

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Champion Power Equipment, Inc. (“Champion”), with Leeman and Champion 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. Champion 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 Champion manufactures, sells, and/or distributes for sale in California automotive booster cables that contain Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Leeman alleges that Champion failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the automotive booster cables it sells in California. Leeman also alleges that Champion manufactures, sells, and/or distributes for sale in California generator covers containing DEHP, without first providing the required Proposition 65 health hazard warning.

1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC automotive booster cables containing DEHP that are manufactured, sold, and/or distributed for sale in California by Champion, including, but not limited to, the *CPE Automotive Booster Cables, #50066 12142010, UPC #8 96682 50066*. All such vinyl/PVC automotive booster cables containing DEHP are referred to collectively hereinafter as the “Products.”

This Settlement Agreement also covers generator covers containing DEHP that are

manufactured, sold, and/or distributed for sale in California by Champion, including, but not limited to, the *Champion Power Equipment Portable Generator Cover, CP90015, UPC #8 96682 90015 4*. All such generator covers containing DEHP that are manufactured, sold, and/or distributed for sale in California are collectively referred to hereinafter as “Additional Products”.

1.4 Notice of Violation

On January 23, 2015, Leeman served Champion and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Champion violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. 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

Champion denies the material, factual, and legal allegations contained in the Notice and maintains that all of the Products sold and distributed in California, including the Products and the Additional Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Champion 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 Champion of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Champion. This Section shall not, however, diminish or otherwise affect Champion’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 July 30, 2015, if this Agreement is fully executed by that date.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS; WARNINGS

2.1 Commitment to Reformulate

Commencing on January 1, 2016, and continuing thereafter, Champion shall only

purchase for sale in California, manufacture for sale in California, and/or distribute for sale in California Reformulated Products. For purposes of this Settlement Agreement, “Reformulated Products” are Products that contain a maximum of 1,000 parts per million (0.1%) DEHP content by weight in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to Environmental Protection Agency methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for determining DEHP content in a solid substance. Additional Products (i.e., generator covers) that contain more than 1,000 parts per million (0.1%) DEHP) will bear a clear and reasonable warning pursuant to Section 2.2.

2.2 Warnings for Additional Products

Champion agrees that as of the Effective Date, all Additional Products it purchases for sale in California, manufactures for sale in California and/or distributes or sells in California which contain more than 1,000 parts per million (0.1%) DEHP will bear a clear and reasonable warning pursuant to this Section. Champion further agrees that the warning will be prominently placed 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 use. For purposes of this Settlement Agreement, a clear and reasonable warning, if needed, for Additional Products shall consist of a warning affixed to the packaging, label, tag, or directly to an Additional Product sold in California and containing wording that complies with Proposition 65 requirements specifically using the following statement:

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

2.3 Grace Period for Existing Inventory of Additional Products and/or Warnings

Champion represents that, after receiving the Notice, it implemented a health hazard warning for the Additional Products. Leeman agrees that, until it exhausts its current inventory of Additional Products or any packaging or labeling materials for the same, that Champion may

continue to sell and offer for sale in California those Additional Products labeled with the following statement: “This product contains chemicals known to the State of California to cause cancer or birth defects and other reproductive harm.”

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Champion agrees to pay \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 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% paid to Leeman. Champion agrees to provide its payment within five (5) days of the Effective Date in a single check made payable to: “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$2,500. Leeman’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment made under this Settlement Agreement.

3.2 Reimbursement of Leeman’s Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, within five (5) days of the Effective Date, Champion agrees to pay \$25,000 in the form of a check payable to “The Chanler Group” for all fees and costs incurred by Leeman investigating, bringing this matter to the attention of Champion’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments required by 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 Champion

Leeman acting on her own behalf, on behalf of her past and current agents, representatives, attorneys, successors, and assignees, releases Champion and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Champion directly or indirectly distributes or sells Products and/or Additional Products including, but not limited to, downstream distributors, wholesalers, customers, retailers (including, without limitation, Cabela's Incorporated), franchisees, cooperative members, licensors, and licensees ("Releasees"), from all claims alleging a failure to warn about exposures to DEHP in Products and/or Additional Products that Champion sold or distributed for sale prior to the Effective Date. Compliance with this Agreement constitutes compliance with Proposition 65.

In further consideration of the promises and agreements herein contained, Leeman, on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to alleged or actual failure to warn about exposures to DEHP from Products and/or Additional Products sold or distributed for sale by Champion before the Effective Date. The releases provided by Leeman under this Settlement Agreement are provided solely on Leeman's behalf and are not releases on behalf of the public.

4.2 Champion's Release of Leeman

Champion, 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 and/or Additional Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision 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 and/or Additional Products, then Champion may provide written notice to Leeman of the 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 and/or Additional Products are so affected. If there is a future revision to Proposition 65's requirements or implementing regulations relating to required warnings for the Products, then Champion may comply with this Settlement Agreement by complying with the revised warning regulations or those required by this Settlement Agreement.

7. NOTICE

Unless specified herein, all correspondence and notices 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 Champion:

Dennis Trine, CEO
Champion Power Equipment, Inc.
12039 Smith Avenue

For Leeman:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth Street

Santa Fe Springs, CA 90670

Parker Plaza, Suite 214
Berkeley, CA 94710

with a copy to:

Malcolm C. Weiss, Esq.
Hunton & Williams LLP
550 South Hope St., Suite 2000
Los Angeles, CA 90071

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 § 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, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 7/28/15

By: Whitney R. Leeman
Dr. Whitney R. Leeman

AGREED TO:

Date: 7/24/2015

By: Dennis Trine
Dennis Trine, CEO
Champion Power Equipment, Inc.