

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and The Grand Del Mar Resort, L.P. (“The Grand”), with Leeman and The Grand collectively referred to as the “Parties.” Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. The Grand 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, Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Leeman alleges that The Grand has sold in the State of California, without the requisite Proposition 65 health hazard warning, flame cooked ground beef burgers containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, which are cancer-causing chemicals listed pursuant to Proposition 65. Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene shall be collectively referred to herein as the “Listed Chemicals.”

1.3 Product Description

The products covered by this Settlement Agreement are flame-cooked ground beef burgers containing the Listed Chemicals that are sold or offered for sale in California by The Grand, including, but not limited to, the *Clubhouse Cheeseburger* (collectively “Products”).

1.4 Notice of Violation

On or about August 16, 2012, Leeman served The Grand and the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that The Grand was in violation of Proposition 65 for failing to warn their customers and consumers in California that flame-cooked ground beef burgers containing the Listed Chemicals sold by The Grand expose individuals to the Listed Chemicals. 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

The Grand denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has sold 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 The Grand of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by The Grand of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by The Grand. This Section shall not, however, diminish or otherwise affect The Grand's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 No Effect in Other Proceedings or for Other Purposes

Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Settlement Agreement. This Settlement Agreement is the product of negotiation and compromise and is accepted by the Parties for purposes of settling, compromising, and resolving issues raised by the Notice, and shall not be used for any other purpose, in any other matter.

1.7 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 10, 2013.

2. INJUNCTIVE RELIEF

2.1 Reformulation: Cooking Modification

The Grand shall exercise its best efforts to substantially reduce or eliminate the Listed Chemicals from the Products. To that end, The Grand agrees to install new cooking equipment at each location where Products are prepared by August 31, 2013, so that ground beef menu items sold in California will no longer be exposed to flame during cooking. All documentation

regarding modifications made to The Grand's cooking equipment shall be retained by The Grand for at least seven years, and shall be promptly shared with Leeman, upon Leeman's written request.

2.2 Product Warnings

Commencing within thirty days of execution of this Settlement Agreement and continuing thereafter, The Grand shall, at each location under its ownership or control that is located in California where any Product(s) are sold, provide a "Warning" if consumption of a single serving of one ground beef menu item sold at that location, of normal size and lipid content for that item, cooked to well done, results in an exposure of equal to or greater than 0.033 micrograms ("µg") benz(a)anthracene, 0.06 µg benzo(a)pyrene, or 0.096 µg benzo(b)fluoranthene ("Warning Threshold") in a test performed by a laboratory within the United States which is agreed upon by the parties ("Testing Laboratory"). A Warning must be provided if one or more menu items contain PAHs in excess of the Warning Threshold.

Where one is required, the Warning shall consist of the following "Warning Language:"¹

WARNING: Chemicals known to the State of California to cause cancer[and reproductive harm or birth defects] are present in the food or beverages sold here. Some grilled[or browned] foods, such as flame cooked beef[and browned potatoes], contain chemicals known to the State of California to cause cancer[and reproductive harm] formed as a by-product of the grilling[and browning]. These chemicals are not added to our food but are created when certain foods are grilled[and browned].

The Warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices so as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or consumption.

¹ The Grand may add the bracketed language appearing in the Warning Language, and language regarding additional chemicals and/or products, only if The Grand has knowledge—based on testing conducted by a U.S.-based laboratory employing methods for detection and analysis of chemicals authorized by state or federal agencies, or grounded in facts that are generally accepted by a recognized authoritative body, as that term is defined in Health and Safety Code § 25306(b)—that chemicals known to the State of California to cause cancer, or birth defects or other reproductive harm are present in a particular food product.

Specifically, the Warning shall be provided through the posting of a sign that meets or substantially complies with the criteria set forth below.

The Warning will be displayed on a sign (“Warning Sign”) that is at least ten inches by ten inches (10 x 10), with the word “WARNING” centered three-quarters of an inch from the top of the sign in Times New Roman bold, Garamond bold type face, or similar font, in all capital letters that are at least one inch in height. Three-sixteenths of an inch from the base of the word “WARNING” shall be a line extending from left to right across the width of the sign one-sixteenth of an inch in thickness. Centered one-half inch below the line shall be the body of the Warning. The Warning shall appear in Times New Roman bold, Garamond bold, or similar font. For the body of the Warning, left and right margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. Larger signs shall bear substantially the same proportions of type size and spacing to sign dimensions as the sign 10 inches high by 10 inches wide.

A Warning Sign must be placed at each of the following locations in the restaurant so that it is clearly visible to consumers: (1) at the hostess station; (2) in the food preparation area(s), (3) at each counter where food is purchased; and (4) in the bar area next to the posted business licenses.

2.3 Compliance Review

Beginning on the date that is thirty days following the Effective date and continuing at least once every six months for three years thereafter, The Grand shall perform a compliance review of each of its California locations selling any Products, to assess and ensure that such each location is in compliance with all of the requirements of this Section 2. The compliance review shall be documented in writing, noting with specificity at a minimum: any deficiencies regarding compliance with this Section, the date those deficiencies were discovered, and the date by which the deficiencies were corrected. All documentation regarding this compliance review shall be retained by The Grand for at least one year from the date produced, and shall be promptly shared with Leeman, upon Leeman’s written request. The Grand shall, within fourteen

(14) days of the compliance inspection or notification of noncompliance by any other means, correct any deficiencies, including replacing damaged or missing Warning Signs.

3. MONETARY PAYMENTS

3.1 Civil Penalties

In settlement of all the claims referred to in this Settlement Agreement, The Grand shall pay a total of \$36,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) in the form of a check issued to “OEHHA,” and the remaining 25% of the penalty remitted to Leeman, in the form of a check made payable to “The Chanler Group in Trust for Whitney R. Leeman.” All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.1 Initial Civil Penalty

The Grand shall pay an initial civil penalty in the amount of \$20,000 on or before the Effective Date. The amount of initial civil penalty due shall be reduced by fifty percent (to \$10,000), if The Grand certifies in writing, received by Leeman on or before the Effective Date, that it shall, by August 31, 2013, modify its cooking equipment as set forth in Section 2.1. This certification in lieu of a portion of the initial civil penalty payment is a material term, and time is of the essence.

3.1.2 Final Civil Penalty

The Grand shall pay a final civil penalty of \$16,000 within ten days of the September 1, 2013 (“Certification Deadline”). The final civil penalty shall be reduced upon written certification by an appropriate officer or director of The Grand, received by the Certification Deadline at the address for Dr. Leeman provided in Section 8, as follows:

- a) The Grand shall pay the entire final penalty of \$16,000 if no certification is received by the Certification Deadline;

- b) The Grand shall pay the entire final penalty of \$16,000 if The Grand (1) has sold Products after the Effective Date, (2) has not changed the cooking equipment as set forth in Section 2.1, and (3) has failed to comply with Section 2.2;
- c) The final civil penalty shall be reduced by twenty-five percent, to \$12,000, if The Grand has not changed its cooking equipment as set forth in Section 2.1, but has complied with Section 2.2, including by providing a Warning from the Effective Date forward, as necessary;
- d) The final civil penalty shall be reduced by seventy-five percent, to \$4,000, if The Grand has both (1) changed its cooking equipment as set forth in Section 2.1, and (2) has complied with Section 2.2, including by providing a Warning from the Effective Date forward, as necessary;
- e) The final civil penalty shall be waived in its entirety if The Grand demonstrates achievement of the Warning Threshold by the Certification Deadline.

The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence.

3.2 Reimbursement of Fees and Costs

The Parties reached an accord on the compensation due 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, on or before the Effective Date, The Grand shall pay \$25,250.00 for all fees and costs incurred investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. The Grand shall deliver payment in the form of a check payable to "The Chanler Group," at the address provided in Section 3.3.1(a).

3.3 Payment Procedures

3.3.1 Issuance of Payments

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

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

(b) All payments owed to OEHHA pursuant to Sections 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

3.3.2 Proof of Payment

A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

3.3.3 Tax Documentation

Upon each payment required by this Section 3, The Grand shall issue separate 1099 forms as follows: For each penalty payment to OEHHA, a 1099 shall be issued to the Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486); for each penalty payment to Whitney Leeman, a 1099 shall be issued to "Whitney R. Leeman," whose address and tax identification number shall be furnished upon request after this Consent Judgment is fully executed by the Parties; for each payment in reimbursement of fees and costs, The Grand shall issue a separate 1099 form to "The Chanler Group" (EIN: 94-3171522).

4. RELEASES

4.1 Leeman's Release of The Grand

This Settlement Agreement is a full, final, and binding resolution between Leeman and The Grand of any violation of Proposition 65 that was or could have been asserted by Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees against The Grand, its parents, subsidiaries, affiliated entities under common ownership (specifically including Manchester Resorts Management, LLC), its directors, officers, employees, attorneys, insurers, and each entity to whom The Grand directly or indirectly distributed or sold the 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 the Listed Chemicals contained in the Products that were sold and/or offered for sale by The Grand in California before the Effective Date.

Leeman, on behalf of herself, her past and current agents, representatives, attorneys, successors, and assignees further releases and discharges Releasees from any and all known and unknown past, present and future rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses related to or arising out of the facts and claims asserted, or that could have been asserted, in the Notice and related to the Products, including without limitation any and all claims concerning exposure of any person to the Listed Chemicals in the Products that were sold and/or offered for sale by The Grand in California before the Effective Date. Compliance with the terms of this Settlement Agreement shall constitute compliance by the Releasees with Proposition 65 with respect to exposures to the Listed Chemicals contained in the Products. This release does not limit or affect the obligations of any party created under this Settlement Agreement.

It is possible that other injuries, damages, liability, or claims not now known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered, and this Settlement Agreement is expressly intended to cover and include all such injuries, damages, liability, and claims, including all rights of action therefor. Leeman has full

knowledge of the contents of section 1542 of the Civil Code ("Section 1542"). Leeman acknowledges that the claims released in this section may include unknown claims and waives Section 1542 as to any such unknown claims. Section 1542 reads 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 acknowledges and understands the significance and consequences of this specific waiver of Section 1542.

4.2 The Grand's Release of Leeman

The Grand 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 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

It is possible that other injuries, damages, liability, or claims not now known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered, and this Settlement Agreement is expressly intended to cover and include all such injuries, damages, liability, and claims, including all rights of action therefor. The Grand has full knowledge of the contents of Section 1542. The Grand acknowledges that the claims released in this section may include unknown claims and waives Section 1542 as to any such unknown claims. The Grand acknowledges and understands the significance and consequences of this specific waiver of Section 1542.

5. NOTICE AND CURE

No action to enforce this Settlement Agreement may be commenced against The Grand or Manchester Resorts Management, LLC by Leeman unless Leeman notifies The Grand of the specific acts alleged to breach this Settlement Agreement at least 60 days before serving or filing

any action. Any notice to The Grand must contain (a) the name of the Product, (b) specific dates when the Product was sold without the warning specified in Section 2.2, (c) the location in the Grand del Mar Resort at which the Product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

Within 30 days of receiving the notice described in the paragraph immediately above, The Grand shall either (1) withdraw the Product, (2) provide a Warning for the Product as described in Section 2, or (3) refute the information provided in the notice. Should the Parties be unable to resolve the dispute, either party may seek relief by filing an action to enforce this Settlement Agreement in the California Superior Court for the County of San Francisco.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within 12 months of the execution of this Settlement Agreement, The Grand may send Leeman a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and to seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, in furtherance of obtaining approval of the consent judgment, Leeman and The Grand and their respective counsel agree to mutually employ their best efforts to support the entry of the proposed consent judgment and obtain approval of the consent judgment by the Court in a timely manner. For purposes of this Section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if The Grand exercises its right contained in the paragraph above, The Grand will reimburse Leeman and her counsel for their reasonable fees and costs incurred in drafting and filing the complaint, converting the

Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the consent judgment, in an amount not to exceed \$18,000, exclusive of fees and costs incurred on appeal, if any. The Grand will remit payment to The Chanler Group, at the address provided in Section 3.3.1(a) within thirty (30) calendar days after its receipt of monthly invoices from Leeman's counsel for work performed under this Section.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California for all purposes and apply within the State of California.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For The Grand:

Thomas Voss, President
The Grand Del Mar Resort, L.P.
5300 Grand Del Mar Court
San Diego, CA 92130

For Leeman:

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

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

10. 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.

11. POST-EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

12. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties signed by authorized representatives of each Party.

13. **ENTIRE AGREEMENT**

This Settlement Agreement is the entire agreement between the Parties regarding its subject matter, and supersedes all prior and contemporaneous oral and written agreements and communications.

14. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Party and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date:

Whitney R. Leeman

Date:

26 APRIL 2013

By:

April 30, 2013
Whitney R. Leeman

By:

Thomas Voss
Thomas Voss, President
The Grand Del Mar Resort, L.P.