

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and OccuNomix International LLC (“OccuNomix”), with Leeman and OccuNomix 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. Leeman alleges that OccuNomix 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 OccuNomix manufactures, sells, and/or distributes for sale in California, safety vests with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Leeman alleges that OccuNomix failed to provide health hazard warnings required by Proposition 65 for exposures to DEHP from its safety vests with vinyl/PVC components.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are safety gear with vinyl/PVC reflective tape components containing DEHP including, but not limited to, the *OccuNomix International LLC High Visibility Safety Gear Vest, XGTM-OXL, UPC #0 21844 55681 2*, manufactured, sold or distributed for sale in California by OccuNomix (“Products”).

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

On or about October 28, 2015, Leeman served OccuNomix, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that OccuNomix violated Proposition 65 when it failed to warn its customers and consumers in California that its Products 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**

OccuNomix 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 OccuNomix 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 OccuNomix of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by OccuNomix. This Section shall not, however, diminish or otherwise affect OccuNomix’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 July 15, 2016.

## **2. INJUNCTIVE RELIEF**

Commencing on October 15, 2016, and continuing thereafter, OccuNomix agrees to only manufacture, distribute, or purchase for sale in or into California: (a) “Reformulated Products”, or (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2 below. For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that

may be touched during use) 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.

## **2.2 Clear and Reasonable Warnings**

OccuNomix agrees that as of October 15, 2016, all Products it sells and/or distributes for sale in California (except for those Products already in the stream of commerce), which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. OccuNomix 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 Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing the following statement:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.<sup>1</sup>

## **2.3 Grace Period For Existing Inventory**

OccuNomix represents that it currently affixes warnings to Products that read: “WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.” Leeman agrees that OccuNomix may continue to sell Products bearing this warning through 2016, or until they have exhausted their supply of Products and/or warnings bearing this statement.

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<sup>1</sup> For Products that OccuNomix knows, or has reason to know, to contain additional Proposition 65-listed chemicals, it may use: “WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.”

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

#### **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

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, OccuNomix agrees to pay \$9,000 in civil penalties. This 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 remitting OccuNomix’s penalty payment(s) under this settlement to OEHHA. Payment shall be made within ten (10) business days of the Effective Date and OccuNomix shall provide its payment in a single check made payable to “Whitney R. Leeman Client Trust Account”, to be delivered to the address provided in section 3.3, below.

#### **3.2 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, OccuNomix agrees to pay \$19,000 to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of OccuNomix’s management, and negotiating the settlement. OccuNomix’s payment shall be due within ten (10) business 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 OccuNomix**

This Settlement Agreement is a full, final and binding resolution between Leeman, as an individual and not on behalf of the public, and OccuNomix of any violation of Proposition 65 that was or could have been asserted by Leeman, on behalf of herself, or on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against OccuNomix, its parents, subsidiaries, affiliated entities under common (full or partial) ownership, directors, officers, shareholders, employees, attorneys, and agents, and their predecessors, successors and assigns and each entity to whom OccuNomix directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to DEHP contained in Products manufactured, distributed, sold or offered for sale by OccuNomix in California before the Effective Date, as alleged in the notice of violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by OccuNomix and Releasees with regard to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale after the Effective Date. Releasers hereby releases any such claims against OccuNomix and Releasees.

In further consideration of the promises and agreements herein contained, Leeman, as an individual and not on behalf of the public, and on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all Leeman's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Leeman may have, including, without limitation, all actions, and causes of action, in law or 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 DEHP in the Products, as alleged in the notice of violation, manufactured, distributed, sold and/or offered for sale by OccuNomix, before the Effective Date (collectively "claims"), against OccuNomix and Releasees.

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 OccuNomix's Release of Leeman**

OccuNomix, 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. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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 otherwise rendered inapplicable by reason of law generally, as to OccuNomix specifically as a result of a statutory exemption, or as to the Products, then OccuNomix may provide written notice to Leeman of any asserted change in the law, or its applicability to OccuNomix or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, OccuNomix or the Products are so affected.

In the event that Proposition 65 and its related regulations are amended in such a way as to impact the terms agreed to here, including as to appropriate safe harbor warning language, the parties agree to meet and confer on appropriate revisions, if any, to this Settlement Agreement. In which event, each party shall bear its own costs in relation to any such meet and confer and amendment to this Settlement Agreement.

**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 **OccuNomix**:

Douglas Rose, CEO  
OccuNomix International LLC  
585-52 North Bicycle Path  
Port Jefferson Station, NY 11776

With a copy to:

Lauren M. Michals, Esq.  
Nixon Peabody LLP  
One Embarcadero Center, 18<sup>th</sup> Floor  
San Francisco, CA 94111-3600

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.

**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 each represents that he/she is authorized to execute this Settlement Agreement and has read, understands, and agrees to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 7/28/2016

**AGREED TO:**

Date: 28 July 2016

By:   
WHITNEY R. LEEMAN, PH.D.

By:   
Douglas Rose, CEO  
OCCUNOMIX INTERNATIONAL LLC