

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and RM Exports, with Leeman and RM Exports 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. RM Exports supplied the tea products at issue in this settlement to Cost Plus, Inc. (Cost Plus), the entity named in Leeman’s 60-Day Notice of Violation.

#### 1.2 Product Description

For purposes of this Settlement Agreement, “Covered Product” is defined as, and limited to, the dried tea identified in Leeman’s Notice that is sold and distributed for sale in California by Cost Plus and Bed, Bath & Beyond, and that is supplied to Cost Plus and Bed, Bath & Beyond by RM Exports, specifically, the *Hand Picked Teas of India Plantation Grown Darjeeling Tea, #25124231*, without regard to whether the Covered Product is sold in individual units, cases, containers, or in bulk quantities.

#### 1.3 Notice of Violation

On October 28, 2016, Leeman served Cost Plus, its corporate parent, Bed, Bath & Beyond, Inc., the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that they violated Proposition 65 by failing to warn their customers and consumers in California of the health hazards associated with exposures to lead from the Covered Product. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

#### **1.4 No Admission**

RM Exports denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products that it has sold and distributed for sale in California, including the Covered Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by RM Exports 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 RM Exports of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by RM Exports. This Section shall not, however, diminish or otherwise affect RM Exports' obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean September 29, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1** Commencing on the Effective Date and continuing thereafter, RM Exports shall only ship, sell, or offer for sale in California (i) Compliant Products as defined by Section 2.2, below, or (ii) a non-Compliant Covered Product that is sold and offered for sale in California with a clear and reasonable warning pursuant to Section 2.4.

**2.2** "Compliant Products" are defined as a Covered Product that:

**2.2.1** yields an infusion test result of "no reportable amount" of lead when a domestic laboratory evaluates the Covered Product using a validated preparation method and analyzes the sample according to United States Environmental Protection Agency ("EPA") testing methodology 6020 using inductively coupled plasma mass spectrometry (ICP-MS). The sample shall be prepared by placing one prepackaged tea bag or, for loose leaf teas, two grams of dried tea leaves, in 200 milliliters (mL) of ultra-pure boiling water for five minutes, and after five minutes decanting a representative sample of the resulting infusion for analysis. For purposes of this Settlement Agreement,

“no reportable amount” is defined as an amount of lead that does not exceed a reporting limit of 1.0micrograms per liter ( $\mu\text{g/L}$ ); or

2.2.2 yields a content test result of “no reportable amount” of lead when a domestic laboratory evaluates a representative sample of the dried leaves of a Covered Product using a validated preparation method and analyzes the sample according to EPA testing methodology 6020 using ICP-MS. For purposes of this Settlement Agreement, “no reportable amount” is defined as an amount of lead that does not exceed 0.25 milligrams per kilogram (mg/kg).

### 2.3 Additional Testing Methods

In addition to the above testing protocols, RM Exports may use equivalent methodologies utilized by state or federal agencies to determine the presence, or measure the amount of lead in a solid substance (e.g., dried tea leaf material), or analyze an infusion sample (e.g., steeped or brewed tea) for lead content.

### 2.4 Warnings

Commencing on the Effective Date and continuing thereafter, any Covered Product sold, offered for sale, or distributed for sale in California by RM Exports that does not qualify as Compliant Products, shall be accompanied by a clear and reasonable warning, in accordance with this section. The warning required by this section shall 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 Settlement Agreement a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning containing the following statement:

**WARNING.** Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

## **2.5 Modification of Compliance Standards**

The lead content limits applicable to Compliant Products established by subsection 2.2, above, shall not be modified except as follows: RM Exports may use any lead reformulation standard or level for the Covered Product that is, after the Effective Date, adopted by The State of California, either by statute or regulation. In the event RM Exports intends to use a lead content limit permitted by this subsection, RM Exports shall provide Leeman with written notice of the proposed change and the basis for it.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Within thirty (30) days after the Effective Date, 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, RM Exports agrees to cause payment to be made in the amount of \$2,000 in civil penalties. The 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 retained by Leeman. RM Exports shall cause payment to be made in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Whitney R. Leeman, Client Trust Account” in the amount of \$500. Leeman’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment.

### **3.2 Attorneys’ 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, leaving the issue to be resolved after the material terms of the Parties’ agreement had been settled. Shortly after finalizing the other settlement terms the Parties negotiated RM

Exports' reimbursement of Leeman's fees and costs 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 thirty (30) days after the Effective Date, RM Export agrees to cause payment to be made in a check in the amount of \$11,000 made payable to "The Chanler Group." RM Exports' payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of RM Exports, Cost Plus and Bed, Bath & Beyond, and negotiating a settlement that provides a significant public benefit.

### **3.3 Payment Address**

All payments under 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 RM Exports**

This Settlement Agreement is a full, final, and binding resolution between Leeman, in her individual capacity and not on behalf of the public in California, and RM Exports of any violation of Proposition 65 that was or could have been asserted by Leeman, on her own behalf or on behalf of her past and current agents, representatives, attorneys, successors, and assignees, against RM Exports, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom RM Exports directly or indirectly distributes or sells the Covered Product, including its downstream distributors, wholesalers, customers (including, without limitation, Cost Plus and Bed Bath & Beyond), retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to lead in any Covered Product sold or distributed for sale by RM Exports and Releasees in California before the Effective Date, as alleged in the Notice.

Leeman agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in any Covered Product sold after the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, as an individual and not on behalf of the public of California, on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights she may have 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, expenses, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to lead in any Covered Product sold by RM Exports before the Effective Date, as alleged in the Notice.

The releases in this Settlement are specifically limited to the Covered Product sold by RM Exports to Bed, Bath & Beyond and Cost Plus and specifically exclude any other products not falling within the definition of "Covered Product" set forth in Section 1.3.

#### **4.2 RM Exports' Release of Leeman**

RM Exports, 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Product.

#### **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 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then RM Exports 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 Covered Product is so affected.

7. **NO CONSENT TO JURISDICTION**

**By entering into this Settlement Agreement, RM Exports specifically does not agree to be subject to jurisdiction in California or the United States, and expressly reserves all rights and objections to any attempt to subject it to jurisdiction in California or the United States.**

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 RM Exports:

Merrit Jones, Esq.  
Bryan Cave LLP  
3 Embarcadero Center, 7<sup>th</sup> Floor  
San Francisco, CA 94111-4070

For Leeman:

The Chanler Group  
Attn: Proposition 65 Coordinator  
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 are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 10/16/2017

By:   
WHITNEY R. LEEMAN, PH.D.

**AGREED TO:**

Date: 23rd SEPTEMBER '2017.

By:   
RM EXPORTS

Name: SACHIN MALHOTRA  
(print)

Title: CEO