

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Dick's Sporting Goods, Inc. ("Dick's Sporting Goods") and Whitney R. Leeman, Ph.D. ("Leeman"), with Leeman and Dick's Sporting Goods 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. Dick's Sporting Goods 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 Dick's Sporting Goods has distributed and/or sold in the State of California cooking utensils with vinyl/PVC grips 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 the following cooking utensils with vinyl/PVC grips containing DEHP distributed, sold and/or offered for sale in the State of California by Dick's Sporting Goods: *Rome's Original Marshmallow & Weenie Roasting Forks Set of 4, RC6093, UPC #0 29794 30004 2.*

#### 1.4 Notice of Violation

On or about January 23, 2015, Leeman served Dick's Sporting Goods 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 Dick's Sporting Goods' 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**

Dick's Sporting Goods denies all factual and legal allegations contained in Leeman's Notice, and maintains that all of the products that 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, or local laws. Nothing in this Settlement Agreement shall be construed as an admission by Dick's Sporting Goods 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 Dick's Sporting Goods of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect Dick's Sporting Goods' 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: REFORMULATION**

Beginning no later than five days after the Effective Date, Dick's Sporting Goods shall only offer for sale in California Products that are: (1) sold or shipped with one of the clear and reasonable warnings set forth in subsection 2.1 from its existing inventory; or (2) exempt from the warning requirement pursuant to Section 2.2 because they are Reformulated Products as defined in Section 2.3.

#### **2.1 Product Warnings**

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 or at the time of purchase so as to minimize the risk of consumer confusion, each warning shall be provided in a manner such that the consumer or user understands to which specific Product(s) the warning applies as follows,

either (a) on the packaging, labeling or directly on any Products that are not Reformulated Products and sold in California from existing inventory, or (b) by providing a warning at the point of purchase on a chit separate from the receipt that calls attention to the warning on any Products that are not Reformulated Products and sold in California from existing inventory:

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

or

**WARNING:** You have purchased an item(s) that contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

[SPECIFY PRODUCT]

## 2.2 Exceptions to Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

## 2.3 Reformulation Standard

Commencing on the Effective Date, and continuing thereafter, Dick's Sporting Goods agrees to acquire, import, distribute, manufacture, produce, package, create, and contract with entities to manufacture, produce, package and create for sale in or into California only Products that are "Reformulated Products". For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl ("DBP"), butyl benzyl phthalate ("BBP"), and Diisononyl phthalate ("DINP") 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, BBP or DINP 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 Dick's Sporting Goods by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Dick's Sporting Goods under laws other than Proposition 65.

### **3. MONETARY PAYMENTS**

#### **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Dick's Sporting Goods shall pay a total penalty payment of \$4,000 in accordance with this Section. The penalty payment will be allocated by Leeman in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds being remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty payment being retained by Leeman. Dick's Sporting Goods shall pay the penalty payment within five (5) days of the Effective Date in one check made payable to "Whitney Leeman, Client Trust Account." All penalty payments shall be delivered to the address listed in Section 3.4 below. Dick's Sporting Goods shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

#### **3.2 Representations**

Dick's Sporting Goods represents that the sales data and other information concerning its Product sales information, knowledge of DEHP, 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 Dick's Sporting Goods, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Dick's Sporting Goods 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 Dick's Sporting Goods, Leeman shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

### **3.3 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 agreement. Dick's Sporting Goods shall pay \$23,000 for fees and costs incurred as a result of investigating, bringing this matter to Dick's Sporting Goods' attention, and negotiating a settlement in the public interest. Dick's Sporting Goods shall tender a check payable to "The Chanler Group," within five (5) business days of the Effective Date. Dick's Sporting Goods shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not paid within five (5) business after the Effective Date or within five (5) business days after W-9's are provided by counsel for Leeman for all of the payees.

### **3.4 Payment Procedures**

All payments pursuant to Sections 3.1 and 3.3, shall be delivered to the following

address:

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

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

##### **4.1 Leeman's Release of Dick's Sporting Goods**

This Settlement Agreement is a full, final, and binding resolution between Leeman, as an individual and not on behalf of the public, and Dick's Sporting Goods 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 Dick's Sporting Goods, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Dick's Sporting Goods 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 Dick's Sporting Goods in the State of California before the Effective Date as set forth in the Notice. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products sold or distributed by Dick's Sporting Goods after the Effective Date.

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 Dick's Sporting Goods 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 Dick's Sporting Goods before the Effective Date.

##### **4.2 Dick's Sporting Goods' Release of Leeman**

Dick's Sporting Goods 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. 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 Dick's Sporting Goods 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.

**6. 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 Dick's Sporting Goods:

Mary Tortorice, VP Deputy General  
Counsel & Chief Compliance Officer  
Dick's Sporting Goods, Inc.  
345 Court Street  
Coraopolis, PA 15108

For Leeman:

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

With a copy for Dick's Sporting Goods to:

Michael A. Geibelson  
Robins Kaplan LLP  
2049 Century Park East, Suite 3400  
Los Angeles, CA 90067

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.

**7. 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.

**8. 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.

**9. 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).

**10. MODIFICATION**

This Settlement Agreement may be modified only by a 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:**

**AGREED TO:**

Date: 7/13/15

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

By: *Whitney Leeman*  
Whitney Leeman

By: \_\_\_\_\_  
Mary Tortorice, VP Deputy General  
Counsel & Chief Compliance Officer  
Dick's Sporting Goods, Inc.



**7. 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.

**8. 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.

**9. 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).

**10. MODIFICATION**

This Settlement Agreement may be modified only by a 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:**

**AGREED TO:**

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

Date: 7/14/15

By: \_\_\_\_\_  
Whitney Leeman

By: MARY TORTOLICE  
Mary Tortolice, VP Deputy General  
Counsel & Chief Compliance Officer  
Dick's Sporting Goods, Inc.