

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D., (“Leeman”) and Oakley, Inc. (“Oakley”), with Leeman and Oakley 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. Oakley employs ten or more individuals 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 Oakley manufactures, sells, and distributes for sale in California, backpacks with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. 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 backpacks with vinyl/PVC components containing DEHP that are manufactured, sold, or distributed for sale in California by Oakley including, but not limited to, the *Oakley Dry Goods Pack, Grigio Scuro, #92607-23Q, UPC #8 87288 82758 7* (“Products”).

1.4 Notice of Violation

On December 29, 2015, Leeman served Oakley, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Oakley violated Proposition 65 when it failed to warn its customers and

consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Oakley denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, sold, and distributed for sale 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 Oakley 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 Oakley of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Oakley. This Section shall not, however, diminish or otherwise affect Oakley'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 March 25, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date and continuing thereafter, Oakley agrees, with respect to Products as defined above in subsection 1.3, to manufacture for sale, purchase for sale, or distribute for sale in California only: (a) "Reformulated Products" as defined by subsection 2.2 below, or (b) Products that are sold with a clear and reasonable warning in accordance with subsection 2.3 below.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%)

when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Oakley that are not Reformulated Products, Oakley will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Oakley further agrees that any warning used will be prominently placed in relation to the Product 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 purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing the following statement:

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

In the event that Oakley sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement

appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

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, Oakley agrees to pay \$18,000 in civil penalties. Each 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 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Leeman. Leeman's counsel shall be responsible for delivering OEHHA's portion of any penalty payment(s) made under this Settlement Agreement to OEHHA.

3.1.1 Initial Civil Penalty

Within five days of the Effective Date, Oakley shall make an initial civil penalty payment of \$4,500. Oakley shall provide its payment in a single check made payable to "Whitney R. Leeman, Client Trust Account."

3.1.2 Final Civil Penalty; Waiver

On June 1, 2016, Oakley will make a final civil penalty payment of \$13,500. Pursuant to title 11 Cal. Code Regs. section 3203(c), the final civil penalty will be waived in its entirety if, by June 15, 2016, an officer of Oakley provides Leeman's counsel with signed declaration certifying that, as of the date of the declaration, all Products sold or distributed for sale in California by Oakley are Reformulated Products, and that Oakley will continue to offer only Reformulated Products in California in the future. The option to provide a declaration certifying complete reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

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, within five days of the Effective Date, Oakley agrees to pay \$23,000 to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of Oakley's management, and negotiating a settlement in the public interest. Oakley's reimbursement payment shall be delivered 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 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 Oakley

This Settlement Agreement is a full, final, and binding resolution between Leeman and Oakley, of any violation of Proposition 65 that was or could have been asserted by Leeman, in her individual capacity only and not in any representative capacity, on her own behalf or on behalf of her past and current agents, representatives, attorneys, successors, and assignees, against Oakley, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, the manufacturers of the Products, and each entity to whom Oakley directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in Products

manufactured, sold, or distributed for sale in California by Oakley before the Effective Date, as alleged in the Notice.

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 and all rights that she may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Oakley and Releasees including, without limitation, all actions and causes of action, 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 the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold, or offered for sale in California by Oakley, 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 Oakley's Release of Leeman

Oakley, 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, 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 provision of this Settlement Agreement is held 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 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Oakley may provide written notice to Leeman of any asserted change in the law, and shall have no further injunctive 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 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 Oakley:

Andrea Dorigo, President
Oakley, Inc.
1 Icon
Foothill Ranch, CA 92610

with a copy to:

R. Morgan Gilhuly, Esq.
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104

For Leeman:

Proposition 65 Coordinator
The Chanler Group
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:

Date: 3/23/16

By: Whitney Leeman
DR. WHITNEY R. LEEMAN

AGREED TO:

Date: 3/21/2016

By: A. Dorigo
Andrea Dorigo, President
OAKLEY, INC.