

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Starwest Botanicals, Inc. (“Starwest”), with Leeman and Starwest 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. Starwest 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Leeman alleges that Starwest sells and distributes for sale in California dried teas (loose leaf and bagged teas) containing lead, and that it does so without providing the warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

For purposes of this Settlement Agreement, “Products” are defined as, and limited to, the Oolong tea identified in Leeman’s Notice that is sold and distributed for sale in California by Starwest and specifically identified as the *Starwest Botanicals Oolong Tea, #401065-4, UPC #7 67963 14218 4*, without regard to whether the Products are sold in individual units, cases, containers, or in bulk quantities.

1.4 Notice of Violation

On November 7, 2016, Leeman served Starwest, Inc., the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Starwest violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with

exposures to lead from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

1.5 No Admission

Starwest 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 Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Starwest 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 Starwest of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Starwest. This Section shall not, however, diminish or otherwise affect Starwest'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 this agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION and WARNINGS

2.1 Commencing on the Effective Date and continuing thereafter, Starwest shall only ship, sell, or offer for sale in California Reformulated Products pursuant to Section 2.2, or Products bearing Proposition 65 warnings pursuant to Section 2.3.

2.2 "Reformulated Products" are defined as those products that:

2.2.1 yield an infusion test result of "no reportable amount" of lead when a domestic laboratory evaluates the 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 1.0 micrograms per liter ($\mu\text{g/L}$); or

2.2.2 yield a content test result of “no reportable amount” of lead when a domestic laboratory evaluates a representative sample of the dried tea 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/kilogram (mg/kg).

2.3 Warnings

Commencing on the Effective Date and continuing thereafter, those Products sold, offered for sale, or distributed for sale in California by Starwest that are not Reformulated Products, shall be accompanied by a clear and reasonable warning, in accordance with this Section. The warning 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. A warning containing the following warning statement shall be deemed clear:

WARNING: Consuming this product can expose you to lead, which is known to the State of California to cause birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov/food

2.4 Additional Testing Methods

In addition to the above testing protocols, Starwest may use equivalent methodologies utilized by state or federal agencies to determine the presence, or measure the amount of lead in a solid (i.e. dried loose or bulk teas), or liquid (i.e., brewed tea) substance.

2.5 Modification of Reformulation Standards

The reformulation standards set forth in Section 2.2, above, shall not be modified unless the conditions and procedures set forth in Sections 2.5.1, 2.5.2 or 2.5.3, below, are satisfied.

2.5.1 Alternative Standards Adopted by The State of California.

Starwest may utilize any lead reformulation standard or level for the Products that is, after the Effective Date: (i) adopted by The State of California, either by statute or regulation; or (ii) agreed to by the California Attorney General, on behalf of the People of the State of California, in a consent judgment entered by a Superior Court of the State of California. In the event Starwest intends to utilize a reformulation standard permitted by this subsection, Starwest shall provide Leeman with written notice of the proposed change and the basis therefor.

2.5.2 Alternative Standards Adopted by Leeman. Starwest may utilize any lead reformulation standard or level for the Products that is, after the Effective Date, agreed to by Leeman in a consent judgment entered by the California Superior Court. In the event Starwest intends to utilize a reformulation standard permitted by this subsection, Starwest shall provide Leeman with written notice of the proposed change and the agreement entered by Leeman supporting the proposed new standard.

2.5.3 Alternative Standards Proposed by a Party. Starwest may, no sooner than 180 days after the Effective Date, provide Leeman with written notice of a proposed change to the reformulation standards or levels established by Section 2.2. Upon such notice, the Parties shall meet and confer for a period of 90 days to modify the Settlement Agreement. If, after meeting and conferring, the Parties are unable to reach an agreement, they shall seek the services of Judicial Arbitration and Mediation Services (JAMS), San Francisco offices, to privately adjudicate the dispute, the costs of which shall be paid by Starwest.

2.6 The reformation standards established by Section 2.2, above, take into

consideration Starwest's remedial efforts, including its representation that it will (a) include a "Daily Serving Size" on the labeling of both its bulk dried tea, and individually-bagged tea Products. The Daily Serving Size will advise consumers of the Products to "Bring water to boil, remove from heat, and allow to cool slightly. Pour 8-12 oz. of simmering water (180° preferred) over one tea bag [*or for bulk tea Products* '1 tsp. of tea']. Steep 3-4 minutes" and (b) add the statement "Pregnant women should limit their intake to 1 cup per day" to the packaging or other labeling for the Products. The Parties agree that the reformulation standards coupled with these additional statements would reduce any resulting exposure to a level below that at which Proposition 65 requires a warning.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

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, Starwest agrees to pay civil penalties in the amount of \$2,500 within five days of the Effective Date. 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 paid to Leeman. Starwest shall issue 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, Client Trust Account" in the amount of \$625. Leeman's counsel shall be responsible for delivering OEHHA's portion of any civil penalty payment made under this Settlement Agreement.

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

Starwest's 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 five days of the Effective Date, Starwest agrees to pay \$17,500 in a single check made payable to "The Chanler Group." Starwest's payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Starwest's management, 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 Starwest

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 Starwest 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 Starwest, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Starwest directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to lead in Products sold or distributed for sale by Starwest in California before the Effective Date, as alleged in the Notice. Leeman agrees that compliance with this Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in Products sold by Starwest 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, and on behalf of herself, 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 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to lead in Products sold by Starwest before the Effective Date, as alleged in the Notice.

4.2 Starwest's Release of Leeman

Starwest, 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 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Starwest 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 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 Starwest:

Van Joerger, President
Starwest Botanicals, Inc.
161 Main Avenue
Sacramento, CA 95838

James Scadden, Esq.
Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

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:

AGREED TO:

Date: 4/14/2017

Date: 4/13/17

By:


WHITNEY R. LEEMAN, PH.D.

By:


Van Joerger, President
STARWEST BOTANICALS, INC.