

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Dr. Whitney R. Leeman and Excel Hobby Blades Corp.

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Dr. Leeman”), and Excel Hobby Blades Corp. (“Excel”), with Dr. Leeman and Excel collectively referred to as the “Parties.” Dr. 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. Excel employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Dr. Leeman alleges that Excel manufactured, imported, distributed, sold and/or offered for sale in the state of California tools with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”). 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 tools with vinyl/PVC grips containing DEHP including, but not limited to, *Excel 6” Needle Nose Pliers, #55561 (#0 98171 55561 0)*, and the *Excel 5” Wire Cutter Pliers, #55580 (#0 98171 55580 1)* manufactured, imported, distributed, sold and/or offered for sale by Excel in the state of California, hereinafter the “Products.”

1.4 Notice of Violation

On June 19, 2013, Dr. Leeman served Excel and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Excel was in violation of California Health & Safety Code § 25249.6 for failing

to warn consumers that its Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public prosecutor has commenced and is diligently prosecuting an action against this violation.

1.5 No Admission

Excel denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed 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 Excel 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 Excel of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Excel under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean September 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products that contain a total DEHP content of less than or equal to 1000 parts per million ("ppm") when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date all Products manufactured, caused to be manufactured, distributed, caused to be distributed, imported and/or caused to be imported for sale in the state of California by Excel shall be Products that qualify as Reformulated Products as defined in

Section 2.1 above or shall be affixed with appropriate warning labels, pursuant to section 2.3 below.

2.3 Product Warnings

2.3.1 Product Labeling

Any warning provided under Section 2.2 above shall be affixed to the packaging, labeling, or directly on each Product. 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. 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. A warning provided pursuant to this Settlement Agreement shall state:

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harms.

2.3.2 Mail Order Catalog and Internet Website Warning

In the event that Excel sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Excel shall provide warnings for such Products sold via mail order catalog or the internet to California residents. 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 2.3.2(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog 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 DEHP, a chemical 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 location as the display and/or description of the Product, Excel 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 DEHP, a chemical 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, Excel 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 DEHP, a chemical 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 DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

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

3.1 Civil Penalty Payments

In settlement of all the claims referred to in this Settlement Agreement, Excel has been assessed civil penalties in the amount of \$7,000. Each civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Dr. Leeman.

3.1.1 Initial Civil Penalty

On or before the Effective Date, Excel, shall make an initial civil penalty payment of \$2,500. Excel shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$625.

3.1.2 Final Civil Penalty

On or before December 15, 2014, Excel shall make a final civil penalty payment of \$4,500. Pursuant to title 11 California Code of Regulations, section 3203(c), Dr. Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later than December 1, 2014, an officer of Excel provides Dr. Leeman with written certification that all of the Products manufactured, caused to be manufactured, distributed, caused to be distributed, imported and/or caused to be imported for sale in California are Reformulated Products as defined by Section 2.1, and that Excel will continue to manufacture, cause to be manufactured, distribute, cause to be distributed, import and/or cause to be imported for sale only Reformulated Products in California in the future. The option to certify reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and with regard to such term, time is of the

essence. In the event that the final civil penalty is not waived, Excel shall provide its payment in two check for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,375; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$1,125.

3.2 Reimbursement of Fees and Costs

The Parties acknowledge that Dr. 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. Dr. 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 Dr. 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 agreement. On or before the Effective Date, Excel shall pay \$18,000 for fees and costs incurred as a result of investigating, bringing this matter to the Excel’s attention, and negotiating a settlement in the public interest.

3.3 Payment Procedures

3.3.1 Payment Addresses

(a) All payments owed to Dr. Leeman and her counsel 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 shall be delivered directly to OEHHA (Checks with memo line “Prop 65 Penalties”) at one of the following addresses, as appropriate:

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 or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.2 Proof of Payment to OEHHA

Excel shall provide Dr. Leeman's counsel with a copy of the checks sent to OEHHA enclosed with the payments to Dr. Leeman and her counsel sent to the address in Section 3.3.1(a).

4. RELEASES

4.1 Dr. Leeman's Release of Excel

This Settlement Agreement is a full, final and binding resolution between Dr. Leeman, in her individual capacity and not on behalf of the public, and Excel, of any violation of Proposition 65 that was or could have been asserted by Dr. Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, against Excel, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Excel 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, imported, distributed, sold and/or offered for sale by Excel in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Dr. Leeman, in her individual capacity only, 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 he 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, sold and/or offered for sale by Excel before the Effective Date (collectively "claims"), against Excel and Releasees.

4.2 Excel's Release of Dr. Leeman

Excel, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Dr. 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 Dr. 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.

5. 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.

6. 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 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 Excel shall provide written notice to Dr. 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 Excel from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICES

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

For Excel Hobby Blades Corp.:

Arthur Porter, Esq.
Fischer, Porter & Thomas, PC
560 Sylvan Avenue
Suite 3061
Englewood Cliffs, NJ 07632

For Dr. 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.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

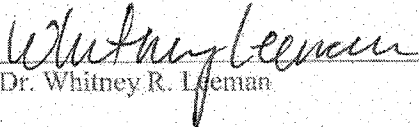
Leeman agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

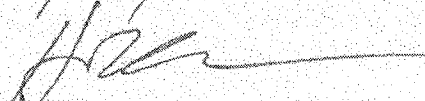
AGREED TO:

Date: 10/8/14

By: 
Dr. Whitney R. Leman

AGREED TO:

Date: 9/12/14

By: 
Gary Hammam, Vice President
Excel Hobby Blades Corp.