

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and The Danielson Company (“Danielson”) with Leeman and Danielson 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. Danielson 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 Danielson manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, vinyl/PVC tool grips that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are tools made with vinyl/PVC components containing DEHP, that are manufactured, sold and/or distributed for sale in California by Danielson, specifically limited to the *Danielson 6” Length Stainless Steel Long Nose Pliers, PSLN6, UPC #0 32054 05635 1*, the *Danielson 6” Long Nose Pliers, PSLN6, UPC #0 32054 00344 7*, the *Danielson 8” Bent Nose Pliers, UPC #0 32054 012494*, the *Danielson 4 1/2” Stainless Steel Side Cutter Pliers, UPC #0 32054 05637 5*, the *Danielson Oyster Knife, Model # OK375R, UPC # 0 32054 01367 5*, and the

Danielson Floating Stainless Steel Fillet Knife, Model #FK6F, UPC# 032054 00915 9
(collectively, "Products").

1.4 Notice of Violation

On August 20, 2015, Leeman served Danielson and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Danielson violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. 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

Danielson denies the material, factual, and legal allegations contained in the Notice and Danielson maintains that all of the products that it has sold and distributed 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 Danielson 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 Danielson of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Danielson. This Section shall not, however, diminish or otherwise affect Danielson'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 that this Settlement Agreement is signed by both parties.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS

2.1 Reformulated Products

Commencing on the Effective Date, and continuing thereafter, Danielson agrees to only manufacture, distribute, or purchase for sale in or into California: (a) "Reformulated Products", or (b) Products that are sold with a clear and reasonable health

hazard warning, pursuant to Section 2.2 below. For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

Danielson agrees that as of the Effective Date, all Products it sells and/or distributes in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Danielson 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 for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing one of the following statements:

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

or

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

The phrase “Wash hands after handling” may be added to the warning pursuant to this section, but it is not required.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

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, Danielson agrees to pay \$18,600 in civil penalties. Each 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. Leeman’s counsel shall be responsible for remitting Danielson’s penalty payment(s) under this settlement to OEHHA.

3.1.1 Initial Civil Penalty. Within ten days of the Effective Date, Danielson shall pay an initial civil penalty of \$3,600. Danielson shall provide its payment in a single check made payable to “Whitney Leeman Client Trust Account”, to be delivered to the address provided in section 3.3, below.

3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation. On June 15, 2016, Danielson shall make a final civil penalty payment of \$15,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later than June 1, 2016, an officer or other authorized representative of Danielson provides Leeman with an original, signed written certification that all of the Products it ships for sale or distributes for sale in California as of the date of its certification are Reformulated Products, and that Danielson will continue to offer only Reformulated Products in California in the future. The option to certify early reformulation in lieu of making the final civil penalty payment otherwise required by this Section is a material term, and time is of the essence. Danielson shall deliver its certificate, if any, to Leeman’s counsel at the address provided in Section 3.3, below.

3.2 Reimbursement of Leeman’s Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to Leeman and his 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, within ten days of the Effective Date, Danielson agrees to pay \$24,500 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Danielson’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments required by this Consent Judgment shall be delivered to the following address:

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 Danielson

This Settlement Agreement is a full, final and binding resolution between Leeman as an individual and not on behalf of the public, and Danielson, of any violation of Proposition 65 that was or could have been asserted by Leeman on her own behalf, or on behalf of herself, her past and current agents, representatives, attorneys, successors, and assignees, against Danielson, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Danielson directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, such as Kmart and Sears Holdings Corporation, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged failure to warn about exposures to DEHP in Products sold or distributed for sale by Danielson prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman as an individual and not on behalf of the public, and on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of

legal action and releases all claims that he 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 the failure to warn about exposures to DEHP from Products sold or distributed for sale by Danielson 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 Danielson's Release of Leeman

Danielson on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Leeman and his 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 his 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.

4.3 Representations

Danielson represents that the sales data for the Products and other information it provided to Leeman is truthful to the best of its knowledge and a material factor upon which Leeman has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Settlement Agreement. If, within twelve months of the Effective Date, Leeman discovers and presents to Danielson, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Danielson 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 Danielson, Leeman shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

5. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the remaining enforceable 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, then Danielson 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 Danielson:

Carol R. Brophy, Esq.
Sedgwick LLP
333 Bush Street, 30th Floor
San Francisco, CA 94104

For Leeman:

The Chanler Group
Attn: Prop 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 his 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, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 4/28/16

By: Whitney Leeman
WHITNEY R. LEEMAN, PH.D.

AGREED TO:

Date: 4/29/16

By: [Signature]
THE DANIELSON COMPANY