

# SETTLEMENT AGREEMENT

AG Number: 2015-00418

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney Leeman, Ph.D (“Leeman”), and Acme United Corporation (“Acme”), with Leeman and Acme 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. Acme 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Leeman alleges that Acme manufactures, sells, and distributes for sale in California, vinyl/PVC tool grips containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Leeman also alleges that Acme failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from vinyl/PVC hand straps to tape measurers (“hand straps”), but Acme asserts that exposure to such items exempts them from its obligation to provide a health hazard warning.

### 1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC tool grips containing DEHP that are manufactured, sold, or distributed for sale in California by Acme including, but not limited to, the *Clauss Titanium Bonded Wire Cutters, Model No. 18431, UPC #0 15829 18431 2* (“Products”).

#### **1.4 Notices of Violation**

Leeman served Acme and the requisite public enforcement agencies with 60-Day Notices of Violation (“Notices”), including the one issued on May 21, 2015, alleging that Acme violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

Acme denies the material, factual, and legal allegations contained in the Notices 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 Acme 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 Acme of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Acme. This Section shall not, however, diminish or otherwise affect Acme’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 December 16, 2015.

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

Commencing on October 31, 2015 and continuing thereafter, Acme agrees to only manufacture for sale or purchase for sale in or into California, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” are Products that contain no more than 1,000 parts per million (0.1%) DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent

methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, Acme agrees to pay \$6,600 in civil penalties. Within five days of the Effective Date, Acme shall make a civil penalty payment of \$6,600. It shall deliver its payment in a single check made payable to “Whitney Leeman, Client Trust Account.” The 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% of the penalty amount paid to Leeman. Leeman’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment made under this Settlement Agreement to OEHHA.

#### **3.2 Attorneys’ 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Acme expressed a desire to resolve Leeman’s fees and costs. 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, Acme agrees to pay \$27,400 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Acme’s management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments under 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 Acme**

This Settlement Agreement is a full, final and binding resolution between Leeman, on her own behalf and *not* in any representative capacity, and Acme, 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 Acme, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Acme directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products and the hand straps sold or distributed for sale in California by Acme before the Effective Date.

In further consideration of the promises and agreements herein, Leeman, on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and/or 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 exposures to DEHP from Products and the hand straps manufactured, distributed, sold and/or offered for sale by Acme before the Effective Date. The release provided by Leeman under this section of the Settlement Agreement are provided solely on Leeman's own behalf and *not* on behalf of the public in California.

#### **4.2 Acme Release of Leeman**

Acme, 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 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 or the hand straps.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement by the Parties, any provision of this Settlement Agreement 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 Acme may 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.

#### **7. NOTICE**

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 Acme:

Brian Olschan, President  
Acme United Corporation  
55 Walls Drive  
Fairfield, CT 06824

For Leeman:

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

With a copy to:

William F. Tarantino, Esq.  
Morrison & Foerster LLP  
425 Market Street Suite 32  
San Francisco, CA 94105-2482

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**

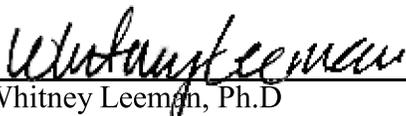
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 12/10/15

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

By:   
Whitney Leeman, Ph.D

By: \_\_\_\_\_  
Brian Olschan, President  
ACME UNITED CORPORATION

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

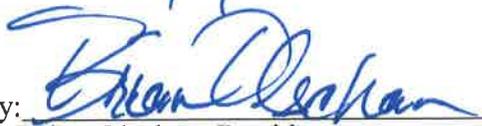
**AGREED TO:**

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

By: \_\_\_\_\_  
Whitney Leeman, Ph.D

**AGREED TO:**

Date: 12/11/15 \_\_\_\_\_

By:  \_\_\_\_\_  
Brian Olschan, President  
ACME UNITED CORPORATION