

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Florida Pneumatic Manufacturing Corporation (“Florida Pneumatic”) and Whitney R. Leeman, Ph.D. (“Leeman”), with Leeman and Florida Pneumatic collectively referred to as the “Parties.” Leeman is an individual residing in the State of 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. Florida Pneumatic 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 Florida Pneumatic has manufactured, distributed and/or sold in the State of California shop stools with vinyl seats containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

#### 1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined as shop stools with vinyl seats containing DEHP including, but not limited to, the *Craftsman Adjustable Rolling Mechanic’s Seat*, Item 51828, Model 875.518280 (#7 22470 17659 6), manufactured, imported, sold and/or distributed for sale in the State of California by Florida Pneumatic.

#### 1.4 Notice of Violation

On or about May 31, 2013, Leeman served Florida Pneumatic and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Florida Pneumatic’s failure to warn consumers that the Products exposed users in the State of California to DEHP. To the

best of the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Florida Pneumatic 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 laws. Nothing in this Settlement Agreement shall be construed as an admission by Florida Pneumatic 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 Florida Pneumatic of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect Florida Pneumatic'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 this Settlement Agreement is signed by all Parties.

### **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD**

#### **2.1 Reformulation Standard**

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl ("DBP") and butyl benzyl phthalate ("BBP") in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, NVLAP (National Volunteer Laboratory Accreditation Program), American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar nationally recognized accrediting organization pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state

agencies for the purpose of determining DEHP, DBP and/or BBP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Florida Pneumatic by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Florida Pneumatic under laws other than Proposition 65.

## 2.2 Vendor Notification Requirement

To the extent it has not already done so, within thirty (30) days of the Effective Date, Florida Pneumatic shall provide the reformulation standard specified in Section 2.1 to each of its then-current Vendors of Products that will be sold or offered for sale to consumers in the State of California and shall instruct each Vendor to use reasonable efforts to provide Products that comply with the reformulation standard for Reformulated Products in Section 2.1 above. In addressing the obligation set forth in the preceding sentence, Florida Pneumatic shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. For purposes of this Settlement Agreement, the term "Vendor" means a person or entity that manufactures, imports, distributes, sells, or otherwise supplies the Products or vinyl component parts of the Products to Florida Pneumatic, its parents, assignees, subsidiaries and/or affiliated entities under common ownership.

## 2.3 Warnings Required: Product Labeling

The Parties acknowledge and agree that Florida Pneumatic has already implemented a warning program for all Products that are not Reformulated Products which are manufactured, imported, distributed, sold and/or offered for sale by Florida Pneumatic in the State of California, which provides that a warning be affixed to the packaging, labeling or directly on any Products that are not Reformulated Products as follows:

**WARNING:** This product contains chemicals known to the state of California to cause cancer and birth defects and other reproductive harm.

Florida Pneumatic shall continue to affix the above warning to the packaging or labeling or directly on all Products that are not Reformulated Products which are sold or offered for sale to institutional or individual consumers within the State of California and institutional customers with nationwide distribution. Each warning shall be prominently placed with such conspicuousness as 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product(s) the warning applies, so as to minimize the risk of consumer confusion.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Florida Pneumatic shall pay a total of \$17,000 in accordance with this Section. Each 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, as follows:

**3.1 Initial Civil Penalty**

Florida Pneumatic shall pay an initial civil penalty in the amount of \$4,500 within five (5) days of the Effective Date. Florida Pneumatic shall issue two separate checks made payable as follows: (a) “OEHHA” in the amount of \$3,375; and (b) “The Chanler Group in Trust for Whitney R. Leeman, Ph.D.” in the amount of \$1,125. All penalty payments shall be delivered to the addresses listed in Section 3.5.1 below.

**3.2 Final Civil Penalty**

Florida Pneumatic shall pay a final civil penalty of \$12,500 on or before September 30, 2014. The final civil penalty shall be waived in its entirety if an officer of Florida Pneumatic provides Leeman with written certification that Florida Pneumatic has met and continues to meet the Reformulation Standard specified in Section 2.1 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale by Florida

Pneumatic in the State of California as of the date of the certification, and continuing into the future, are and will be Reformulated Products. Leeman must receive any such certification on or before September 15, 2014; time is of the essence. Unless waived in its entirety, Florida Pneumatic shall issue two separate checks for any remaining portion of the final civil penalty, with 75% of the funds remitted to OEHHA and 25% of the funds remitted to “The Chanler Group in Trust for Whitney R. Leeman, Ph.D.”

### **3.3 Representations**

Florida Pneumatic represents that the sales data and other information concerning its size, knowledge of DEHP, and prior reformulation and/or warning efforts, that it provided to Leeman in negotiating this Settlement Agreement was truthful to its knowledge at the time of execution of this Settlement Agreement and a material factor upon which Leeman relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within twelve months of the Effective Date, Leeman discovers and presents to Florida Pneumatic, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Florida Pneumatic shall have 30 days to meet and confer regarding Leeman’s contention. Should this 30 day period pass without any such resolution between Leeman and Florida Pneumatic, Leeman shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

### **3.4 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. The Parties 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 agreement. Florida Pneumatic shall pay \$21,500 for fees and costs

incurred as a result of investigating, bringing this matter to Florida Pneumatic's attention, and negotiating a settlement in the public interest. Florida Pneumatic shall tender a check payable to "The Chanler Group," within five (5) days of the Effective Date.

**3.5 Payment Procedures**

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

(a) All payments owed to Leeman, her attorneys, pursuant to Sections 3.1, 3.3 and 3.4, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 and 3.2, 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

Florida Pneumatic shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under Section 3 that are not received within two business days of the due date.

**3.5.2 Proof of Payment to OEHHA.** Florida Pneumatic shall mail a copy of each check payable to OEHHA, simultaneous with payment, to The Chanler Group at the address set forth in Section 3.5.1(a) above, as proof of payment to OEHHA.

**3.5.3 Issuance of 1099 Forms.** After each penalty payment, Florida Pneumatic shall issue separate 1099 forms for each payment to: (a) Leeman, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, (b) OEHHA, who shall be identified as “California Office of Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 3.5.1(a) above.

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

##### **4.1 Leeman’s Release of Florida Pneumatic**

This Settlement Agreement is a full, final, and binding resolution between Leeman and Florida Pneumatic 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 Florida Pneumatic, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Florida Pneumatic directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers (“Releasees”), based on the alleged failure to warn about potential exposures to DEHP contained in the Products sold and/or offered for sale by Florida Pneumatic in the State of California before the Effective Date as set forth in the Notice.

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 Florida Pneumatic 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, arising under Proposition 65 with respect to DEHP in the Products sold and/or offered for sale by Florida Pneumatic before the Effective Date.

#### **4.2 Florida Pneumatic's Release of Leeman**

Florida Pneumatic 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.

#### **5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the complete execution of this Settlement Agreement by the Parties, Florida Pneumatic may send Leeman a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to California Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Leeman agrees to reasonably cooperate with Florida Pneumatic and to use her best efforts, and that of her counsel, to obtain approval of the Parties' settlement by a Superior Court in California and an entry of judgment in accordance with the terms set forth herein.

Pursuant to California Code of Civil Procedure §§ 1021 and 1021.5, Florida Pneumatic will reimburse Leeman and her counsel for the reasonable fees and costs incurred in drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement, in an amount not to exceed \$15,000, exclusive of fees and costs that may be incurred on any appeal. Within thirty days after its receipt of monthly invoices from Leeman for work performed under this Section, Florida Pneumatic will remit payment to The Chanler Group at the address set forth in Section 3.5.1(a) above.

#### **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 DEHP, then Florida Pneumatic 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 Florida Pneumatic:

Richard B. Goodman  
General Counsel  
P&F Industries, Inc.  
445 Broadhollow Road, Suite 100  
Melville, NY 11747

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:**

Date: 1/24/14

**AGREED TO:**

Date: 1/30/14

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

By: Bart Swank  
Bart Swank, President  
Florida Pneumatic  
Manufacturing Corporation