

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered by and between Whitney R. Leeman, Ph.D. (“Leeman”) and The Art of Tea LLC (“Art of Tea”) with Leeman and Art of Tea 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. Art of Tea employs ten or more individuals, 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 Art of Tea sells and distributes for sale in California packaged, dried green 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 dried teas (loose leaf and/or bagged) that are sold and distributed for sale in California by Art of Tea identified in Leeman’s Notice, including but not limited to, the *Art of Tea Lapsang Souchong, LAP4*, as well as Gunpowder Green Tea, Ti Kuan Yin, Oolong, and Pu-erh teas.

### 1.4 Notice of Violation

On August 19, 2016, Leeman served Art of Tea, the California Attorney General and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Art of Tea 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**

Art of Tea denies the material, factual, and legal allegations contained in the Notice and maintains that all 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 Art of Tea 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 Art of Tea of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Art of Tea. This Section shall not, however, diminish or otherwise affect Art of Tea'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 OR WARNING**

**2.1** Commencing on the Effective Date and continuing thereafter, Art of Tea shall only ship, sell, or offer for sale in California: (i) Reformulated Products as defined by Section 2.2, or (ii) non-Reformulated Products that bear a clear and reasonable warning pursuant to Section 2.4.

**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). Where Products do not specify brewing instructions, 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. Where the Products include brewing instructions, the protocol shall be modified to follow the brewing instructions. For purposes of this Settlement Agreement, “no reportable amount” is defined as an amount of lead that does not exceed a reporting limit of 0.8 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 per kilogram (mg/kg).

### **2.2.3 Additional Testing Methods**

In addition to the above testing protocols, Art of Tea may use equivalent methodologies utilized by state or federal agencies to determine the presence, or measure the amount of lead in a solid substance.

## **2.3 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 2.3.1 or 2.3.2, below, are satisfied.

**2.3.1 Alternative Standards Adopted by The State of California.** Art of Tea 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 Art of Tea intends to utilize a reformulation standard permitted by this subsection, Art of Tea shall provide Leeman with written notice of the proposed change and the basis therefor.

**2.3.2 Alternative Standards Adopted by Leeman.** Art of Tea 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 Art of Tea intends to utilize a reformulation standard permitted by this subsection, Art of Tea shall provide Leeman with written notice of the proposed change and the agreement entered by Leeman supporting the proposed new standard.

## **2.4 Warnings**

Commencing on the Effective Date and continuing thereafter, those Products sold, offered for sale, or distributed for sale in California by Art of Tea that are not Reformulated 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).

## **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, Art of Tea agrees to \$2,000 in civil penalties within ten 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. Art of Tea shall issue its payment 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 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 fees and costs to be reimbursed to them, 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 Art of Tea’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 ten days of the Effective Date, Art of Tea agrees to pay \$11,000 in a single check made payable to “The Chanler Group.” Art of Tea’s payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Art of Tea’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 Art of Tea**

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 Art of Tea 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 Art of Tea, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Art of Tea directly or indirectly distributes or sells the 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 Art of Tea 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 Art of Tea 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 or distributed for sale by Art of Tea before the Effective Date.

#### **4.2 Art of Tea’s Release of Leeman**

Art of Tea, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Leeman and her attorneys and other representatives, for any 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, after 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. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Art of Tea 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 The Art Of Tea:

Steven Schwartz, Chief Executive Officer  
The Art of Tea LLC  
748 Monterey Pass Road  
Monterey Park, CA 91754

Michelle Gillette, Esq.  
Crowell & Moring LLP  
3 Embarcadero Center, 26th Floor  
San Francisco, CA 94111  
(415) 365-7445

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 the terms and conditions of this Settlement Agreement.


**AGREED TO:**

**AGREED TO:**

Date: 7/18/2017

Date: 7/12/2017

By:   
WHITNEY R. LEEMAN, PH.D.

By:   
Steven Schwartz, Chief Executive Officer  
THE ART OF TEA LLC