

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) on the one hand, and Home Products International, Inc. and Home Products International – North America, Inc. (collectively “Home Products”) on the other hand, with Leeman and Home Products 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. Home Products 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Leeman alleges that Home Products manufactures, sells, and distributes for sale in California, vinyl/PVC hoses containing di(2-ethylhexyl)phthalate (“DEHP”) and Lead without first providing a health hazard warning in violation of Proposition 65. DEHP and Lead are each listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm

### 1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC hoses containing DEHP and/or Lead that are manufactured, sold, or distributed for sale in California by Home Products (“Products”) including, but not limited to, the *Homz Smart Solutions Portable Sprayer Item No. 04430302* and the *Homz Smart Solutions Shampoo Sprayer Item No. 04410202*, identified in Leemans’s 60-day notice of violation of Proposition 65.

#### **1.4 Notice of Violation**

On December 1, 2015, Leeman served Home Products, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Home Products violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to DEHP and Lead. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Home Products denies the material, factual, and legal allegations contained in the Notice and 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 Home Products 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 Home Products of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Home Products. This Section shall not, however, diminish or otherwise affect Home Products’ obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean February 19, 2016.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, Home Products agrees to only manufacture for sale or purchase for sale in California, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” are Products that: (a) contain no more than 1,000 parts per million (“ppm”) or 0.1% DEHP content by weight when analyzed pursuant to U.S. Environmental Protection Agency

(“EPA”) testing methodologies 3580A and 8270C; and (b) contain no more than 90 ppm Lead content by weight when tested according to EPA test methodologies 3050B and 6010B, and no more than 1.0 micrograms of lead when sampled and analyzed according to the NIOSH 9100 testing protocol. In the alternative to the methodologies set forth above, the Parties may use equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP and/or Lead content in a solid substance.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, Home Products agrees to pay \$9,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (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 delivering any penalty payment made under this Settlement Agreement to OEHHA.

##### **3.1.1 Initial Civil Penalty.**

Within five days of the Effective Date, Home Products shall pay an initial civil penalty of \$3,000. Home Products will provide its payment in a single check made payable to “Whitney Leeman, Client Trust Account.”

##### **3.1.2 Final Civil Penalty.**

On May 1, 2016, Home Products shall pay a final civil penalty of \$6,000. Pursuant to title 11, California Code of Regulations section 3203(c), the final civil penalty will be waived in its entirety if, no later than April 15, 2016, an officer of Home Products provides Leeman’s counsel with a signed declaration certifying that, as of the date of its declaration, all Products that Home Products ships for sale or distributes for sale in California are Reformulated Products, and that it will continue to offer only

Reformulated Products in California in the future. The option to provide a signed declaration certifying complete reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

### **3.2 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 section 1021.5 for all work performed in this matter. Under these legal principles, Home Products agrees to pay \$22,500 to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of Home Products' management, and negotiating a settlement in the public interest. Home Products' payment shall be in the form of a check payable to "The Chanler Group" and due within five days of the Effective Date.

### **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 Home Products**

This Settlement Agreement is a full, final, and binding resolution between Leeman and Home Products, 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 Home Products, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Home Products directly or indirectly distributes or sells the Products including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"),

based on the failure to warn about exposures to DEHP or Lead in Products manufactured, sold, or distributed for sale by Home Products before the Effective Date, as alleged in the Notice.

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 and all rights she has to institute or participate in, directly or indirectly, any form of legal action and releases all claims including, without limitation, all actions and causes of action, 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 alleged or actual failure to warn about exposures to DEHP or Lead in Products manufactured, sold, or distributed for sale by Home Products before the Effective Date, as alleged in the Notice.

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 Home Products' Release of Leeman**

Home Products, 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed 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 otherwise rendered inapplicable by reason of law generally, as to the Products, then Home Products may provide written notice to Leeman of any asserted change in the law, and shall have no further injunctive obligation 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 Home Products:**

Dennis Doheny,  
Executive Vice President, Chief Financial Officer  
Home Products International, Inc.  
Home Products International – North America, Inc  
4501 West 47<sup>th</sup> Street  
Chicago, IL 60632

**With a copy to:**

Bruce Nye, Esq.  
adams | nye | becht LLP  
222 Kearny Street, 7th Floor  
San Francisco, CA 94108-4521

**For Leeman:**

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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 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 REPORTING REQUIREMENTS**

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 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:**

Date: 2/29/16

**AGREED TO:**

Date: 3/1/2016

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

By: Dennis Doheny  
Dennis Doheny  
Executive VP and Chief Financial Officer  
HOME PRODUCTS INTERNATIONAL, INC.  
HOME PRODUCTS INTERNATIONAL – NORTH AMERICA, INC.