

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and Coda Resources Ltd. (“Coda”), with Leeman and Coda each individually referred to as a “Party” and collectively 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 in consumer products. Coda 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 Coda sells or distributes for sale in California, tools with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are tools with vinyl/PVC grips containing DEHP that are manufactured, sold and/or distributed for sale in California by Coda including, but not limited to, the *Utilitech Terminal Kit with Tool, Item #0046789, Model #CTK-25, UPC #6 80183 12412 2*. All such tools with vinyl/PVC grips containing DEHP are referred to collectively hereinafter as the “Products.”

1.4 Notice of Violation

On January 23, 2015, Leeman served Coda and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Coda violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with

exposures to DEHP in the Products. 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

Coda 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 Coda 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 Coda of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Coda. This Section shall not, however, diminish or otherwise affect Coda'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 29, 2015.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS

2.1 Reformulated Products

Commencing on December 1, 2015, and continuing thereafter, Coda shall only purchase for sale or manufacture for sale in California, (a) "Reformulated Products", or (b) Products that are sold with a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DEHP concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to measure DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

Coda agrees that as of the Effective Date and continuing thereafter, all Products it sells and/or distributes in California (except for those Products already in the stream of commerce, as provided in Section 2.3, below) which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Coda 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 Product shall consist of a warning affixed to the packaging, label, tag, or directly to a Product 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).

2.3 Grace Period for Existing Inventory of Products

After receiving the Notice, Coda represents it repackaged its current inventory and implemented a health hazard warning for the Products under its control. Leeman agrees that, until it exhausts its current inventory of Products and/or Product packaging, Coda may continue to sell and offer for sale in California those Products that contain the following warning statement:

“Warning: This product contains chemicals known to the State of California to cause cancer, birth defects, (and other reproductive harm).” All products sold or distributed for sale by Coda prior to the Effective Date are subject to the releases provided by Sections 4.1 and 4.3 of this Settlement Agreement.

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, Coda agrees to pay \$23,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% paid to Leeman. Leeman’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment made under this Settlement Agreement.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Coda shall make an initial civil penalty payment of \$8,000. Coda agrees to provide its payment in a single check made payable to: “Dr. Whitney R. Leeman, Client Trust Account.”

3.1.2 Final Civil Penalty. On November 1, 2015, Coda shall pay a final civil penalty of \$15,000. Pursuant to California Code of Regulations, title 11, section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than October 15, 2015, an officer of Coda provides Leeman’s counsel with signed Declaration certifying that it is only selling or distributing for sale in California, Reformulated Products, and that it will continue to only offer Reformulated Products in California in the future. The option to provide a declaration certifying one-hundred percent product reformulation in lieu of making the final civil penalty payment 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 five days of the Effective Date, Coda agrees to pay \$25,000 in the form of a check payable to “The Chanler Group” for all fees and costs incurred by Leeman investigating, bringing this matter to the attention of Coda’s management, and negotiating a settlement in the

public interest.

3.3 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Leeman's Release of Coda

This Settlement Agreement is a full, final, and binding resolution between Leeman and Coda, 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 assignees, against Coda and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Coda directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), alleging a failure to warn about exposures to DEHP in Products that Coda sold or distributed for sale prior to 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 current agents, representatives, attorneys, successors, and 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 with respect to the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Coda 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.

4.2 Coda's Release of Leeman

Coda, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and 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, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.3 Mutual California Civil Code Section 1542 Waiver

The Parties each acknowledge she/it is familiar with Section 1542 of the 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 waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code §1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent she/it may lawfully waive such rights or benefits pertaining to the released matters, as defined by Sections 4.1 and 4.2, above.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the remaining provisions 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 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 Coda may provide written notice to Leeman of the 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.

7. 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 Coda:

Hillel Tropper, President
Coda Resources Ltd.
960 Alabama Avenue
Brooklyn, NY 11207

with a copy to Coda's counsel:

Nathan Metcalf, Esq.
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

For Leeman:

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

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.

8. 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.

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 and Safety Code section 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by 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:

Date: 6/29/15

By: Whitney Leeman
DR. WHITNEY R. LEEMAN

AGREED TO:

Date: June 29, 2015

By: Hillel Tropper
Hillel Tropper, President
CODA RESOURCES LTD.