

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman, (“Leeman”) and Fastenal Company (“Fastenal”), with Leeman and Fastenal 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. Fastenal 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 Fastenal manufactures, distributes, sells, and/or offers for sale tape measures with vinyl/PVC grips, tools with vinyl/PVC grips, tool bags with vinyl/PVC handles, and vinyl/PVC tape containing 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 tape measures with vinyl/PVC grips that contain DEHP and/or lead including, but not limited to, the *Rock River 25’ Power Grip Return Tape, Part #0254454 (#6 62956 11236 9)*, which were manufactured, distributed, sold and/or offered for sale in California by Fastenal, hereinafter referred to as “Initial Noticed Products.”

In addition to the above, this Settlement Agreement also covers the following products:
(1) *Jonnesway tools with vinyl/PVC grips containing DEHP specifically limited to the Jonnesway 8” Long Nose Pliers with Side Cutter, P068A, #0266249, UPC #4719152 110685 and the Jonnesway Telescoping Inspection Mirror, Item No.: AG010033, Part No.: 0267364,*

UPC #4 719152 907337; (2) tool bags containing DEHP including, but not limited to, the *Rock River 16" Large Mouth Rubber Bottom Tool Bag, Part #0258473, UPC No. 6 62956 12779 0*; and (3) vinyl electrical tape containing DEHP including, but not limited to, the *Power Phase 3/4" x 60 ft. Black Economy Grade Vinyl Electrical Tape, #0747384, UPC No. 6 62956 27287 2*, which were manufactured, distributed, sold and/or offered for sale in California by Fastenal, hereinafter referred to collectively as the "Supplemental Noticed Products." The Initial Noticed Products and the Supplemental Noticed Products are hereinafter referred to collectively as the "Products."

1.4 Notice of Violation

On or about June 10, 2013, Leeman served Fastenal and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Initial Notice"), alleging that Fastenal was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Initial Noticed Products sold by Fastenal exposed users to DEHP.

On or about March 26, 2014, Leeman served Fastenal and various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice"), alleging that Fastenal was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Supplemental Noticed Products sold by Fastenal exposed users to DEHP. The Initial Notice and the Supplemental Notice are hereinafter referred to collectively as the "Notices." To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

Fastenal denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, sold 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 Fastenal 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 Fastenal of any fact,

finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Fastenal. This Section shall not, however, diminish or otherwise affect Fastenal'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 July 1, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

Commencing on the Effective Date and continuing thereafter, Fastenal shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Products that are "Reformulated Products," or Products that comply with the warning requirements set forth below in Section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing components that may be handled, touched or mouthed by a consumer, and which components yield: (1) less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; (2) less than 100 parts per million ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by state or federal agencies for purposes of determining lead content in a solid material; and (3) less than or equal to 1,000 ppm (0.1%) DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for purposes of determining DEHP content in a solid material.

2.2 Product Warnings

The Parties acknowledge and agree that Fastenal already implemented a warning program for all non-Reformulated Products manufactured, imported, distributed, sold, and/or offered for sale by Fastenal in California, which provides as follows:

WARNING: Chemicals known to the State of CA to cause cancer, or birth defects or other reproductive harm are present in this product.

Fastenal shall continue to use said warning on all non-Reformulated Products with a manufactured date of June 1, 2014 or earlier. However, for any non-Reformulated Products with a manufacture date of June 1, 2014 or later that are distributed, sold and/or offered for sale by Fastenal in California, Fastenal shall provide the clear and reasonable warnings set forth in subsections 2.2(a) and (b), as applicable. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. Warnings for the Initial Noticed Products shall include the bracketed warning language.

(a) Retail Store Sales.

(i) Product Labeling. Fastenal shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Fastenal or any person selling the Products, that states:

WARNING: This product contains chemicals, including DEHP [and lead], known to the State of California to cause birth defects and other reproductive harm.

(ii) Point-of-Sale Warnings. Alternatively, Fastenal may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Fastenal's retail outlets in California shall be sent by certified mail, return receipt requested or written confirmation from the retail outlet that the warning sign is posted in close proximity to the point of display of the Product.

WARNING: This product contains chemicals, including DEHP [and lead], known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do

not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain chemicals, including DEHP [and lead], known to the State of California to cause birth defects and other reproductive harm.

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales.

In the event that Fastenal sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Fastenal shall provide warnings for such Products. The warning requirements found in Sections 2.2(b)(i) below shall only apply to mail order catalogs published after the Effective Date (Fastenal's 'Big Blue' Volume 12 or later). Non-Reformulated Products sold via mail order catalogs published before the Effective Date (Fastenal's 'Big Blue' Volume 11 or earlier) to customers located in California, after the Effective Date, shall contain warnings compliant with Section 2.2(a)(i) above. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog published after the Effective Date (Fastenal's 'Big Blue' Volume 12 or later) shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains chemicals, including DEHP [and lead], known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same

¹ For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

location as the display and/or description of the Product, Fastenal may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals, including DEHP [and lead], known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Fastenal must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains chemicals, including DEHP [and lead], known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain chemicals, including DEHP [and lead], known to the State of California to cause birth defects and other reproductive harm.

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

In settlement of all the claims referred to in this Settlement Agreement, Fastenal shall pay a total of \$53,000 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

Fastenal shall pay an initial civil penalty in the amount of \$11,000 on or before the Effective Date. Fastenal shall issue two separate checks to: (a) “OEHHA” in the amount of \$8,250; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$2,750. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Second Civil Penalty

Fastenal shall pay a second civil penalty of \$17,000 on or before the September 15, 2014. The second civil penalty shall be waived in its entirety, however, if, no later than September 1, 2014, an officer of Fastenal provides Leeman with written certification that, as of the date of such certification and continuing into the future, Fastenal has met the reformulation standard specified in Section 2.1 above, such that all Initial Noticed Products manufactured, imported, distributed, sold and offered for sale in California by Fastenal are Reformulated Products. The certification in lieu of a second civil penalty payment provided by this Section is a material term, and time is of the essence. Fastenal shall issue two separate checks for its second civil penalty payments, if any, to: (a) “OEHHA” in the amount of \$12,750; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$4,250.

3.3 Final Civil Penalty

Fastenal shall pay a final civil penalty of \$25,000 on or before the January 15, 2015. The final civil penalty shall be waived in its entirety, however, if, no later than January 1, 2015, an officer of Fastenal provides Leeman with written certification that, as of the date of such certification and continuing into the future, Fastenal has met the reformulation standard specified

in Section 2.1 above, such that all Supplemental Noticed Products manufactured, imported, distributed, sold and offered for sale in California by Fastenal 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. Fastenal shall issue two separate checks for its final civil penalty payments, if any, to: (a) "OEHHA" in the amount of \$18,750; and (b) "Dr. Whitney R. Leeman, Client Trust Account" in the amount of \$6,250.

3.4 Payment Procedures

3.4.1 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, 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 3.4.1(a), as proof of payment to OEHHA.

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. Fastenal shall pay \$36,000 for fees and costs incurred as a result of investigating, bringing this matter to Fastenal's attention, and negotiating a settlement in the public interest. Fastenal shall issue the check payable to "The Chanler Group" and shall deliver payment on or before the Effective Date, to the address listed in Section 3.4.1(a) above.

5. RELEASES

5.1 Leeman's Release of Fastenal

This Settlement Agreement is a full, final and binding resolution between Leeman in her individual capacity and not on behalf of the public, and Fastenal, 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 Fastenal, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fastenal 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 Fastenal in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, in her individual capacity only, on behalf of herself, her past and current agents, representatives,

attorneys, successors, and/or assignees, hereby waives all of 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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP and lead in the Products manufactured, distributed, sold and/or offered for sale by Fastenal before the Effective Date, against Fastenal and Releasees.

5.2 Fastenal's Release of Leeman

Fastenal, 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. 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.

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 Fastenal 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.

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:

To Fastenal:

Leland J. Hein, President
Fastenal Company
2001 Theurer Boulevard
Winoma, MN 55987

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.

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 & Safety Code § 25249.7, subdivision (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: 6/27/14

Date: 7/1/14

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

By: Leland J. Hein
Leland J. Hein, President
Fastenal Company