

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Whitney R. Leeman, Ph.D and Vanroden, Inc.

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D (“Leeman”) and Vanroden, Inc. (“Vanroden”), with Leeman and Vanroden collectively referred to as the “Parties.” Leeman is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Leeman alleges that Vanroden 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 Vanroden has manufactured, imported, distributed, sold, and/or offered for sale in the State of California vinyl/PVC notebook covers containing di(2-ethylhexyl) phthalate (“DEHP”), without the requisite Proposition 65 warnings. DEHP is listed as a chemical known to the State of California to cause cancer, and birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are a category of products referred to as vinyl/PVC notebook covers containing DEHP, which include, but are not limited to, the *Wellspring Note Folio-Orange, #3705 UPC #7 84229 03705 3*, manufactured, imported, distributed, shipped, sold and/or offered for sale by Vanroden in the State of California, hereinafter “Products.”

1.4 Notice of Violation

On July 30, 2014, Leeman served Vanroden and various public enforcement agencies with a document entitled, “60-Day Notice of Violation” (“Notice”), which provided the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products exposed users in California to DEHP. To the best of the parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

This Settlement Agreement resolves claims that are denied and disputed by Vanroden, and is entered into by Vanroden solely for the purposes of avoiding the expense and uncertainty of litigation. Vanroden denies the material, factual and legal allegations contained in Leeman’s Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered for sale in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Vanroden 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 Vanroden of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Vanroden. However, this section shall not diminish or otherwise affect Vanroden’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 June 1, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate Products

Commencing on September 15, 2015, and continuing thereafter, Vanroden commits that the Products it manufactures, imports, distributes, ships, sells or ships for sale in California, will be “Reformulated Products” as defined below.

2.2 Reformulation Standards

For purposes of this Settlement Agreement, “Reformulated Products” are defined to mean Products that contain less than 1,000 parts per million (“ppm”) DEHP by weight in any Accessible Component (i.e. any component that may be touched or handled during reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

3. PAYMENT OF PENALTIES

Pursuant to Health & Safety Code §25249.7(b), Vanroden shall pay a total of \$17,000 in civil penalties pursuant to the terms and conditions set forth below.

3.1 Initial Civil Penalty

In settlement of all the claims referred to in the Notice and this Settlement Agreement, Vanroden, on or before the Effective Date, shall pay an initial civil penalty in the amount of \$2,000. The initial civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman. Vanroden shall issue two separate checks for the penalty payment: (a) one check made payable to OEHHA in the amount of \$1,500.00 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Whitney R. Leeman” in the amount of \$500.00, representing 25% of the total penalty. The checks shall be delivered to the address listed in Section 3.3 below, and Leeman shall have sole responsibility for promptly transmitting

the OEHHA check to OEHHA .

3.2 Final Civil Penalty

Pursuant to Health & Safety Code § 25249.7(b), on September 15, 2015, Vanroden shall pay a final civil penalty in the amount \$15,000 except that the final civil penalty shall be waived in its entirety, if, on or before August 15, 2015, an officer of Vanroden certifies to Leeman’s counsel, in writing, that all Products sold or offered for sale by Vanroden in California after August 1, 2015, are Reformulated Products, and that Vanroden will continue to sell only Reformulated Products in California thereafter. The option to provide a written certification of expedited reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with 75% of the penalty payment remitted to OEHHA, and the remaining 25% of the penalty remitted to Leeman. Vanroden shall issue two separate checks for the final penalty payment: (a) one check made payable to OEHHA in the amount of \$11,250.00 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Whitney R. Leeman” in the amount of \$3,750.00, representing 25% of the total penalty. The checks shall be delivered to the address listed in Section 3.3 below, and Leeman shall have sole responsibility for promptly transmitting the OEHHA check to OEHHA (if not waived).

3.3 Payment Procedures

Payments 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 ATTORNEY'S 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 issue to be resolved after the other material terms of this Settlement Agreement had been resolved. The Parties then attempted to (and did) reach an accord on the attorney's fees and expenses to be paid to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure ("CCP") § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Accordingly, in complete resolution of any claim for attorney's fees and expenses, Vanroden hereby agrees to reimburse Leeman and her counsel an all inclusive amount of \$25,000 for all attorney's fees and expenses incurred as a result of investigating, bringing this matter to its attention, and negotiating this settlement. Vanroden shall deliver this payment on or before the Effective Date to the following address:

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

5. RELEASES

5.1 Leeman's Release of Vanroden

This Settlement Agreement is a full, final and binding resolution between Leeman, as an individual and *not* on behalf of the public, and Vanroden, of any violation or alleged 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 ("Releasers"), and Releasers hereby release any and all such claims, against Vanroden, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Vanroden directly or indirectly distributes or sells Products, including but not limited to

downstream distributors, wholesalers, customers, retailers (including but not limited to McCaulou's), franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about any actual or alleged exposures to DEHP contained in Products manufactured, distributed, sold or offered for sale by Vanroden in California through the Effective Date of this Settlement Agreement. The penalties, reformulation commitment, and attorneys' fees paid by Van Roden in connection with this Settlement Agreement are intended to resolve all issues concerning any alleged violations of Proposition 65 concerning alleged DEHP in the Products. Releasors agree that compliance with the terms of this Settlement Agreement Constitutes compliance with Proposition 65 with respect to alleged DEHP in the Products.

In further consideration of the promises and agreements herein contained, Releasors hereby covenant not to sue and waive any right to institute or participate in, directly or indirectly, any form of legal action and release all claims that they may have against Van Roden or the Releasees, 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 limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the Products manufactured, imported, distributed, sold and/or offered for sale by Vanroden through the Effective Date of this Settlement Agreement.

5.2 Vanroden's Release of Leeman

Vanroden, 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 (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, 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 are rendered inapplicable by reason of law generally as to the Products, then Vanroden 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 Vanroden from an obligation to comply with any other pertinent state or federal toxic control laws.

8. ENTIRE AGREEMENT

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 discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9. NOTICES

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

To Vanroden:

Trip VanRoden, President
Vanroden, Inc.
717 Flory Mill Road
Lancaster, PA 17601

To Leeman:

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

With copy too:

James Robert Maxwell, Esq.
Rogers Joseph O'Donnell
Robert Dollar Building
311 California Street, 10th Floor
San Francisco, CA 94104

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 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. A facsimile or pdf signature shall be as valid as the original.

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

Leeman and her attorneys agree 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: 4/13/15

Date: _____

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

By: _____
Albert VanRoden, III, President
Vanroden, Inc.

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: 4/16/2015

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

By: Trip Van Roden
Trip Van Roden, President
Vanroden, Inc.