

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and CVS Pharmacy, Inc. (“CVS”), with Leeman and CVS collectively referred to as the “Parties.” Leeman is an individual residing in the State of 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. CVS 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 CVS manufactures, imports, distributes, sells, and/or offers for sale vinyl/PVC luggage tags containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of California without the requisite Proposition 65 health hazard warning. 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 luggage tags containing DEHP specifically identified as the *Bargain Buys Luggage Tags, SKU #924909, UPC #0 50428 40539 0*, which were manufactured, imported, distributed, sold and/or offered for sale in the State of California by CVS, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about April 30, 2014, Leeman served CVS and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Notice”), alleging that CVS was in violation of Proposition 65 for failing to warn its customers and consumers in the State of California that the Products exposed 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

CVS denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, sold and/or offered for sale in the State of 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 CVS of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by CVS of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by CVS. This Section shall not, however, diminish or otherwise affect CVS'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 September 1, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date, CVS shall only manufacture, cause to be manufactured, import, cause to be imported, distribute, or cause to be distributed for shipment and/or sale into the State of California Products that are Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C or any equivalent methodologies utilized by state or federal agencies for purposes of determining DEHP content in a solid material. For purposes of this Settlement Agreement, "Accessible Component" shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

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

In settlement of all the claims referred to in this Settlement Agreement, CVS shall cause to be paid a total of \$8,000 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

CVS shall cause to be paid an initial civil penalty in the amount of \$2,000 on or before the Effective Date. CVS shall cause two separate checks to be issued to: (a) “OEHHA” in the amount of \$1,500; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

CVS shall cause to be paid a final civil penalty of \$6,000 on or before November 15, 2014, the final civil penalty shall be waived in its entirety, however, if, no later than November 1, 2014, an officer of CVS provides Leeman with written certification that, as of the date of such certification and continuing into the future, CVS has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and/or offered for sale in California by CVS 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. CVS shall cause two separate checks to be issued for its final civil penalty payments to: (a) “OEHHA” in the amount of \$4,500; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$1,500.

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, 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.

4. 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 issue to be resolved after the material terms of the agreement had been settled. CVS 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 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. CVS shall cause to be paid \$19,000 for fees and costs incurred as a result of investigating, bringing this matter to CVS's attention, and negotiating a settlement in the public interest. CVS shall cause a check to be issued made

payable to “The Chanler Group” and shall cause payment to be delivered on or before the Effective Date, to the address listed in Section 3.3.1(a) above.

5. RELEASES

5.1 Leeman’s Release of CVS

This Settlement Agreement is a full, final and binding resolution between Leeman in her individual capacity on not on behalf of the public, and CVS, 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 CVS, CVS Caremark Corporation, their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom CVS 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 CVS in the State of California before the Effective Date.

In further consideration of the promises and agreements herein contained, 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 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 CVS before the Effective Date, against CVS and Releasees.

5.2 CVS's Release of Leeman

CVS, 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 provision is held 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.

8. NOTICES

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

To CVS:

Greg Froton, VP Merchandising
CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, RI 02895

To Leeman:

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

With Copy to:

General Counsel
CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, RI 02895

Any party may, from time to time, specify in writing to the other party 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. POST-EXECUTION ACTIVITIES

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

11. MODIFICATION

This Settlement Agreement may be modified only by a 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: _____

Date: 8/20/2014

By: _____
Dr. Whitney R. Leeman

By: Meg Froton
Greg Froton, VP Merchandising
CVS Pharmacy Inc.

With Copy to:

General Counsel
CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, RI 02895

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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: 8/19/2014

Date: _____

By: 
Dr. Whitney R. Leeman

By: _____
Greg Froton, VP Merchandising
CVS Pharmacy Inc.