

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Budge Industries LLC (“Budge”), with Leeman and Budge 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 improve human health by reducing or eliminating hazardous substances contained in consumer products. Plaintiff alleges that Budge 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 Budge has manufactured, distributed, sold and/or offered for sale in the State of California vinyl/PVC-coated car cover cables containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC-coated car cover cables containing DEHP including, but not limited to, the *Multi-Purpose Car Cover Security Kit, CBL-1 (#0 18397 91001 7)*, manufactured, distributed, sold and/or offered for sale in California by Budge, hereinafter referred to as the “Covered Products.”

The additional products covered by this settlement are spare tire covers containing DEHP and lead including, but not limited to, the *Spare Tire Cover, BOO45SAFCS, ST-2 (#0 18397 42062 2)*, manufactured, distributed, sold and/or offered for sale in California by Budge, hereinafter referred to as the “Additional Products.” Lead is listed as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.4 Notice of Violation

On or about June 10, 2013, Leeman served Budge and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that alleged violations of Proposition 65 by Budge for failing to warn its customers and consumers in California that the Covered Products it sold exposed 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

This Settlement Agreement resolves claims that are denied and disputed by Budge. Budge denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Budge of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Budge of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Budge. However, this Section shall not diminish or otherwise affect Budge’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 31, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Budge shall only manufacture, distribute and/or import for sale or use in the State of California “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” shall mean Covered Products and Additional Products which contain less than or equal to 1,000 ppm (0.1%) DEHP in each accessible component when

analyzed pursuant to EPA testing methodologies 3580A and 8270C, and that contain maximum of 100 parts per million (ppm) lead content in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B.

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

In settlement of all the claims referred to in this Settlement Agreement, Budge shall pay a total of \$7,500 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

Budge shall pay an initial civil penalty in the amount of \$2,500 on or before the Effective Date. Budge shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,875; and (b) “Whitney Leeman, Client Trust Account” in the amount of \$625. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Budge shall pay a final civil penalty of \$5,000 on or before August 31, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than August 31, 2014, an officer of Budge provides Leeman with written certification that, as of the date of such certification and continuing into the future, Budge has met the reformulation standard specified in Section 2.1 above, such that all Covered Products and Additional Products manufactured, imported, and distributed, for sale in California by Budge 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.

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, 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

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.

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. Budge shall pay \$20,500 for fees and costs incurred as a result of investigating, bringing this matter to Budge’s attention, and negotiating a settlement in the public interest. Budge shall issue a separate 1099 for fees and costs, shall make the check

payable to “The Chanler Group” and shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1(a) above.

5. CLAIMS COVERED AND RELEASED

5.1 Release

This Settlement Agreement is a full, final and binding resolution between Leeman and Budge, 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 Budge, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Budge directly or indirectly distributes or sells Covered Products and Additional Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products and lead and DEHP contained in Additional Products that were manufactured, distributed, sold and/or offered for sale by Budge in California before the Effective Date. The penalties, reformulation commitment, and attorneys’ fees paid by Budge in connection with this Settlement Agreement are intended to resolve all issues concerning any alleged violations of Proposition 65 concerning DEHP in Covered Products and lead and DEHP contained in Additional Products. Budge’s compliance with this Settlement Agreement shall be deemed compliance with Proposition 65 with respect to any actual or alleged exposures to DEHP and/or lead contained in Covered Products and/or Additional Products.

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 against Budge and the Releasees limited to and arising under Proposition 65

with respect to DEHP in the Covered Products and Additional Products manufactured, distributed, and/or sold by Budge before the Effective Date (collectively “Claims”).

Leeman, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, further provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character or kind, known or unknown, suspected or unsuspected, as such Claims relate to the Covered Products and Additional Products manufactured, distributed and/or sold by Budge prior to the Effective Date. Leeman further acknowledges that she is familiar with Civil Code section 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, her past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Civil Code section 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 the released matters herein.

5.2 Budge’s Release of Leeman

Budge on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Leeman, 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 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products and Additional Products.

Budge further acknowledges that it is familiar with Civil Code section 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.

Budge, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Civil Code section 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 the released matters herein.

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 Covered Products and/or Additional Products, then Budge may 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 Covered Products and/or Additional 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 personally delivered or sent by: (a) first-class, registered or certified mail, return receipt requested; or (b) overnight courier on any party

by the other party at the following addresses:

To Budge:

Charles Simon, President
Budge Industries LLC
1690 Sumneytown Pike, Suite 250
Lansdale, PA 19446

To Leeman:

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

With Copy to:

James Robert Maxwell, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th fl
San Francisco, CA 94104

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.

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

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

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

11. MODIFICATION

This Settlement Agreement may be modified only by 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:

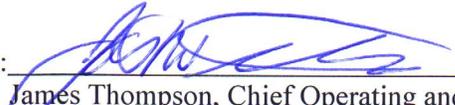
AGREED TO:

Date: _____

Date: 7/25/14 _____

By: _____

Whitney R. Leeman, Ph.D.

By:  _____

James Thompson, Chief Operating and
Chief Financial Officer, Budge Industries LLC

AGREED TO:

Date: 7/30/14

By: Whitney Leeman
Whitney R. Leeman, Ph.D.

AGREED TO:

Date: _____

By: _____
James Thompson, Chief Operating and
Chief Financial Officer, Budge Industries LLC