

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and Lenovo (United States) Inc. (“Lenovo”), with Leeman and Lenovo 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. Lenovo 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 Lenovo manufactures, imports, distributes, sells, and/or offers for sale headphones with vinyl/PVC components and/or cords 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 headphones with vinyl/PVC components and/or cords containing DEHP, specifically limited to the following model numbers: (1) P950; (2) P830; and (3) P721, that were manufactured, imported, distributed, sold and/or offered for sale in the State of California by Lenovo, hereinafter referred to as the “Products.”

### 1.4 Notice of Violation

On or about July 30, 2014, Leeman served Lenovo and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Lenovo 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**

Lenovo 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 Lenovo 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 Lenovo of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Lenovo. This Section shall not, however, diminish or otherwise affect Lenovo'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 31, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date, Products manufactured, caused to be manufactured, imported, caused to be imported, distributed, or caused to be distributed by Lenovo for sale and/or use in the State of California shall be Reformulated Products or Products that are affixed with the appropriate warning labels pursuant to Section 2.2 below. 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. 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. Compliance with the

terms of this Section constitutes compliance with Proposition 65 with respect to the failure to warn about exposures to DEHP from the Products manufactured, caused to be manufactured, imported, caused to be imported, distributed, or caused to be distributed by Lenovo for sale and/or use in the State of California.

## **2.2 Product Warnings**

Lenovo agrees that as of the Effective Date, all Products it sells and/or distributes for sale in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Lenovo further agrees that the warning 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Products sold in California and containing one of the following statements:

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

or

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

or

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).

In the event that Lenovo sells non-Reformulated Products via its internet website to customers located in California, the warning shall appear either: (a) on the same web page on which a non-Reformulated Product is displayed and/or described; (b) on the same page as the price for the non-Reformulated Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. Alternatively, a symbol may appear adjacent to or immediately following the display, description, price, or checkout listing of the non-

Reformulated Product, provided that the warning statement also appears elsewhere on the same web page.

Lenovo shall have a policy of providing a full refund of the retail price actually paid, plus reasonable shipping costs, to any consumer who presents to Lenovo a reasonably documented claim that: (a) the consumer purchased a non-Reformulated Product from a third party via mail order catalogue or internet website which did not display the warning at the time of purchase; (b) the consumer elected to return the non-Reformulated Product to Lenovo upon reading the warning on the package due to concern about exposure to a harmful substance; (c) the consumer did not open the package or use the product, and is returning it to Lenovo in new, saleable condition; and (d) the consumer returned the non-Reformulated Product to Lenovo within 30 days of purchase. The policy may provide that the consumer must present reasonable documentation of the actual purchase price paid and the actual cost of shipping in order to receive a refund.

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

In settlement of all the claims referred to in this Settlement Agreement, Lenovo shall pay a total of \$32,000 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. Leeman’s counsel shall be responsible for remitting Lenovo’s penalty payment(s) under this Settlement Agreement to OEHHA.

#### **3.1 Initial Civil Penalty**

Lenovo shall make an initial civil penalty in the amount of \$12,000 made out to “Dr. Whitney R. Leeman, Client Trust Account” to be paid on or before June 18, 2015.

#### **3.2 Final Civil Penalty**

Lenovo shall make a final civil penalty of \$20,000 made out to “Dr. Whitney R. Leeman, Client Trust Account” on or before November 15, 2015. The final civil penalty shall be waived

in its entirety, however, if, no later than November 1, 2015, an officer of Lenovo provides Leeman with written certification that, as of the date of such certification and continuing into the future, Lenovo has met the 1,000 parts per million reformulation standard specified in Section 2.1 above, such that all Products distributed for sale in California by Lenovo 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.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

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

### **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. Lenovo 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. Lenovo shall pay \$29,500 for fees and costs incurred as a result of investigating, bringing this matter to Lenovo's attention, and negotiating a settlement in the public interest. Lenovo shall issue a check payable to "The Chanler Group" and shall deliver payment on or before June 18, 2015 to the address listed in Section 3.3 above.

## 5. RELEASES

### 5.1 Leeman's Release

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

In further consideration of the promises and agreements herein contained, Leeman, on behalf of herself, and 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 they may have, whether known or unknown, including 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 limited to, investigation fees, expert fees, and attorneys' fees) arising under Proposition 65 or any statutory or common law claim with regard to DEHP in the Products manufactured, imported, distributed, sold and/or offered for sale by Lenovo before the Effective Date. The releases provided by this Section 5.1 are solely on Leeman's behalf, and not on behalf of the public in California.

### 5.2 Lenovo's Release of Leeman

Lenovo, 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 by Leeman and her

attorneys and other representatives before the Effective Date, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

### **5.3 Mutual California Civil Code Section 1542 Waiver**

The Parties each acknowledge that she/it is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, each on her/its own behalf, and on behalf of her/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which she/it/they may have under, or which may be conferred on her/them by the provisions of Civil Code Section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she/it/they may lawfully waive such rights or benefits pertaining to the released matters.

### **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. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products or DEHP, then Lenovo 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.

If Proposition 65 or associated regulations are amended to require or allow different text, font, and/or methods of warning than specified above, Lenovo, after providing written notice to Leeman, may substitute such text, font, and/or methods of warning for product warnings required under this Settlement Agreement.

**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 Lenovo:

Lenovo (United States) Inc.  
VP of Litigation  
1333 New Hampshire Ave. NW  
Washington, DC 20036

To Leeman:

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

With Copy to:

Jeff Parker  
Sheppard Mullin Richter & Hampton LLP  
333 South Hope Street, 43<sup>rd</sup> Floor  
Los Angeles, CA 90071

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: 5/6/15

Date: \_\_\_\_\_

By: *Whitney R. Leeman*  
Dr. Whitney R. Leeman

By: \_\_\_\_\_  
Rachel A. Adams, VP of Litigation  
Lenovo (United States) Inc.

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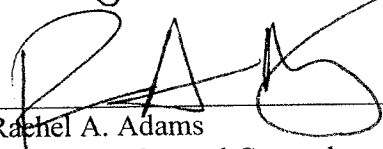
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. Whitney R. Leeman

**AGREED TO:**

Date: May 6, 2015

By:   
Rachel A. Adams  
V.P. Deputy General Counsel  
Lenovo (United States) Inc.