

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Whitney R. Leeman and Barnes & Noble, Inc.

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) on the one hand, and Barnes & Noble, Inc. on the other (“Barnes & Noble”), with Leeman and Barnes & Noble collectively referred to as the “Parties.” Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Barnes & Noble 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 §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Leeman alleges that Barnes & Noble has manufactured, imported, distributed and/or sold in the State of California vinyl/PVC art case handles containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl/PVC art case handles containing DEHP including, but not limited to, *Punctuate by Barnes & Noble Pencils & Pastels Wooden Art Set 54 Piece, ISBN-13: 978-059428787-2*, which are manufactured by Barnes & Noble for sale in the State of California (hereinafter referred to as the “Products”).

1.4 Notice of Violation

On December 1, 2015, Leeman served Barnes & Noble and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Barnes & Noble was in violation of California Health & Safety Code §

25249.6 for failing to warn consumers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Barnes & Noble denies the material, factual and legal allegations contained in Leeman's Notice. Nothing in this Settlement Agreement shall be construed as an admission by Barnes & Noble of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Barnes & Noble of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 14, 2016 or the date on which it is executed by the Parties, whichever is later.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing a maximum of 1000 parts per million of DEHP in any Accessible Component when analyzed pursuant to 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. An "Accessible Component" refers to a component of a Product that can be touched by a person during normally foreseeable use.

2.2 Reformulation Commitment

Any Products that Barnes & Noble manufactures, imports, or purchases on and after the Effective Date that Barnes & Noble thereafter sells or offers for sale in California shall either qualify as Reformulated Products pursuant to Section 2.1 above or carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings

For all Products requiring a warning under Section 2.2, Barnes & Noble shall provide warnings as set forth in this Section 2.3. Each warning shall be prominently placed with such 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Barnes & Noble shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

(ii) **Point-of-Sale Display Warnings.** Alternatively, Barnes & Noble may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Barnes & Noble's customers shall be sent by certified mail, return receipt requested.

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain DEHP, a chemical, known to the State of California

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other and in a manner that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

to cause birth defects and other reproductive harm:

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. For Products that Barnes & Noble sells via mail order catalog and/or the internet to customers located in California, Barnes & Noble shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Barnes & Noble may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Barnes & Noble must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) Internet Website Warning. A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)

on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

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

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Barnes & Noble shall pay a total of \$13,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman, as follows:

3.1 Initial Civil Penalty

Barnes & Noble shall pay an initial civil penalty in the amount of \$3,000 within ten (10) days of the Effective Date. Barnes & Noble shall issue the check to: “Whitney R. Leeman, Client Trust Account” in the amount of \$3,000. Leeman and her counsel will then ensure the proper portion of the payment is made to OEHHA. All penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Final Civil Penalty

Barnes & Noble shall pay a final civil penalty of \$10,000 on or before October 30, 2016. The final civil penalty shall be waived in its entirety, however, if, no later than October 15, 2016,

an officer or vice president of Barnes & Noble provides Leeman with written certification that, as of the certification date, any Products that Barnes & Noble manufactures, imports, distributes, sells or offers, for sale in California, qualify as Reformulated Products under Section 2.1, and that, after the certification date, such Products in the future will continue to qualify as Reformulated Products. Leeman must receive any such certification on or before October 15, 2016. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Barnes & Noble shall issue a check for its final civil penalty payments to “Whitney R. Leeman, Client Trust Account” in the amount of \$10,000.

3.3 Payment Procedures

3.3.1. Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Leeman, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. REIMBURSEMENT OF 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 this fee issue to be resolved after the material terms of the agreement had been settled. Barnes & Noble then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Barnes & Noble shall pay \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to Barnes & Noble’s attention, and negotiating a settlement in the public interest. Barnes & Noble shall make

the check payable to “The Chanler Group” and shall deliver payment within ten (10) days of the Effective Date, to the address listed in Section 3.3.1 above.

5. RELEASES

5.1 Leeman’s Release of Barnes & Noble

This Settlement Agreement is a full, final and binding resolution between Leeman and Barnes & Noble of any violation of Proposition 65 that was or could have been asserted by Leeman on behalf of herself and her past and current agents, representatives, attorneys, successors and/or assignees, and *not* on behalf of the public, against Barnes & Noble, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Barnes & Noble directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, imported, or purchased for sale by Barnes & Noble in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman on behalf of herself and her past and current agents, representatives, attorneys, successors and/or assignees, and *not* on behalf of the public, hereby waives all of her rights 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys’ fees -- limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, imported or purchased for sale by Barnes & Noble before the Effective Date (collectively “Claims”), against Barnes & Noble and Releasees. The Parties agree that compliance by Barnes & Noble with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to DEHP in the Products manufactured, imported, purchased, sold, distributed, shipped, and/or offered for sale by Barnes & Noble after the Effective Date.

5.2 Barnes & Noble's Release of Leeman

Barnes & Noble, on behalf of itself, 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 this claim or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5.3 Mutual Release

It is the intention of the Parties that this Settlement Agreement shall be effective as a full accord and satisfaction and release of the Claims released by Leeman pursuant to this Section 5.1, whether known or unknown or suspected or unsuspected. The Parties are familiar with California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Leeman and Barnes & Noble, each acknowledge and understand the significance of this waiver of California Civil Code Section 1542.

6. 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.

7. 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then

Barnes & Noble shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Barnes & Noble from any obligation to comply with any state or federal toxics control law.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one Party by the other Party at the following addresses:

For Barnes & Noble:

Attn: General Counsel
Barnes & Noble, Inc.
122 Fifth Avenue
New York, NY 10011

For Leeman:

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

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

10. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Leeman agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

12. **MODIFICATION**

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

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: _____

Date: 4/14/16 _____

By: _____

Whitney R. Leeman, Ph.D.

By:  _____

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Leeman agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

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

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 4/7/16

Date: _____

By: *Whitney Leeman*

By: _____

Whitney R. Leeman, Ph.D.