

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Dr. Whitney R. Leeman and Ettore Products Co.

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman ("Leeman") and Ettore Products Co. ("Ettore"), with Leeman and Ettore collectively referred to as the "Parties." Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Ettore 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 §§ 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Leeman alleges that Ettore has manufactured, imported, sold and/or distributed for sale in California, vinyl/PVC long-handled tool 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 vinyl/PVC long-handled tool grips containing DEHP including, but not limited to, *Extend-A Flo Wash Brush With Flow Thru Handle, Product No. 59072, UPC #0 32611 59072 4* that are manufactured, imported, sold and/or distributed for sale in California by Ettore (hereinafter the "Products").

1.4 Notice of Violation

On December 30, 2013, Leeman served Ettore and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on Ettore's alleged failure to warn its customers,

consumers, workers and other individuals that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Ettore denies the material factual and legal allegations contained in Leeman's Notice and maintains that all products that it has manufactured, imported, distributed, and/or sold 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 Ettore 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 Ettore of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Ettore'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 August 15, 2014.

2. REFORMULATION STANDARDS, COMMITMENT, WARNINGS, VENDORS

2.1 Reformulation Standards

Reformulated Products are defined as Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date and continuing thereafter, except as described in Section 2.3 below, all Products manufactured, imported, distributed, sold, and/or offered for sale in the State of California by, or on behalf of, Ettore shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

However, Ettore may ship, sell or offer to be shipped for sale in California Products that do not meet the Reformulated Products standard, if the following three conditions are met: (i) Ettore has determined that no Reformulated Product is “reasonably commercially available”; (ii) the Product is not primarily intended for use by individuals twelve years of age or younger; and (iii) Ettore complies with the warning requirements set forth in Section 2.3 below for all Products manufactured, imported, distributed, sold and/or offered for sale on and after the Effective Date. For purposes of this Section “reasonable commercial availability” shall include consideration of the following factors: availability and supply of a Reformulated Product; cost of the Reformulated Product; performance characteristics of the Reformulated Product, including but not limited to performance, safety, and stability.

2.3 Product Warnings

As of the Effective Date, for all Products that do not qualify as Reformulated Products and that meet the three conditions in Section 2.2 above, Ettore shall provide clear and reasonable warnings, as set forth in subsections 2.3(a) and (b). 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.

(a) Retail Store Sales.

(i) Product Labeling. Ettore shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

(ii) **Point-of-Sale Warnings.** Alternatively, Ettore 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 Ettore's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains DEHP, a phthalate chemical 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 DEHP, a phthalate Chemical, 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 Ettore sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Ettore 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(b)(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 phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

¹For 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.

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, Ettore 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 phthalate 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, Ettore 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; or (b) on the same web page as the order form for a Product; or (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 phthalate 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: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

2.4 Vendor Notification Requirement

To the extent Ettore has not already done so, within thirty (30) days of the Effective Date, Ettore shall provide the reformulation standards specified in section in section 2.1 for Reformulated Products to all of its current vendors of the Products that will be sold or offered for sale to California consumers, and shall instruct each vendor to use its best efforts to provide only Reformulated Products, as such Products are defined in Section 2.1.

3. MONETARY PAYMENTS

3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)

In settlement of all the claims referred to in this Settlement Agreement, Ettore shall pay a total of \$20,000 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) and (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.

3.1.1 Initial Civil Penalty

On or before August 22, 2014, Ettore shall pay an initial civil penalty in the amount of \$8,000. Ettore shall provide its payment in two checks to: (a) "OEHHA" in the amount of \$6,000; and (b) "Dr. Whitney R. Leeman, c/o The Chanler Group Client Trust Account" in the amount of \$2,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.2 Final Civil Penalty

On or before January 15, 2015, Ettore shall pay a final civil penalty in the amount of \$12,000. The payment final civil penalty shall be waived in its entirety, however, if, no later than December 31, 2014, an Officer of Ettore provides Leeman with written certification that as of the date of such certification and continuing into the future, all Products manufactured, imported, distributed, sold and offered for sale in California by Ettore are Reformulated Products. Leeman must receive any such certification on or before December 31, 2014, and time

is of the essence. Unless waived, the final civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the funds remitted to Leeman, as provided by California Health & Safety Code § 25249.12(d). Unless waived, Ettore shall provide its payment in two checks to: (a) "OEHHA" in the amount of \$9,000; and (b) "Dr. Whitney R. Leeman, c/o The Chanler Group Client Trust Account" in the amount of \$3,000. All penalty payments shall be delivered to the addresses listed in Section 3.3.1 below.

3.2 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Ettore expressed a desire to resolve the fee and cost issue. 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 section 1021.5 for all work performed through the mutual execution of this agreement. Ettore shall pay \$27,000 for fees and costs incurred as a result of investigating, bringing this matter to Ettore's attention, and negotiating a settlement in the public interest. Ettore shall make the check payable to "The Chanler Group" and shall deliver payment on or before August 22, 2014, to the address listed in Section 3.3.1(a) below.

3.3 Payment Procedures

3.3.1 Issuance of Payments

(a) All payments owed to 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 Section 3.1, 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 Non-United States 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. A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 3.3.1(a) above, as proof of payment to OEHHA.

3.3.3 Issuance of 1099 Forms. After each penalty payment, Ettore shall issue separate 1099 forms for each payment to Leeman and The Chanler Group, whose addresses and tax identification numbers shall be furnished by The Chanler Group after this Settlement Agreement has been fully executed by the Parties, and to OEHHA (EIN: 68-0284486) at the addresses listed in Section 3.3.1 above.

4. CLAIMS COVERED AND RELEASED

4.1 Leeman's Release of Ettore

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

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 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 in the Products manufactured, imported distributed, sold and/or offered for sale by Ettore before the Effective Date (collectively “claims”), against Ettore and Releasees.

4.2 Ettore’s Release of Leeman

Ettore, 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 or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5. SEVERABILITY

If any of the provisions of this Settlement Agreement are held 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Products, and Ettore believes that its obligations under this Settlement Agreement, in whole or in part, would no longer be required under Proposition 65, then Ettore 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. Nothing in this Settlement Agreement shall be interpreted to relieve Ettore from any obligation to comply with any pertinent state or federal law, including all toxic control laws.

7. NOTICES

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

To Defendant Ettore Products Co.:

Christopher M. Smahlik, President
Ettore Products Co.
2100 North Loop Road
Alameda, CA 94502

To Plaintiff Dr. Whitney R. Leeman:

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

With a copy to:

Karl R. Morthole, Esq.
Law Office of Karl R. Morthole
57 Post Street, Suite 804
San Francisco, CA 94104
415-986-0227

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

9. 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 section 25249.7(f).

10. MODIFICATION

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

11. 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: 8/19/14

Date: _____

By: 
Whitney R. Leeman

By: _____
Christopher M. Smahlik, President
Ettore Products Co.

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AGREED TO:

AGREED TO:

Date: _____

Date: 8/19/2014

By: _____
Whitney R. Leeman

By: 
Christopher M. Sarahluk, President
Ettore Products Co.