

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Whitney R. Leeman and Stephen Joseph, Inc.

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) on one hand, and Stephen Joseph, Inc. (“Stephen”), with Leeman and Stephen 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. Stephen 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”).

### 1.2 General Allegations

Leeman alleges that Stephen has manufactured, imported, distributed and/or sold in the State of California ottomans with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as ottomans with vinyl/PVC upholstery containing DEHP including, but not limited to, *Stephen Joseph Critter Sitter Monkey, SJ-1052-99, UPC #7 94866 29399 6*, which are manufactured, imported, distributed, sold and/or offered for sale by Stephen in the State of California, hereinafter the “Products.”

### 1.4 Notice of Violation

On December 29, 2015, Leeman served Stephen and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Stephen was in violation of California Health & Safety Code § 25249.6 for

failing to warn consumers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Stephen denies the material, factual and legal allegations contained in Leeman's Notice and maintains that all 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 Stephen of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Stephen of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 2, 2016.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

Reformulated Products are defined as those Products containing a maximum of 1000 parts per million of DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

As of the Effective Date, Stephen shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to this section.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Stephen shall pay a total of \$4,000 in civil penalties in accordance with this Section, within seven (7) days of the Effective Date. The penalty payment will be allocated in accordance with California Health &

Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman. Stephen shall issue the check to: “Whitney R. Leeman, Client Trust Account” in the amount of \$4,000. Leeman and her counsel will then ensure the proper portion of the payment is made to OEHHA. All penalty payments shall be delivered to the addresses listed in Section 3.1 below.

### **3.1 Payment Procedures**

#### **3.1.1. Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Leeman, pursuant to Section 3.1, shall be delivered to the following payment address:

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

## **4. 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. Stephen 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. Stephen shall pay \$22,000 for fees and costs incurred as a result of investigating, bringing this matter to Stephen’s attention, and negotiating a settlement in the public interest. Stephen shall make the check payable to “The Chanler Group” and shall deliver payment within seven (7) days of the Effective Date, to the address listed in Section 3.1.1 above.

## **5. RELEASES**

### **5.1 Leeman's Release of Stephen**

This Settlement Agreement is a full, final and binding resolution between Leeman and Stephen of any violation of Proposition 65 that was or could have been asserted by Leeman on behalf of herself and *not* on behalf of the public, and on behalf of her past and current agents, representatives, attorneys, successors and/or assignees, against Stephen, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Stephen 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 contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Stephen in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman on behalf of herself and *not* on behalf of the public, 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 DEHP in the Products manufactured, imported distributed, sold and/or offered for sale by Stephen before the Effective Date (collectively "claims"), against Stephen and Releasees.

### **5.2 Stephen's Release of Leeman**

Stephen, 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.

**6. 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.

**7. 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or 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 Stephen 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 Stephen from any obligation to comply with any state or federal toxics control law.

**8. NOTICES**

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

For Stephen:

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 94710-2565

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.

**10. 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.

**11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Leeman agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**12. MODIFICATION**

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

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


**AGREED TO:**

**AGREED TO:**

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

Date: 5-3-16

By: \_\_\_\_\_  
Whitney R. Leeman, Ph.D.

By:  \_\_\_\_\_  
~~Stephen Buckley~~, President *Rick Taylor*  
Stephen Joseph, Inc.

For Leeman:

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

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**AGREED TO:**

**AGREED TO:**

Date: 5/2/16

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

By: *Whitney Leeman*  
Whitney R. Leeman, Ph.D.

By: \_\_\_\_\_  
Stephen Buckley, President  
Stephen Joseph, Inc.