

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D., (“Leeman”) and Vanco International, LLC (“Vanco”), with Leeman and Vanco 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 Vanco 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 Vanco manufactures, sells, and/or distributes for sale in California, vinyl/PVC power cords 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 Vanco failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from its vinyl/PVC power cords.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC power cords containing DEHP including, but not limited to, the *Vanco Computer Power Cord Part # 330007, UPC #7 41835 03354 1*, manufactured, sold or distributed for sale in California by Vanco (“Products”).

1.4 Notice of Violation

On or about October 28, 2015, Leeman served Vanco, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Vanco

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

Vanco 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 Vanco 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 Vanco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Vanco. However, this Section shall not diminish or otherwise affect Vanco'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 on which all parties sign the Settlement Agreement.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment


On or before the Effective Date and continuing thereafter, Vanco agrees that all future orders placed with its suppliers will require its Products manufactured for sale or purchase for sale in or into California, to be "Reformulated Products". For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.2 Commitment to Warn for Products in Inventory

For Products that are currently committed to Vanco's inventory, it shall provide one of the following warnings for any such Products sold in California:

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

OR

 **WARNING:** This product can expose you to DEHP a chemical known to the State of California to cause birth defects and other reproductive harm.

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, Vanco agrees to pay \$ 2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 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.

On or before the Effective Date, Vanco shall pay a civil penalty in the amount of \$2,500. Vanco will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Whitney R. Leeman, Ph.D., Client Trust Account" in the amount of \$625.

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to Leeman's 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, Vanco agrees to pay \$22,500 to Leeman's counsel for all fees and costs incurred investigating, bringing this matter to the attention of Vanco's management,

and negotiating a settlement in the public interest. Vanco's payment shall be due on 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 Vanco

This Settlement Agreement is a full, final and binding resolution between Leeman, as an individual and not on behalf of the public, and Vanco, 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 Vanco, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Vanco 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 Vanco in California before the Effective Date, as alleged in the notice of violation.

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, 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 Vanco, before the Effective Date (collectively "claims"), against Vanco 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 Vanco's Release of Leeman

Vanco, 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 Vanco specifically as a result of a statutory exemption, or as to the Products, then Vanco may provide written notice to Leeman of any asserted change in the law, or its applicability to

Vanco or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Vanco or 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 addressees:

For Vanco:

Brad Corbin, President
Vanco International, LLC
506 Kingsland Drive
Batavia, IL 60510

For Leeman:

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

With a copy to:

George Dowell, Esq.
Dowell LLP
1153 Lincoln Avenue, Suite C
San Jose, CA, 95125

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: 5/19/2016

Date: 5-23-2016

By: 
Whitney R. Legman, Ph.D.

By: 
Brad Corbin, President
Vaneo International, LLC