

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Club Glove USA (“CGUSA”), with Leeman and CGUSA 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 to improve human health by reducing or eliminating hazardous substances used in consumer products. CGUSA 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 CGUSA manufactures, imports, sells, or distributes for sale in California vinyl/PVC garment bag shoulder strap pads containing lead without first providing Proposition 65 health hazard warning. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

Leeman also alleges that CGUSA manufactures, imports, sells, or distributes for sale in Californiavinyl/PVC golf club head covers containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing Proposition 65 health hazard warning. 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 (a) vinyl/PVC garment bag shoulder strap pads containing lead that are manufactured for sale and/or purchased for sale in California by CGUSA including, but not limited to, the *Club Glove The II Suit Garment Bag, GLGM1009*, and (b) vinyl/PVC golf club head covers containing DEHP that are manufactured for sale and/or purchased for sale in California by CGUSA, including but not limited to the *Club Glove* line of golf club head covers. This Settlement Agreement also covers vinyl/PVC golf

bags, containing lead and/or DEHP that are manufactured and/or purchased for sale in California by CGUSA including, but not limited to *Club Glove Billboard Golf Bag*. All such vinyl/PVC golf bags containing DEHP and/or lead that are manufactured for sale and/or purchased for sale in California by CGUSA are referred to collectively hereinafter as the “Additional Products.”

#### **1.4 Notice of Violation**

On January 30, 2015, Leeman served CGUSA and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that CGUSA violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to lead and 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**

CGUSA 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 CGUSA 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 CGUSA of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by CGUSA. This Section shall not, however, diminish or otherwise affect CGUSA’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 9, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on September 1, 2015, and continuing thereafter, CGUSA shall only purchase for sale or manufacture for sale in California, Reformulated Products. For purposes of this Settlement Agreement, “Reformulated Products” are Products and Additional Products that

(a) contain a maximum lead concentration of 90 parts per million (“ppm”) when analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (b) no more than 1,000 ppm DEHP content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C. In addition to the above-mentioned methodologies, the Parties may utilize any method used by state or federal agencies to measure lead and/or 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 and referred to in this Settlement Agreement, CGUSA agrees to pay \$4,400 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, CGUSA shall make an initial civil penalty payment of \$1,400. CGUSA agrees to provide its payment in a single check made payable to: “Whitney R. Leeman, Client Trust Account” in the amount of \$1,400.

**3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On August 1, 2015, CGUSA shall pay a final civil penalty of \$3,000. 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 June 15, 2015, an officer of CGUSA provides Leeman’s counsel with a signed declaration certifying that all of the Products it ships for sale or distributes for sale in California as of the date of its declaration are Reformulated Products as defined by Section 2, above. The option to provide a declaration in lieu of making the final civil penalty payment required by this Settlement Agreement 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, CGUSA agrees to pay \$14,000 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 CGUSA's management, and negotiating a settlement in the public interest. CGUSA agrees to pay said amount as follows: \$4,500 within 5 days of the Effective Date; \$4,500 within 35 days of the Effective Date; and \$5,000 within 65 days of the Effective Date.

### **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 CGUSA**

This Settlement Agreement is a full, final, and binding resolution between Leeman and CGUSA, 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 CGUSA and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom CGUSA 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 lead and/or DEHP in Products sold by CGUSA 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 alleged or actual exposures to lead and/or DEHP from Products or Additional Products sold or distributed for sale by CGUSA 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 CGUSA's Release of Leeman**

CGUSA, 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, if any provision is deemed 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 CGUSA 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 CGUSA:

Jeffrey Herold, President  
Club Glove USA  
17811 Jamestown Lane  
Huntington Beach, CA 92647

with a copy to:

Matthew Soleimanpour, Esq.  
Matthews Law Group  
3870 Murphy Canyon Road, Suite 320  
San Diego, CA 92123

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:

AGREED TO:

Date: 6/10/15

Date: 6/9/15

By: *Whitney R. Lefman*  
WHITNEY R. LEFMAN, PH.D.

By: *Jeffrey Herold*  
Jeffrey Herold, President  
CLUB GLOVE USA