

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (“Leeman”) and The Tao of Tea LLC (“Tao”), with Leeman and Tao 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. Tao 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 Tao sells and distributes for sale in California dried teas (loose leaf and bagged teas) containing naphthalene and lead, 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. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

For purposes of this Settlement Agreement, “Products” are defined as, and limited to, the smoked tea identified in Leeman’s Notices that is sold and distributed for sale in California by Tao and specifically identified as the *The Tao of Tea Organic Pine Smoked Black Lapsang Souchong Black Tea, UPC #6 89951 71030 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 Notices of Violation

On July 29, 2016, Leeman served Tao, the California Attorney General and all other requisite public enforcement agencies with a 60-Day Notice of Violation. On

August 19, 2016, Leeman served Tao, the California Attorney General and all other requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation. The 60-Day Notice of Violation and the Supplemental 60-Day Notice of Violation (collectively the “Notices”) allege that Tao violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to naphthalene and lead from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations made in either of the Notices.

### **1.5 No Admission**

Tao denies the material, factual, and legal allegations contained in the Notices 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 Tao 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 Tao of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Tao. This Section shall not, however, diminish or otherwise affect Tao’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 February 1, 2017.

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

**2.1** Commencing on the Effective Date and continuing thereafter, Tao shall only ship, sell, or offer for sale in California Reformulated Products.

**2.2** With respect to naphthalene, “Reformulated Products” are defined as Products that either:

**2.2.1** 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 3630C 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

**2.2.2** yield an infusion test result of “no reportable amount” of naphthalene when analyzed by a domestic laboratory according to EPA testing methodology 3630C 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 ( $\mu\text{g}/\text{L}$ ).

**2.3** With respect to lead, “Reformulated Products” are defined as those products that:

**2.3.2** yield an infusion test result of “no reportable amount” of lead when a domestic laboratory evaluates the Product using a validated preparation method and analyzes the sample according to EPA testing methodology 6020 using inductively coupled plasma mass spectrometry (ICP-MS). Where Products do not specify brewing instructions, the sample shall be prepared by placing one prepackaged tea bag or, for loose leaf teas, two grams of dried tea leaves, in 200 milliliters (mL) of ultra-pure boiling water for five minutes, and after five minutes decanting a representative sample of the resulting infusion for analysis. Where the Products include brewing instructions, the protocol shall be modified to follow the brewing instructions. For purposes of this Settlement Agreement, “no reportable amount” is defined as an amount of lead that does not exceed a reporting limit of 0.8 micrograms per liter ( $\mu\text{g}/\text{L}$ ); or

**2.3.2** yield a result of “no reportable amount” of lead when a domestic laboratory evaluates a representative sample of the Product using a validated preparation method and analyzes the sample according to EPA testing methodology 6020 using ICP-MS. For purposes of this Settlement Agreement, “no reportable amount” is defined as an amount of lead that does not exceed 0.25 milligrams/kilogram ( $\text{mg}/\text{kg}$ ).

## **2.4 Additional Testing Methods**

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

## **2.5 Modification of Reformulation Standards**

The reformulation standards set forth in Sections 2.2 and 2.3, above, shall not be modified unless the conditions and procedures set forth in Section 2.5.1, 2.5.2 or 2.5.3, below, are satisfied.

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

Tao may utilize any naphthalene or lead 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 Tao intends to utilize a reformulation standard permitted by this subsection, Tao shall provide Leeman with written notice of the proposed change and the basis therefor.

**2.5.2 Alternative Standards Adopted by Leeman.** Tao may utilize any naphthalene or lead 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 Tao intends to utilize a reformulation standard permitted by this subsection, Tao shall provide Leeman with written notice of the proposed change and the agreement entered by Leeman supporting the proposed new standard.

**2.5.3 Alternative Standards Proposed by a Party.** Tao 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 Tao.

### **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 Notices or referred to in this Settlement Agreement, Tao agrees to pay civil penalties in the amount of \$4,000 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 any civil penalty payment made under this Settlement Agreement. Tao shall issue its payment in two checks for the following amounts made payable to (a) “OEHHA” in the amount of \$3,000; and (b) “Whitney R. Leeman, Client Trust Account” in the amount of \$1,000.

#### **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 Tao’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, within five days of the Effective Date, Tao agrees to pay \$26,000 in a single check made payable to “The Chanler Group.” Tao’s payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Tao’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 Tao**

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 Tao 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 Tao, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Tao directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers (including without limitation Piedmont Grocery Company) franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to naphthalene and lead in Products sold or distributed for sale by Tao in California before the Effective Date, as alleged in the Notices. Leeman agrees that compliance with this Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to naphthalene and lead in Products sold by Tao 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/or assignees, hereby waives all Leeman's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Leeman 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to naphthalene and lead in Products sold by Tao before the Effective Date, as alleged in the Notices.

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

Tao, 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 Tao may provide written notice to Leeman of any asserted change in the law, and 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 Tao:**

Veerinder Chawla, CEO  
The Tao of Tea LLC  
3430 SE Belmont Street  
Portland, OR 97214

Michelle Gillette, Esq.  
Crowell & Moring LLP  
3 Embarcadero Center, 26<sup>th</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 written agreement of the Parties.

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**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: 1/18/2017

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

By:   
WHITNEY R. LEEMAN, PH.D.

By: \_\_\_\_\_  
VEERINDER CHAWLA, CEO  
THE TAO OF TEA LLC

**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: \_\_\_\_\_

Date: 1/19/17

By: \_\_\_\_\_

By: 

WHITNEY R. LEEMAN, PH.D.

VEERINDER CHAWLA, CEO  
THE TAO OF TEA LLC