

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and Dutro Company (“Dutro ”), with Leeman and Dutro each individually referred to as a “Party” and collectively as the “Parties.” Leeman is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Dutro 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 Dutro manufactures, sells, and/or distributes for sale in California, hand trucks with vinyl grips that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Leeman alleges that Dutro failed to provide its customers and consumers in California with the health hazard warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products that are covered by this Settlement Agreement are hand trucks with Vinyl/PVC grips containing DEHP that are/were manufactured, sold and/or distributed for sale in California by Dutro, including, but not limited to, the *Dutro Company Hand Truck, Style #DTR58PMP* (collectively, “Products”).

1.4 Notice of Violation

On or about November 15, 2013, Leeman served Dutro and various public enforcement agencies with a document entitled 60-Day Notice of Violation (“Notice”) alleging that Dutro violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose 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

Dutro 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 Dutro 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 Dutro of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Dutro. However, this Section shall not diminish or otherwise affect Dutro’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 June 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION & INTERIM WARNINGS

2.1 Reformulation

Commencing on the Effective Date and continuing thereafter, Dutro agrees that it will only sell or distribute for sale in California “Reformulated Products” or Products that are sold with a clear and reasonable warning pursuant to Section 2.2. For purposes of this Settlement Agreement, “Reformulated Products” are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any accessible component (i.e., any feature, part or

portion of a Product that can be touched or handled during reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance.

2.2 Warnings for Non-Reformulated Covered Products

Commencing on the Effective Date and continuing thereafter, for all Products other than Reformulated Products, Dutro agrees that it will only sell or distribute such Products for sale in California with a clear and reasonable warning in accordance with this Section. Dutro further agrees to affix the warning directly to the Product, or on Product packaging or labeling, such as a hangtag, and that the warning will be prominently placed with such conspicuousness when compared to 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. The warning shall further be provided in such a manner that the consumer or user understands to which *specific* Product the warning applies, so as to avoid any confusion.

A warning provided under this Consent Judgment shall contain the following statement:

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

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Agreement, Dutro agrees to pay \$6,000 in civil penalties, as further described below. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental

Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Leeman.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Dutro shall pay an initial civil penalty of \$1,500. Dutro will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1125; and (b) “The Chanler Group in Trust for Whitney Leeman” in the amount of \$375.

3.1.2 Final Civil Penalty. On November 1, 2014, Dutro shall pay a final civil penalty of \$4,500, however, this final civil penalty shall be waived in its entirety if, no later than October 15, 2014, an officer of Dutro provides Leeman’s counsel with written certification that, as of the date of such certification, all Products purchased for sale or distributed for sale in California by Dutro are Reformulated Products as defined by Section 2.1, or have been labeled with a warning as described in Section 2.2, and that it will continue to only offer Reformulated Products or Products with warnings in California in the future. The option to provide a written certification of reformulation or warning in lieu of making the final civil penalty payment required by this Agreement is a material term, and time is of the essence.

3.2 Reimbursement of Leeman’s Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Dutro agrees to pay, within five days of the Effective Date, \$18,500 to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of Dutro’s management, and negotiating a settlement in the public interest.

3.3 Payment Procedures

3.3.1 Payment Addresses. Payments shall be delivered as follows:

(a) All payments and tax documentation required for Leeman and her counsel under this Settlement Agreement shall be delivered to:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) All payments and tax documentation required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (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 Courier or Other Non-U.S. Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

3.3.2 Proof of Payment to OEHHA. Dutro agrees to provide Leeman with a copy of each penalty check sent to OEHHA, enclosed with Dutro’s penalty payment(s) to Leeman, and delivered to the address provided in Section 3.3.1(a).

3.3.3 Issuance of 1099 Forms. Dutro also agrees to issue a separate federal IRS 1099 form for its payments to each of the following payees: (a) “Whitney Leeman” whose address and tax information shall be provided after this Settlement Agreement is fully executed by the Parties; (b) “The Chanler Group” (EIN: 94-3171522); and (c) “Office of Environmental Health Hazard Assessment” (EIN: 68-0284486).

4. CLAIMS COVERED AND RELEASED

4.1 Leeman's Release of Dutro

This Settlement Agreement is a full, final and binding resolution between Leeman and Dutro, of any violation of Proposition 65 that was or could have been asserted by Leeman on her own behalf, or on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees, against Dutro, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Dutro directly or indirectly distributes or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about alleged exposures to DEHP from Products manufactured, distributed, sold or offered for sale by Dutro in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, on her own behalf, and on behalf of her past and present representatives, attorneys, successors, and/or assignees, hereby waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 and related to the failure to warn about exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Dutro before the Effective Date.

4.2 Dutro's Release of Leeman

Dutro, on its own behalf, and on behalf of 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.

5. POST EXECUTION ACTIVITIES

Within twelve months of the execution of this Settlement Agreement Dutro may send Leeman a written request, asking that she file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and seek court approval of the same pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Leeman and Dutro agree to reasonably cooperate, and to use their best efforts, and those of their counsel, to support the entry of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Dutro agrees to reimburse Leeman and her counsel for the reasonable fees and costs performing work under this Section not to exceed \$15,000, exclusive of fees and cost incurred on appeal, if any. Dutro further agrees to remit payment to the address set forth in Section 3.3.1(a) within ten days of receiving an invoice from Leeman's counsel.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the remaining provisions 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 Dutro 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.

8. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Dutro :

William Dutro, President
Dutro Company
675 North 600 W, Suite 2
Logan, UT 84321

For Leeman:

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

with copy to:

John Epperson
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, CA 94111

Any Party may, from time to time, specify in writing to the other 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Leeman and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 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: 5/29/14

Date: 5-27-14

By: Whitney R. Leeman
Whitney R. Leeman

By: William Dutro
William Dutro, President
Dutro Company