

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman, Ph.D., ("Leeman") and 31, Inc., with Leeman and 31, Inc. 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. 31, Inc., an Ohio corporation, 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 31, Inc. manufactures, sells, and/or distributes for sale in California, tools with vinyl/PVC 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 31, Inc. failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP the vinyl PVC grips of tools sold in California.

1.3 Product Description

The products that are covered by this Settlement Agreement are tools with vinyl/PVC grips containing DEHP including, but not limited to, the *HD Wheel Weight Pliers #14-906 (UPC No. 6 39601 49060 8)*, and the *Chrome Nut Cover Pliers, #14-982 (UPC No. 6 39601 49820 8)* manufactured, sold and/or distributed for sale in California by 31, Inc. (collectively, "Products").

1.4 Notice of Violation

On February 26, 2014, Leeman served 31, Inc. and certain requisite public

enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that 31, Inc. 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

31, Inc. 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 31, Inc. 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 31, Inc. of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by 31, Inc.. This Section shall not, however, diminish or otherwise affect 31, Inc.'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 29, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standard

Commencing no later than ninety (90) days immediately following the Effective Date and continuing thereafter, 31, Inc. shall only ship for sale or distribute for sale in California, "Reformulated Products" or Products that include a Proposition 65 warning in accordance with Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component 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 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for all Products that are not Reformulated Products, 31, Inc. agrees to provide a clear and reasonable consumer warning in accordance with this Section. 31, Inc. agrees that any warning utilized will be prominently placed with such conspicuousness when 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. For purposes of this Settlement Agreement, a clear and reasonable warning for DEHP in Products shall consist of a warning affixed to the packaging, label, tag or directly to a Product sold in California, and contain one of the following statements:

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

For Products that may contain, in addition to DEHP, chemicals listed pursuant to Proposition 65 that are known to cause cancer and birth defects or other reproductive harm:

WARNING: This product contains chemicals, including DEHP, that are known to the State of California to cause cancer, 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, 31, Inc. agrees to pay twelve thousand dollars and no cents (\$12,000.00) in civil penalties as provided by this Section 3.1. 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 ten (10) days of the Effective Date, 31, Inc. shall pay an initial civil penalty of \$4,000. 31, Inc. will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$3,000; and (b) "Whitney Leeman, Client Trust Account" in the amount of \$1,000.

3.1.2 Final Civil Penalty. On December 1, 2014, 31, Inc. shall pay a final civil penalty of \$8,000.00. The final civil penalty shall be waived in its entirety if, no later than December 1, 2014, an officer of 31, Inc. provides Leeman's counsel with written certification that, as of the date of its certification, all of the Products it ships or distributes for sale in California are Reformulated Products as defined by Section 2.1, and that it will continue to only offer Reformulated Products in California in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise 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, within ten (10) days of the Effective Date, 31, Inc. agrees to pay twenty two thousand dollars and no cents (\$22,000.00) to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of 31, Inc.'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 forms 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. 31, Inc. agrees to provide Leeman with a copy of each penalty check sent to OEHHA, enclosed with 31, Inc.’s penalty payment(s) to Leeman, and delivered to the address provided in Section 3.3.1(a).

5. CLAIMS COVERED AND RELEASED

5.1 Leeman’s Release of 31, Inc.

This Settlement Agreement is a full, final and binding resolution between Leeman and 31, Inc., 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 31, Inc., its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom 31, Inc. 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 DEHP in Products that 31, Inc. sold or distributed for sale by 31, Inc. prior to 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 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, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to Products sold or distributed for sale by 31, Inc. before the Effective Date. The releases provided by Leeman under this Settlement Agreement are provided solely on Leeman's behalf and are not releases on behalf of the public.

5.2 31, Inc.'s Release of Leeman

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

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 Products, then 31, Inc. 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 31, Inc.:

Paul Clark, President
31, Inc.
100 Enterprise Drive
New Cornerstown, OH 43832

with a copy to:

Brian Mertes, Esq.
Black McCuskey Souers & Arbaugh, LPA
220 Market Ave. S, Suite 1000
Canton, OH 44702

For Leeman:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth St.
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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.

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.

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 and Safety Code section 25249.7(f). Leeman and her attorneys shall provide 31, Inc. and Brian R. Mertes with a copy of all notices served on the Attorney General relating to this settlement.

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: 9/11/14

By: 
WHITNEY R. LEEMAN, PH.D.

AGREED TO:

Date: 9/14/14

By: 
Kevin Gardner, Vice President
31, INC.