ask Leeman, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Leeman agrees to reasonably cooperate with Poolmaster and to use best efforts and that of her counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Poolmaster will reimburse Leeman and her counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a

proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive of fees and costs incurred on appeal, if any. Poolmaster shall remit payment to The Chanler Group at the payment address provided in Section 3.3.1 above. Such additional fees shall be paid by Poolmaster within ten days after its receipt of monthly invoices from Leeman for work performed under this paragraph.

7. 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.

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 are 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 Poolmaster shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

9. 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:

To Poolmaster:

Leon Tager, President
Poolmaster, Inc.
770 Del Paso Road
Sacramento, CA 95834

To 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.

10. 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.

11. 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.

12. POST-EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7, subdivision (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 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: 12/11/13

Date: 12-10-2013

By: Whitney R. Leeman
Dr. Whitney R. Leeman

By: Leon Tager
Leon Tager, President
Poolmaster, Inc.