

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Dr. Whitney R. Leeman and Great Neck Saws

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and Great Neck Saw Manufacturers, Inc. and its associated corporate affiliates (collectively, “Great Neck”), with Leeman and Great Neck collectively referred to as the “Parties.” Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Great Neck 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 §§ 25249.5 *et seq.* (“Proposition 65”).

1.1 General Allegations

Leeman alleges that Great Neck has manufactured, imported, sold and/or distributed for sale in California, vinyl/PVC tape containing lead and di(2-ethylhexyl)phthalate (“DEHP”). Lead and DEHP are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

1.2 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl/PVC tape containing lead or DEHP including, but not limited to, *Tool Choice 4 Piece PVC Electrical Tape, #17512, UPC #0 76812 175120*, that are manufactured, imported, sold and/or distributed for sale in California by Great Neck (hereinafter the “Products”).

1.3 Notices of Violation

On December 29, 2015, Leeman served Great Neck and certain requisite public enforcement agencies with a “60-Day Notice of Violation” that provided the recipients with notice of alleged violations of Proposition 65 based on Great Neck’s alleged failure to warn its

customers, consumers, and other individuals that the Products exposed users in California to DEHP. On March 23, 2016, Leeman served Great Neck and certain requisite public enforcement agencies with a “Supplemental 60-Day Notice of Violation” that provided the recipients with further notice of alleged violations of Proposition 65 based on Great Neck’s alleged failure to warn its customers, consumers, and other individuals that the Products also exposed users in California to lead.¹ To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the aforementioned 60-day notice or supplemental 60-day notice (collectively, “Notices”).

1.4 No Admission

Great Neck denies the material factual and legal allegations contained in Leeman’s Notices and maintains that all products that it has manufactured, imported, distributed, and/or sold 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 Great Neck 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 Great Neck of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Great Neck’s obligations, responsibilities, and duties under this Settlement Agreement.

1.5 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which this document has been executed by all Parties.

¹ As with her original 60-day notice to Great Neck, Leeman’s supplemental notice was supported by a Certificate of Merit, the evidentiary support for which was obtained during the course of her original investigation of the Products in 2015 and has been provided to the California Attorney General’s office as required by its regulations.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standard

Reformulated Products are defined as Products containing (a) DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance, and (b) lead in concentrations less than 0.01 percent (100 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3050B.

2.2 Reformulation Commitment

As of the Effective Date, all Products manufactured, imported, or distributed for sale in the State of California by Great Neck shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.²

2.3 Extended Reformulation Commitment

As of the Effective Date, all Products manufactured, imported, or distributed for sale in the State of California by Great Neck shall also contain butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate (“DINP”), and di-n-hexyl phthalate (“DnHP”) in concentrations of less than 0.1 percent (1,000 parts per million) each when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance.³

² Products previously manufactured for Great Neck that are labeled with Proposition 65 warnings and are in the process of entering or are already in its inventory, and other Products which Great Neck has distributed to third parties prior to February 29, 2016, shall be deemed exempted from the requirements of Sections 2.2 and 2.3 above and can be sold through as manufactured, packaged or labeled.

³ DEHP, BBP, DBP, DIDP, DINP, DnHP, and lead are collectively referred to herein as the “Listed Chemicals.”

3. MONETARY PAYMENTS

3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(b)

In settlement of the claims referred to in this Settlement Agreement, Great Neck has been assessed a total of \$2,000 in civil penalties in light of information it provided to Leeman concerning its very limited California sales and revenues associated with the Product and the prompt action it undertook to labeling all of its remaining inventory of the Products with Proposition 65 warnings. This amount also accounts for a penalty reduction associated with the reformulation commitment and extended reformulation commitment Great Neck has made hereunder as set forth in Sections 2.2 and 2.3 above.

In accordance with California Health & Safety Code § 25249.12(c)(1) and (d), on or before February 29, 2016, Great Neck shall therefore provide civil penalty payments to address all of the violations addressed in the Notices in two checks as follows: (a) to “OEHHA” in the amount of \$1,500; and (b) to “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$500. These payments shall be delivered to the address listed in Section 3.3 below by no later than April 8, 2016.

3.2 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Great Neck expressed a desire to resolve the fee and cost issue. 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 section 1021.5 for all work performed through the mutual execution of this agreement.

Great Neck shall pay \$22,000 for fees and costs incurred as a result of investigating, bringing this matter to Great Neck’s attention through the Notices, and negotiating a settlement in the public interest. Great Neck shall make the check for the payment required by this section

payable to “The Chanler Group” and shall deliver payment on or before April 8, 2016, to the address listed in Section 3.3 below.

3.3 Payment Procedures

All payments owed pursuant to Sections 3.1 and 3.2 shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller (Leeman v. Great Neck)
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

Within ten business days of its receipt, Leeman’s counsel shall forward the check drawn to OEHHA to:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

4. CLAIMS COVERED AND RELEASED

4.1 Leeman’s Release of Great Neck

This Settlement Agreement is a full, final and binding resolution between Leeman and Great Neck 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 Great Neck, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Great Neck directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP or lead contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Great Neck in California before the Effective Date. This release is provided in Leeman’s individual capacity and is not a release on behalf of the public.

In further consideration of and reliance on the representations and warranties provided by Great Neck in Section 2.3 above, Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of her rights 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys' fees -- limited to and arising under Proposition 65 with respect to Listed Chemicals in the Products manufactured or imported by Great Neck before the Effective Date. This release is also provided in Leeman's individual capacity and is not a release on behalf of the public.

4.2 Great Neck's Release of Leeman

Great Neck, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Leeman and 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, otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5. SEVERABILITY

If any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Products, then Great Neck 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. Nothing in this Settlement Agreement shall be interpreted to relieve Great Neck from any obligation to comply with any pertinent state or federal law, including all toxic control laws.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

To Defendant, Great Neck:

Dan Jacoff, President
Great Neck Saw Manufacturing, Inc.
165 East 2nd Street
Mineola, NY 11501

with a copy to:

Robert Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

To Plaintiff, Dr. Whitney R. 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 AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

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 & Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. AUTHORIZATION

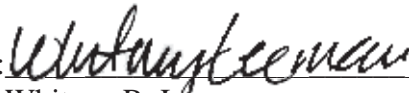
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 3/25/2016

Date: _____

By: 
Whitney R. Leeman

By: _____
Dan Jacoff, President
Great Neck Saw Manufacturing, Inc.

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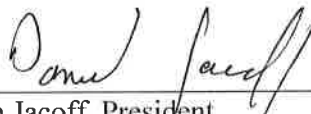
AGREED TO:

AGREED TO:

Date: _____

Date: 3/29/16

By: _____
Whitney R. Leeman

By: 
Dan Jacoff, President
Great Neck Saw Manufacturing, Inc.