

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and Samovar Tea Lounge Online, LLC (“Samovar”), with Leeman and Samovar 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 Samovar 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 Samovar sells and distributes for sale in California dried teas (loose leaf) containing naphthalene, and that it did so without providing the warning required by Proposition 65. Naphthalene is listed pursuant to Proposition 65 as a chemical that is known to cause cancer.

### 1.3 Product Description

For purposes of this Settlement Agreement, “Products” are defined as, and limited to, the smoked tea identified in Leeman’s Notice that is sold and distributed for sale in California by Samovar, and specifically identified as the *Samovar Tea Lapsang Souchong Black*, UPC #8 17119 01043 7, or any other smoked teas, without regard to whether the Products are sold in individual units, cases, containers, or in bulk quantities.

### 1.4 Notice of Violation

On July 29, 2016, Leeman served Samovar, the California Attorney General and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Samovar violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with

exposures to naphthalene from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

### **1.5 No Admission**

Samovar denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed for sale 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 Samovar 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 Samovar of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Samovar. This Section shall not, however, diminish or otherwise affect Samovar'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 December 5, 2016.

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

**2.1** Commencing on the Effective Date and continuing thereafter, Samovar shall only ship, sell, or offer for sale in California Reformulated Products. For purposes of this Settlement Agreement "Reformulated Products" are defined as Products that either:

**2.1.1** yield a result of "no detectable amount" of naphthalene when a domestic laboratory evaluates a representative sample of the Product using a validated preparation method and analyzes the sample according to Environmental Protection Agency ("EPA") testing methodology 36303C using high resolution mass spectrometry. For purposes of this Settlement Agreement, "no detectable amount" is defined as an amount of naphthalene that does not exceed 1.00 micrograms/kilogram ( $\mu\text{g}/\text{kg}$ ); or

**2.1.2** yield an infusion test result of “no reportable amount” of naphthalene when analyzed by a domestic laboratory according to EPA testing methodology 36303C using high resolution mass spectrometry. For purposes of this Settlement Agreement, “no reportable amount” is defined as an amount of naphthalene that does not exceed a reporting limit of 0.0100 micrograms per liter ( $\mu\text{g/L}$ ).

In addition to the above testing protocols, Samovar may use equivalent methodologies utilized by state or federal agencies to determine the presence, or measure the amount of, naphthalene in a solid substance.

## **2.2 Modification of Reformulation Standards**

The Reformulation Standards set forth in Section 2.1, above, shall not be modified unless the conditions and procedures set forth in Section 2.2.1, 2.2.2 or 2.2.3, below, are satisfied.

### **2.2.1 Alternative Standards Adopted by The State of California.**

Samovar may utilize any naphthalene reformulation standard or level for the Products that is, after the Effective Date: (i) adopted by The State of California, either by statute or regulation; or (ii) agreed to by the California Attorney General, on behalf of the People of the State of California, in a consent judgment entered by a Superior Court of the State of California. In the event Samovar intends to utilize a reformulation standard permitted by this subsection, Samovar shall provide Leeman with written notice of the proposed change and the basis therefor.

**2.2.2 Alternative Standards Adopted by Leeman.** Samovar may utilize any naphthalene reformulation standard or level for the Products that is, after the Effective Date, agreed to by Leeman in a consent judgment entered by the California Superior Court. In the event Samovar intends to utilize a reformulation standard permitted by this subsection, Samovar shall provide Leeman with written notice of the proposed change and the agreement entered by Leeman supporting the proposed new standard.

**2.2.3 Alternative Standards Proposed by a Party.** Samovar may, no sooner than 180 days after the Effective Date, provide Leeman with written notice of a proposed change to the reformulation standards or levels established by Section 2.1. Upon such notice, the Parties shall meet and confer for a period of 90 days to modify the Settlement Agreement. If, after meeting and conferring, the Parties are unable to reach an agreement, they shall seek the services of Judicial Arbitration and Mediation Services (JAMS), San Francisco offices, to privately adjudicate the dispute, the costs of which shall be paid by Samovar.

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

#### **3.1 Civil Penalty Payment**

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, Samovar agrees to pay civil penalties in the amount of \$3,000 within five days of the Effective Date. The 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 delivering OEHHA’s portion of the civil penalty payment made under this Settlement Agreement. Samovar shall issue its payment in two checks for the following amounts made payable to (a) “OEHHA” in the amount of \$2,250; and (b) “Whitney R. Leeman, Client Trust Account” in the amount of \$750.

#### **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, leaving the issue to be resolved after the material terms of the Parties’ agreement had been settled. Shortly after finalizing the other settlement terms the Parties negotiated Samovar’s reimbursement of Leeman’s fees and costs 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, Samovar agrees to pay \$19,600 in four (4) monthly payments of \$4,900 made payable to “The Chanler Group,” with the first installment due within five days of the Effective Date and the remaining three consecutive payments due on the first day of each month thereafter. Samovar’s payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Samovar’s management, and negotiating a settlement that provides a significant public benefit.

### **3.3 Payment Address**

All payments under 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 Samovar**

This Settlement Agreement is a full, final, and binding resolution between Leeman, in her individual capacity and not on behalf of the public in California, and Samovar 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 Samovar, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Samovar directly or indirectly distributes or sells the Products, including its downstream distributors, wholesalers, customers, retailers (including, without limitation, Samovar Tea Lounge Yerba Buena, LLC; Shibumi LLC; Samovar Tea Mission LLC; Samovar Tea Lounge Castro LLC; Samovar Tea Lounge Zen Valley LLC; and Hanuman Ventures LLC), franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged or actual failure to warn about exposures to naphthalene in Products sold or distributed for sale by Samovar in California before the

Effective Date, as alleged in the Notice. Compliance with this Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to naphthalene in Products sold by Samovar after the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, as an individual and not on behalf of the public of California, and on behalf of herself, her past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights she may have 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, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to naphthalene in Products sold by Samovar before the Effective Date, as alleged in the Notice.

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

Samovar, 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, 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 held 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Samovar 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 by 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 Samovar:

Jesse Jacobs, President  
Samovar Tea Lounge Online, LLC  
2712 Mercantile Drive  
Rancho Cordova, CA 95742

Michelle Gillette, Esq.  
Crowell & Moring LLP  
275 Battery St., 23<sup>rd</sup> Floor  
San Francisco, CA 94111

For Leeman:

The Chanler Group  
Attn: Proposition 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 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**

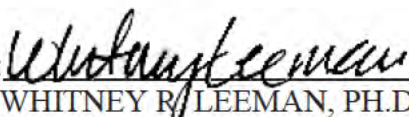
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

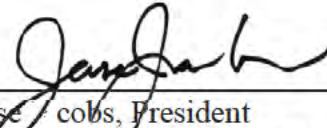
**AGREED TO:**

**AGREED TO:**

Date: 12/5/2016

Date: 12/03/16

By:   
WHITNEY R. LEEMAN, PH.D.

By:   
Jesse Jacobs, President  
SAMOVAR TEA LOUNGE ONLINE, LLC