

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Swany America Corp. (“Swany”) with Leeman and Swany 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 Swany 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 Swany manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, gloves with vinyl/PVC components that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are gloves with vinyl/PVC components containing DEHP, that are manufactured, sold and/or distributed for sale in California by Swany, including, but not limited to, the *Hotfingers Alpine Carver CX212A Rip N Go II, Style# CX212DL, UPC #0 44659 80439 8* (collectively, “Products”).

1.4 Notice of Violation

On December 29, 2015, Leeman served Swany and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that

Swany violated Proposition 65 when it failed to warn its customers and consumers in California that the 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

This Settlement Agreement is entered into to avoid potentially expensive and time consuming litigation. Swany 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, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Swany 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 Swany of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Swany. This Section shall not, however, diminish or otherwise affect Swany'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, June 30, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on the Effective Date, and continuing thereafter, Swany shall only purchase for sale or manufacture for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any vinyl component of the Product when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance. Leeman agrees that Products meeting this

reformulation standard do not require a warning under Proposition 65 for DEHP.

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, Swany agrees to pay, and Leeman agrees to accept \$9,800 in civil penalties as set forth below, completely satisfying the requirements of Health & Safety Code 25249.7(b)(2) pertaining to Products manufactured prior to the Effective Date. Each 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 have sole responsibility for remitting the proper portion of Swany’s penalty payment(s) under this settlement to OEHHA.

3.1.1 Initial Civil Penalty. Within ten days of the Effective Date, Swany shall pay an initial civil penalty of \$2,800. Swany 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.

3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.

On August 31, 2016, Swany shall make a final civil penalty payment of \$7,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later than August 31, 2016, an officer of Swany provides Leeman with an original or pdf of a signed written certification that all of the Products it ships for sale or distributes for sale in California as of the date of its certification are Reformulated Products, and that Swany will continue to offer only Reformulated Products in California in the future. The option to certify early reformulation in lieu of making the final civil penalty payment otherwise required by this Section is a material term, and time is of the essence. Swany shall deliver its certificate,

if any, to Leeman's counsel at the address provided in Section 3.3, below.

3.2 Reimbursement of Leeman's 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 ten days of the Effective Date, Swany agrees to pay \$19,000 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 Swany's management, and negotiating a settlement.

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 Swany

This Settlement Agreement is a full, final and binding resolution between Leeman, as an individual and not on behalf of the public, and Swany, of any actual or alleged violation of Proposition 65 that was or could have been asserted by Leeman on her own behalf, or on behalf of herself, her past and current agents, representatives, attorneys, successors, and assignees, against Swany, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Swany directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including but not limited to Dick's Sporting Goods, Inc.), franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about exposures to

DEHP in Products manufactured, sold or distributed for sale by Swany prior to the Effective Date. Leeman agrees that compliance with the term of this Settlement Agreement constitutes compliance with Proposition 65 with respect to DEHP in the Products.

In further consideration of the promises and agreements herein contained, Leeman, as an individual and not on behalf of the public, 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 limited to, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to Products manufactured or distributed for sale by Swany 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 Swany's Release of Leeman

Swany 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

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4.3 Mutual Waiver of California Civil Code Section 1542

The Parties each acknowledge she/it is familiar with Section 1542 of the Civil Code, 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.

The Parties, each on his/its own behalf, and on behalf of his/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 through 4.2, above.

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 remaining enforceable 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, as to the Products or as to DEHP, then Swany 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 Swany:

Tsukasa Itano, Chief Executive Officer
Swany America Corp.
115 Corporate Drive
Johnstown, NY 12095

For Leeman:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth St.
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With a copy to Swany's counsel:

James Robert Maxwell, Esq.
Rogers Joseph O'Donnell, PC
311 California Street, 10th Floor
San Francisco, CA 94104

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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

10. MUTUAL DRAFTING

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of

the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

11. 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).

12. MODIFICATION

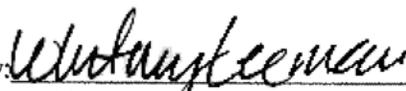
This Settlement Agreement may be modified only by written agreement of the Parties. Any Party seeking to modify this Settlement Agreement or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify or enforce the Settlement Agreement.

13. 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.

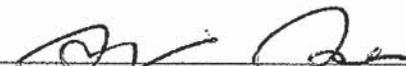
AGREED TO:

Date: 7/6/2016

By: 
Whitney R. Leeman, Ph.D.

AGREED TO:

Date: 7/6/2016

By: 
Swany America Corp.