

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and PlanAhead, LLC (“PlanAhead”), with Leeman and PlanAhead 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 improve human health by reducing or eliminating hazardous substances contained in consumer products. PlanAhead 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 PlanAhead manufactures, sells, and/or distributes for sale in the State of California vinyl/PVC organizer covers containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Leeman alleges that PlanAhead failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC organizer covers.

1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined vinyl/PVC organizer covers containing DEHP including, but not limited to, the *PlanAhead Mom’s Organizer, Item No. 85097, UPC #7 44120 85097 7; Plan Pro Binder, Item Nos. 84539 and 84539T; Book-Lrg Reptile Tel Asst, Item No. 70412; Smooth Classic Journal, Item No. 86093; Smooth Padfolio, Item No. 86103; Animal Journal, Item No. 86424; Belted Soft Bound Journal, Item No. 73936C; Debossed Journal, Item No. 74061C; Book-Sm Reptile Tel Asst, Item No. 70410; Business/Credit Card Holder, Item No. 70724; Organizer w/ Calc,*

Item No. 30566C, manufactured, sold or distributed for sale in the State of California by PlanAhead.

1.4 Notice of Violation

On or about January 23, 2015, Leeman served PlanAhead, Rite Aid Corporation, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that PlanAhead violated Proposition 65 when it failed to warn its customers and consumers in California that its vinyl/PVC organizer covers 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

PlanAhead 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 PlanAhead 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 PlanAhead of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by PlanAhead. However, this Section shall not diminish or otherwise affect PlanAhead’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 the date this Settlement Agreement is signed by all Parties.

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2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD

2.1 Reformulation Commitment


On or before September 1, 2015, and continuing thereafter, PlanAhead agrees to provide for shipment, sale or purchase in or into California only Products that are “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” are Products containing concentrations of less than 0.1 percent (1,000 parts per million) of DEHP, di-n-butyl (“DBP”), butyl benzyl phthalate (“BBP”), and Diisononyl phthalate (“DINP”) in each accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodology utilized by federal or state government agencies for the purpose of determining DEHP, DBP, BBP or DINP content in a solid substance.

2.2 Warnings Required: Product Labeling


Commencing on the Effective Date, for all Products other than Reformulated Products, PlanAhead shall provide clear and reasonable warnings that state:

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

or

 **WARNING:** This product will expose you to DEHP, a chemical known to the State of California to cause birth defects (or other reproductive harm). For more information go to www.P65Warnings.ca.gov.¹

PlanAhead may affix either warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale to institutional or individual consumers within the State of California and institutional customers with nationwide distribution. Either warning shall be prominently placed with such

¹ The diamond shaped border in the standard (Globally Harmonized System) pictogram “” for toxic hazards is to appear in the color red. The word “WARNING” shall be written in all capital letters, in bold print no smaller than 10 point type; the remainder of the warning language shall be written in 8 point type font or larger. PlanAhead may enclose the text of the warning message in a box.

conspicuousness as 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. Either warning shall be provided in a manner such that the consumer or user understands to which *specific* Product(s) the warning applies, so as to minimize the risk of consumer confusion.

3. MONETARY PAYMENTS

3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, PlanAhead shall pay \$42,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code § 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 five (5) days the Effective Date, PlanAhead shall pay an initial civil penalty in the amount of \$14,000. PlanAhead will provide its payment in one check made payable as follows: “Whitney Leeman, Client Trust Account”.

3.1.2 Final Civil Penalty

On or before October 1, 2015, PlanAhead shall pay a final civil penalty of \$28,000 which Leeman shall allocate in accordance with the formula set forth in Paragraph 3.1 above. The final civil penalty shall be waived in its entirety, however, if, no later than September 15, 2015, an officer of PlanAhead provides Leeman’s counsel with written certification that, as of September 1, 2015, all Products shipped, sold or distributed for sale in California are Reformulated Products, and that PlanAhead will continue to provide for shipment, sale or purchase in or into California only Products that are Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence. PlanAhead shall deliver its certificate, if any, to Leeman’s counsel at the address provided in

Section 3.3, below.

In the event that PlanAhead does not timely certify its compliance or make the final civil penalty payment required by this Section, Leeman may seek relief under any available legal remedy. If successful, the Parties further agree that Leeman shall be entitled to her reasonable attorneys' fees and costs pursuant to general contract principles and Code of Civil Procedure § 1021.5.

3.2 Reimbursement of 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 § 1021.5 for all work performed in this matter. Under these legal principles, PlanAhead agrees to pay \$30,000 to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of PlanAhead's management, and negotiating a settlement in the public interest. PlanAhead's payment shall be due within five (5) days of the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

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. CLAIMS COVERED AND RELEASED

4.1 Leeman's Release of PlanAhead

This Settlement Agreement is a full, final and binding resolution between Leeman, as an individual and not on behalf of the public, and PlanAhead 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 ("Releasers"), and Releasers

hereby release any such claims, against PlanAhead, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom PlanAhead directly or indirectly distributed or sold the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensors, and licensees and retailers, including Rite Aid Corporation, Wal-Mart and CVS (“Releasees”), based on the failure to warn about alleged exposures to DEHP contained in Products manufactured, distributed, sold and/or offered for sale by PlanAhead in the State of California before the Effective Date as set forth in the Notice.

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/or assignees, hereby covenants not to sue and 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 Products manufactured, distributed, sold and/or offered for sale by PlanAhead before the Effective Date.

4.2 PlanAhead’s Release of Leeman

PlanAhead, on its own behalf, and on behalf of 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.

5. 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 otherwise rendered inapplicable by reason of law generally, as to PlanAhead specifically as a result of a statutory exemption, or as to the Products, then PlanAhead may provide written notice to Leeman of any asserted change in the law, or its applicability to PlanAhead or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, PlanAhead or the Products are so affected.

6. NOTICES

Unless specified herein, all correspondence and notice 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 PlanAhead:

Jon Berger, President
PlanAhead, LLC
3130 Wilshire Boulevard, Suite 555
Santa Monica, CA 90403

with copy to PlanAhead's counsel:

Aaron P. Allan
Glaser Weil Fink Howard Avchen & Shapiro LLP
10250 Constellation Blvd., 19th Floor
Los Angeles, CA 90067

For Leeman:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
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.

7. COUNTERPARTS; FACSIMILE/PDF 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.

8. 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 § 25249.7(f).

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9. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

10. NOTICE AND CURE / MEET AND CONFER

Any Party, after meeting and conferring, may enforce the terms and conditions contained in this Settlement Agreement. Any action to enforce the terms of Section 2 of this Settlement Agreement shall first comply with the terms of this Section.

10.1 No action to enforce this Settlement Agreement may be commenced, and no notice of violation related to the Product may be served against PlanAhead, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 10.3 below.

10.2 Any notice to PlanAhead, or the Releasees must contain (a) the name of the Product, (b) specific dates when the Product was sold after the Effective Date in California without reformulation, (c) the store or other place at which the Product was available for sale to consumers, and (d) any other evidence or other support for the allegations

10.3 Within 30 days of receiving the notice described in Section 10.2, PlanAhead shall either (1) send the store or other place at which the Product was available for sale to the public a letter directing that the offending Product be immediately removed from inventory and returned to PlanAhead for full credit, including shipping costs, or (2) refute the information provided under Section 10.2.

10.4 In addition to the corrective action, PlanAhead shall reimburse Leeman for her attorneys' fees and costs in the amount of \$10,000 unless PlanAhead, prior to receiving and accepting for distribution or sale the Product identified in the notice pursuant to Section 10.2, obtained test results demonstrating that all of the accessible components of the Product identified in the notice pursuant to Section 10.2 complied with the Section 2.1 above.

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: 6/23/15

By: Whitney Leeman
WHITNEY K. LEEMAN, PH.D.

AGREED TO:

Date: 6/29/15

By: Jon Berger
Jon Berger, President
PLANAHEAD, LLC