

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman ("Leeman") and Monoprice, Inc., ("Monoprice"), with Leeman and Monoprice 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. Leeman alleges that Monoprice 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 Monoprice manufactures, sells, and/or distributes for sale in California, vinyl/PVC electrical tape, tool kit cases with vinyl/PVC components, and vinyl/PVC tool grips containing di(2-ethylhexyl)phthalate ("DEHP"); and voltage tester cords and solder containing LEAD. Leeman alleges that Monoprice failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from: its vinyl/PVC electrical tape; tool kit cases with vinyl/PVC components; and its vinyl/PVC tool grips. In addition, Leeman alleges that Monoprice failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to LEAD from its voltage tester cords; and its solder. DEHP and LEAD are each listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Together, DEHP and LEAD shall be referred to as the, "LISTED CHEMICALS."

#### 1.3 Product Description

The products covered by this Settlement Agreement are toolkits containing:

- (i) vinyl/PVC electrical tape containing DEHP;
- (ii) tool kit cases with vinyl/PVC components containing DEHP;
- (iii) vinyl/PVC tool grips containing DEHP;
- (iv) voltage tester cords containing LEAD; and
- (v) solder containing LEAD;

that are sold or distributed for sale in California by Monoprice including, but not limited to, the *Monoprice 15 Piece Electrical Tool Kit, PTK-027A, PID: 108141, UPC#8 44660 08141 8* Monoprice (collectively, the "Products").

#### **1.4 Notices of Violation**

On August 20, 2015, Leeman served Monoprice and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Monoprice violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to the Listed Chemicals from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

#### **1.5 No Admission**

Monoprice 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 Monoprice 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 Monoprice of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Monoprice. However, this Section shall not diminish or otherwise affect Monoprice'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 September 30, 2016.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date, and continuing thereafter, Monoprice agrees to only manufacture for sale or purchase for sale in or into California, one of the following: (a) "Reformulated Products" (as defined in this Paragraph 2.1, below); or (b) Products that contain a warning in accordance with Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" are (a) Products containing DEHP in concentrations less than 1,000 parts per million ("ppm") (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C; and (b) Products containing LEAD in concentrations that do not exceed 90 ppm (.009%) when tested pursuant to EPA test methodologies 3050B and 6010B. In addition to the test methods 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.

### **2.2 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, Monoprice shall, for all Products it ships, sells, or offers to ship or sell in California other than Reformulated Products, provide a clear and reasonable warning as set forth below. 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 purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

The warning shall be affixed to the packaging or labeling or directly to the non-Reformulated Product and contain one of the following statements:

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

In addition to the above warning statements, should the regulations implementing warning language requirements found at title 27 California Code of Regulations § 25601 et seq. change, and such changes apply to the Products, Monoprice may provide warnings for the Products in compliance with those regulations in lieu of the statements set forth above.

### **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 related to the Products and alleged in the Notice, Monoprice agrees to pay \$2,000 in civil penalties in accordance with this Section. The penalty paid under this Settlement Agreement shall 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 remitting Monoprice's penalty payment(s) under this Settlement Agreement to OEHHA. Within ten business days of the Effective Date, Monoprice shall make the payment of \$2,000 as follows: Monoprice shall provide its payment in a check made payable to OEHHA in the amount of \$1,500; and a check made payable to "Whitney Leeman, Client Trust Account," in the amount of \$500.

#### **3.2 Attorneys' 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. Monoprice 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. Under these legal principles, Monoprice agrees to pay \$25,000 to Leeman and her counsel for all fees and costs incurred investigating, bringing this matter to the attention of Monoprice's management, and negotiating this Settlement Agreement. Monoprice's payment shall be made within ten days of the Effective Date in the form of a check payable to "The Chanler Group."

### **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 Monoprice**

This Settlement Agreement is a full, final and binding resolution between Leeman, as an individual and not on behalf of the public, and Monoprice, of any violation of Proposition 65 that was or could have been asserted by Leeman, on behalf of herself, or on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees ("Releasors"), and Releasors hereby release any such claims, against Monoprice, its parents, subsidiaries, joint ventures, affiliated entities under common ownership, directors, officers, employees, attorneys, including but not limited to Blucora Inc., and each entity to whom Monoprice directly or indirectly distributes or sells

Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to the Listed Chemicals from the Products manufactured, distributed, sold or offered for sale by Monoprice in California 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 not in her representative capacity, and on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and 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 exposures to Lead and/or DEHP in Products manufactured, distributed, sold and/or offered for sale by Monoprice before the date that this Settlement Agreement is fully executed by the Parties.

#### **4.1.1 Claims Not Assigned**

Dr. Leeman acknowledges, represents and warrants that she has not assigned, sold, transferred or otherwise disposed of any of the claims or other matters that are being released herein.

#### **4.2 Monoprice's Release of Leeman**

Monoprice, 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 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 of the provisions of this Settlement Agreement are deemed 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 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Monoprice 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 Monoprice:**

Bernard Luthi, President  
Monoprice, Inc.  
c/o Blucora, Inc.  
10900 NE 8th Street  
Bellevue, WA 98004  
Attn: Laura Baumann, Esq.

with copy to Monoprice's counsel:

David T. Biderman, Esq.  
Perkins Coie LLP  
1888 Century Park East, Suite 1700  
Los Angeles, CA 90067-1721

and

Vilma Palma-Solana, Esq.  
Perkins Coie LLP  
1888 Century Park East, Suite 1700  
Los Angeles, CA 90067-1721

For Leeman:

The Chanler Group  
Attention Prop 65 Coordinator  
2560 Ninth Street, 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 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 section 25249.7(f).

**10. ENTIRE AGREEMENT AND MODIFICATION**

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 discussion, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.

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: 9/29/2016

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

By:   
Whitney R. Leeman

By: \_\_\_\_\_  
Name: Bernard Luthi  
Title: President  
Monoprice, Inc.

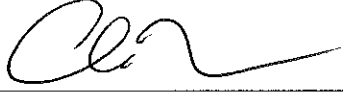
APPROVED AS TO FORM:

**THE CHANLER GROUP**

**PERKINS COIE LLP**

Date: 9/29/16

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

By:   
Chris Martin  
Counsel for Dr. Leeman

By: \_\_\_\_\_  
David Biderman  
Counsel for Monoprice, Inc.

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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.

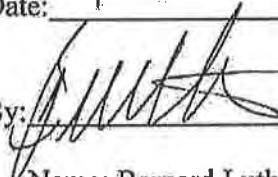
**AGREED TO:**

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

By: \_\_\_\_\_  
Whitney R. Leeman

**AGREED TO:**

Date: 9-29-16

By:  \_\_\_\_\_  
Name: Bernard Luthi  
Title: President  
Monoprice, Inc.

**APPROVED AS TO FORM:**

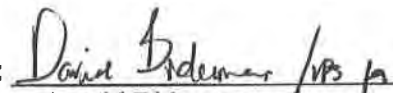
**THE CHANLER GROUP**

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

By: \_\_\_\_\_  
Chris Martin  
Counsel for Dr. Leeman

**PERKINS COIE LLP**

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

By:  \_\_\_\_\_  
David Biderman  
Counsel for Monoprice, Inc.