

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between LorAnn Oils, Inc. (“LorAnn Oils”) and Whitney R. Leeman, Ph.D. (“Leeman”), with Leeman and LorAnn Oils collectively referred to as the “Parties” and individually as a “Party.”

#### 1.2 General Allegations

Leeman alleges that LorAnn Oils has, directly or indirectly, manufactured, distributed and/or sold in the State of California food extracts, flavors and colorings containing concentrations of 4-Methylimidazole (“4-MEI”) above the allowable state levels without the requisite Proposition 65 health hazard warning under California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”). 4-MEI is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

#### 1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined as food extracts, flavors, and colorings including, but not limited to, *LorAnn Oils Cola Flavor, #0 293753 6*, manufactured, imported, and/or distributed for sale in the State of California by LorAnn Oils (“Product” or “Products”).

#### 1.4 Notice of Violation

On or about March 26, 2014, Leeman served LorAnn Oils and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on LorAnn Oils’ alleged failure to warn consumers that the Products exposed users in the State of California to 4-MEI. To the best of the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

LorAnn Oils denies all factual and legal allegations contained in Leeman's Notice and maintains that all of the products it has sold and/or offered for sale in the State of California, including the Products, have been and are in compliance with all federal, state, and local laws. Nothing in this Settlement Agreement shall be construed as an admission by LorAnn Oils 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 LorAnn Oils of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect LorAnn Oils' 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 October 15, 2014.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standards**

"Reformulated Products" shall mean those Products containing 4-MEI in concentrations less than or equal to five (5) parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection Agency method 8321A (LC/MS) or any other substantially equivalent method for detecting the presence of 4-MEI in a liquid substance.

### **2.2 Reformulation Commitment**

As of the Effective Date, LorAnn Oils shall only manufacture, import, and/or order, or cause to be manufactured, imported, and/or ordered on its behalf, for sale in the State of California, Reformulated Products pursuant to Section 2.1 above.

## **3. MONETARY TERMS**

In settlement of all the claims referred to in this Settlement Agreement, LorAnn Oils shall pay a total of \$2,400 in civil penalties, to be allocated as set forth in Sections 3.1 and 3.2.

### **3.1 Initial Civil Penalty**

LorAnn Oils shall pay a civil penalty in the amount of \$400 within ten (10) business days of the Effective Date. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman. LorAnn Oils shall issue two separate checks made payable as follows: (a) “OEHHA” in the amount of \$300; and (b) “Whitney R. Leeman, Ph.D., Client Trust Account” in the amount of \$100. All penalty payments shall be delivered to the addresses listed in Section 3.3.1 below.

### **3.2 Final Civil Penalty**

On or before March 31, 2015, LorAnn Oils shall pay a final civil penalty of \$2,000. The final civil penalty shall be waived in its entirety, however, if an Officer of LorAnn Oils provides Leeman with written certification that, as of April 1, 2015 and continuing into the future, ninety-five percent (95%) of sales by volume of the Product manufactured, imported, distributed, sold and offered for sale in California by LorAnn Oils will contain no detectable 4-MEI. “No detectable” is defined as containing less than or equal to 1 ppm of 4-MEI when analyzed pursuant to U.S. Environmental Protection Agency testing methodology 8321A (LC/MS) or any other substantially equivalent method for detecting the presence of 4-MEI in a liquid substance. Leeman must receive any such certification on or before March 31, 2015, and time is of the essence. LorAnn Oils shall issue two separate checks made payable as follows: (a) “OEHHA” in the amount of \$1,500; and (b) “Whitney R. Leeman, Ph.D., Client Trust Account” in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.3.1 below.

### **3.2 Reimbursement of 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 to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Leeman then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been

finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. LorAnn Oils shall pay \$21,000 by means of a check payable to “The Chanler Group” for all fees and costs incurred as a result of investigating, bringing this matter to LorAnn Oils’ attention, and negotiating a settlement. LorAnn Oils shall deliver payment within ten (10) business days of the Effective Date, to the address listed in Section 3.3.1 below.

**3.3 Payment Procedures**

**3.3.1 Issuance of Payments. Payments shall be delivered as follows:**

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

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

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

**3.3.2 Proof of Payment to OEHHA.** LorAnn Oils shall mail a copy of each check payable to OEHHA, simultaneous with payment, to The Chanler Group at the address set forth in Section 3.3.1(a) above, as proof of payment to OEHHA.

#### **4. RELEASE OF ALL CLAIMS**

##### **4.1 Leeman's Release of LorAnn Oils**

This Settlement Agreement is a full, final, and binding resolution between Leeman and LorAnn Oils of any alleged 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 LorAnn Oils, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom LorAnn Oils directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers, and their present and former agents, attorneys, representatives, shareholders, directors, officers, and employees, and their respective predecessors, successors, parent, affiliates, and subsidiaries (collectively referred to as "Releasees"), based on the alleged failure to warn about potential exposures to 4-MEI contained in the Products manufactured, distributed or sold by LorAnn Oils before the Effective Date as set forth in the Notice. The Parties understand and agree that this Section 4.1 release shall not extend upstream to any entities that provided LorAnn Oils with any of the Products or any ingredients contained in the Products.

In further consideration of the promises and agreements herein contained, Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she may have against LorAnn Oils and Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees (collectively, "Claims") arising under Proposition 65 with respect to 4-MEI in the Products manufactured, distributed or sold by LorAnn Oils before the Effective Date. LorAnn Oils

and Leeman, in her individual capacity only, and not in her representative capacity, agree that compliance by LorAnn Oils with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to any 4-MEI in the Products.

#### **4.2 LorAnn Oils' Release of Leeman**

LorAnn Oils, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, waives any and all claims against Leeman, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

#### **4.3 The Parties' Mutual General Release**

It is the intention of the Parties that this Settlement Agreement shall be effective as a full accord and satisfaction and release of the claims released by Leeman pursuant to Section 4.1, above, and of the claims released by LorAnn Oils pursuant to Section 4.2, above. In furtherance of this intention, the Parties are familiar with California Civil Code § 1542, 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.

LorAnn Oils and Leeman in her individual capacity only, and *not* in her representative capacity, acknowledge and understand the significance and consequences of this waiver of California Civil Code § 1542.

### **5. ENFORCEMENT**

In the event of any dispute regarding compliance with the terms of this Settlement Agreement, the Parties shall meet and confer within 30 days in an effort to resolve the dispute informally. Should such attempts at informal resolution fail, a Party may file an action to enforce the Settlement Agreement. For purposes of this Settlement Agreement, the Parties agree that the

Superior Court of California in San Francisco County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of San Francisco.

**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 and/or 4-MEI, then LorAnn Oils shall 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. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (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 LorAnn Oils:

John Grettenberger, CEO  
LorAnn Oils, Inc.  
4518 Aurelius Rd.  
Lansing, MI 48910

With a copy to:

Trenton H. Norris  
Sarah Esmaili  
Arnold & Porter LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111

For Leeman:

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

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

**8. COUNTERPARTS; FACSIMILE/PDF 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Leeman agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. 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:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 10-2-2014

By: \_\_\_\_\_  
Whitney R. Leeman, Ph.D.

By:  \_\_\_\_\_  
John Grettenberger, CEO  
LorAnn Oils, Inc.



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**AGREED TO:**

**AGREED TO:**

Date: 10/6/14

Date: \_\_\_\_\_

By: Whitney Leeman  
Whitney R. Leeman, Ph.D.

By: \_\_\_\_\_  
John Grettenberger, CEO  
LorAnn Oils, Inc.