

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Dr. Whitney R. Leeman and Hohner, Inc.

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and Hohner, Inc. (“Hohner”), with Leeman and Hohner collectively referred to as the “Parties.” Leeman is an individual residing in the State of California who asserts that she seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Hohner 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 Hohner has manufactured, distributed, sold and/or offered for sale in the State of California vinyl/PVC musical equipment/instrument cases containing lead and the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings. DEHP and lead are listed pursuant to Proposition 65 as chemicals 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 musical equipment/instrument cases containing lead and DEHP including, but not limited to, the *Hohner Blues Briefcase, C-BC-BL (#0 48667 32663 7)*, manufactured, distributed, sold and/or offered for sale in California by Hohner, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about June 19, 2013, Leeman served Hohner and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Hohner

for failing to warn its customers and consumers in California that the Products it sold exposed users to DEHP and lead. 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

Hohner 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 Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Hohner 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 Hohner of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Hohner. However, this Section shall not diminish or otherwise affect Hohner'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 October 15, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Hohner shall only manufacture, import, distribute, sell and/or offer for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing components which 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; and (3) contain less than or equal to 1,000 ppm (0.1%) DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C.

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

In settlement of all the claims referred to in this Settlement Agreement, Hohner shall pay a total of \$5,000 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

Hohner shall pay an initial civil penalty in the amount of \$1,500 on or before the Effective Date. Hohner shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,125; and (b) “The Chanler Group in Trust for Dr. Whitney R. Leeman” in the amount of \$375. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Hohner shall pay a final civil penalty of \$3,500 on or before December 15, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than December 1, 2013, an officer of Hohner provides Leeman with written certification that, as of the date of such certification and continuing into the future, Hohner 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 Hohner 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. In the event the final civil penalty is not waived, Hohner shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$2,625; and (b) “The Chanler Group in Trust for Dr. Whitney R. Leeman” in the amount of \$875.

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, Hohner 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 have reached 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. Hohner shall pay \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to Hohner's attention, and negotiating a settlement in the public interest. Hohner 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 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 Hohner, 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 Hohner, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Hohner directly or indirectly distributes or sells 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 lead and DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Hohner 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, attorneys' fees, testing costs, and any other costs, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to lead and DEHP in the Products manufactured, distributed, sold and/or offered for sale by Hohner before the Effective Date (collectively "claims"), against Hohner and Releasees.

5.2 Hohner's Release of Leeman

Hohner 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.

6. POST EXECUTION ACTIVITIES

Within twelve months of the execution of this Settlement Agreement Hohner 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 Hohner 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, Hohner 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 \$16,000, exclusive of fees and cost that may be incurred on appeal. Hohner will remit payment to

The Chanler Group, at the address set forth in Section 3.3.1 above. Such additional fees shall be paid by Hohner 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 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Hohner 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 Products are so affected.

9. **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 Hohner:

Clayman Edwards, President
Hohner, Inc.
1000 Technology Park Drive
Glen Allen, VA 23059

To Leeman:

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

With Copy to:

David Shane Smith
LeClair Ryan, a Professional Corporation
Riverfront Plaza, East Tower
951 East Byrd Street, Eighth Floor
Richmond, Virginia 23219

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.

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

11. 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).

12. MODIFICATION

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

13. 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:

Date: 10/9/13

By: Whitney Leeman
Dr. Whitney R. Leeman

AGREED TO:

Date: 10/8/13

By: Clayton Edwards
Clayton Edwards, President
Holmer, Inc.