

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and Night Owl SP, LLC (“Night Owl”), with Leeman and Night Owl 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. Leeman alleges and Night Owl disputes that Night Owl 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 Night Owl 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 that is 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 Night Owl including, but not limited to, those tools offered in connection with the *Night Owl CCTV Crimper & Connectors Starter Kit, DIY-CRKIT10, PID #270154-118323, UPC #8 41808 01306 5*. 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 Night Owl and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Night Owl violated

Proposition 65 when it failed to warn its customers and consumers in California that 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

Night Owl 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 Night Owl 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 Night Owl of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Night Owl. This Section shall not, however, diminish or otherwise affect Night Owl'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 26, 2015.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on September 15, 2015, and continuing thereafter, Night Owl shall only manufacture, cause to be manufactured or distribute Reformulated Products for sale in California. 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.

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, Night Owl agrees to pay \$8,250 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, Night Owl shall make an initial civil penalty payment of \$2,750. Night Owl agrees to provide its payment in a single check made payable to: “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$2,750.

3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation. On August 15, 2015, Night Owl shall make a final civil penalty of \$5,500. 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 July 31, 2015, an officer of Night Owl provides Leeman’s counsel with a 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 complete, accelerated product reformulation in lieu of making the final civil penalty payment is a material term, and time is of the essence. To be eligible for a waiver of the final civil penalty, Night Owl must send Leeman’s counsel its signed declaration indicating its compliance with the above early

reformulation requirement on or before July 31, 2015.

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, Night Owl 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 Night Owl'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 Night Owl

This Settlement Agreement is a full, final, and binding resolution between Leeman and Night Owl, 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 Night Owl and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Night Owl directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively, "Releasees"), alleging a failure to warn about exposures to DEHP in Products that Night Owl 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 Night Owl 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 Night Owl's Release of Leeman

Night Owl, 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.

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 Night Owl 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 Night Owl:

Ronald Ferris, President
Night Owl SP, LLC
75 West Street, Floor 2
Naples, FL 34102

Michael A. Refolo
Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street
Worcester, MA 01608-1477

with a copy to Night Owl's counsel:

Kevin C. Mayer, Esq.
Crowell & Moring LLP
515 South Flower Street, 40th Floor
Los Angeles, CA 90071

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.

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:

AGREED TO:

Date: 7/15/15

Date: _____

By: Whitney R. Leeman
DR. WHITNEY R. LEEMAN

By: _____
Ronald Ferris, President
NIGHT OWL SP, LLC

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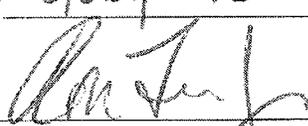
Date: _____

By: _____

DR. WHITNEY R. LEEMAN

AGREED TO:

Date: 6/22/2015

By: 

Ronald Ferris, President
NIGHT OWL SP, LLC