



4090021

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler (State Bar No. 135534)
CHANLER LAW GROUP
71 Elm Street, Suite 8
New Canaan, CT 06840
Telephone: (203) 966-9911
Facsimile: (203) 801-5222

Stephen S. Sayad (State Bar No. 104866)
Daniel Bornstein (State Bar No. 181711)
Laralei S. Paras (State Bar No. 203319)
PARAS LAW GROUP
655 Redwood Highway, Suite 216
Mill Valley, CA 94941
Telephone: (415) 380-9222
Facsimile: (415) 380-9223

Attorneys for Plaintiff
Whitney R. Leeman, Ph.D.

Thomas M. Downey (State Bar No. 142096)
BURNHAM BROWN
1901 Harrison St., 11th Floor
Oakland, CA 94604
Telephone: (510) 444-6800
Facsimile: (510) 835-6666

Attorneys for Defendant
Hortense B. Hewitt Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, Ph.D.,

Plaintiff,

v.

HORTENSE B. HEWITT COMPANY;
TAYLOR CORPORATION; PARTY CITY
CORPORATION; and DOES 1 through 150,

Defendants.

Case No. HG-04-183360

~~PROPOSED~~ ORDER PURSUANT
TO TERMS OF CONSENT
JUDGMENT

Date: October 24, 2005
Time: 10:30 A.M.
Dept.: 603
Judge: Comm. L Thomas Surh

FILED
ALAMEDA COUNTY

OCT 24 2005

CLERK OF THE SUPERIOR COURT

By *[Signature]*
Deputy

1 In the above-entitled action, Plaintiff WHITNEY R. LEEMAN, Ph.D. and Defendants
2 HORTENSE B. HEWITT COMPANY; TAYLOR CORPORATION; and PARTY CITY
3 CORPORATION, having agreed through their respective counsel that judgment be entered
4 pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment ("Consent
5 Judgment") entered into by the above-referenced parties and attached hereto as Exhibit A; and
6 after consideration of the papers submitted and the arguments presented, the Court finds that the
7 settlement agreement set out in the attached Consent Judgment meets the criteria established by
8 Senate Bill 471, in that:

- 9 1. The health hazard warning that is required by the Consent Judgment complies with
10 Health & Safety Code §25249.7 (as amended by Senate Bill 471);
- 11 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
12 Judgment is reasonable under California law; and
- 13 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
14 reasonable,

15 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with the
16 terms of the Consent Judgment, attached hereto as Exhibit A.

17 IT IS SO ORDERED.

18 Dated: October 24, 2005

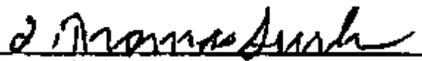

Commissioner L. Thomas Surh
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Clifford A. Chanler (State Bar No. 135534)
2 CHANLER LAW GROUP
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840
5 Telephone: (203) 966-9911
6 Facsimile: (203) 801-5222

7 Attorneys for Plaintiff
8 Whitney R. Leeman, Ph.D.

9 Thomas M. Downey (State Bar No. 142096)
10 BURNHAM BROWN
11 1901 Harrison St., 11th Floor
12 Oakland, CA 94604
13 Telephone: (510) 444-6800
14 Facsimile: (510) 835-6666

15 Attorneys for Defendant
16 Hortense B. Hewitt Company

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF ALAMEDA
19 UNLIMITED CIVIL JURISDICTION

20 WHITNEY R. LEEMAN, Ph.D.,
21 Plaintiff,

22 v.

23 HORTENSE B. HEWITT COMPANY;
24 TAYLOR CORPORATION; PARTY CITY
25 CORPORATION; and DOES 1 through 150,
26 Defendants.

Case No. HG-04-183360

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

27 **1. INTRODUCTION**

28 1.1 **Plaintiff and Settling Defendants.** This Consent Judgment is entered into by and
between plaintiff WHITNEY R. LEEMAN ("Leeman" or "Plaintiff"), and defendants
HORTENSE B. HEWITT COMPANY ("Hortense"), TAYLOR CORPORATION ("Taylor"),

1 and PARTY CITY CORPORATION ("Party City). Defendants Party City, Hortense and Taylor
2 are collectively referred to as the "Settling Defendants." Hortense and Taylor are collectively
3 referred to as the "Taylor Parties". Plaintiff and the Settling Defendants are collectively referred
4 to as the "Parties", with Leeman, Party City, Hortense and Taylor each being a "Party."

5 1.2 **Plaintiff.** Leeman is an individual residing in Sacramento, California who seeks
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer and industrial products.

8 1.3 **General Allegations.** Plaintiff alleges the Settling Defendants have manufactured,
9 distributed and/or sold in the State of California metal party charms that contain lead (and/or lead
10 compounds) that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of
11 1986, California Health & Safety Code §§ 25249.5 et seq., also known as Proposition 65, to cause
12 cancer and birth defects and other reproductive harm. Lead (and/or lead compounds) shall be
13 referred to herein as the "Listed Chemicals."

14 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
15 are defined as follows: (1) all metal charms including but not limited to party charms, wedding
16 charms, social charms, and holiday charms containing lead manufactured, sold, offered for sale,
17 and/or distributed by the Taylor Parties and each of their parent companies, corporate affiliates,
18 subsidiaries, predecessors and successors, and, (2) all metal charms including but not limited to
19 party charms, wedding charms, social charms, and holiday charms containing lead sold, offered
20 for sale, and/or distributed by Party City that were purchased from the Taylor Parties and each of
21 their parent companies, corporate affiliates, subsidiaries, predecessors and successors. Such
22 products collectively are referred to herein as the "Products."

23 1.5 **Notices of Violation.** Beginning on July 30, 2004, Leeman served the Settling
24 Defendants and various public enforcement agencies with documents, entitled "60-Day Notice of
25 Violation" ("Notice") that provided the Settling Defendants and such public enforcers with notice
26 that alleged that the Settling Defendants were in violation of Health & Safety Code § 25249.6 for
27 failing to warn purchasers that certain products that they sold expose users in California to lead
28 (and/or lead compounds).

1 1.6 **Complaint.** On November 2, 2004, Leeman, in the interest of the general public
2 in California, filed a complaint in this action, no. HG04183360, (hereafter referred to as the
3 “Complaint” or the “Action”) in the Superior Court in and for the County of Alameda against the
4 Settling Defendants and Does 1 through 150, alleging violations of Health & Safety Code
5 § 25249.6 based on the alleged exposures to one or more of the Listed Chemicals contained in
6 certain products sold by the Settling Defendants.

7 1.7 **No Admission.** The Settling Defendants deny the material factual and legal
8 allegations contained in Plaintiff’s Notice and Complaint and maintain that all products that they
9 have sold and distributed in California, including the Products, have been and are in compliance
10 with all laws. Nothing in this Consent Judgment shall be construed as an admission by the
11 Settling Defendants, or any of them, of any fact, finding, issue of law, or violation of law, nor
12 shall compliance with this Agreement constitute or be construed as an admission by the Settling
13 Defendants, or any of them, of any fact, finding, conclusion, issue of law or violation of law.
14 However, this section shall not diminish or otherwise affect the obligations, responsibilities and
15 duties of the Settling Defendants under this Consent Judgment.

16 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
17 stipulate that this Court has jurisdiction over the allegations of violations contained in the
18 Complaint and personal jurisdiction over the Settling Defendants, and each of them, as to the acts
19 alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has
20 jurisdiction to enter this Consent Judgment and to enforce the provisions thereof.

21 1.9 **Effective Date.** For purposes of this Consent Judgment, “Effective Date” shall be
22 July 29, 2005.

23 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

24 2.1 **WARNINGS AND REFORMULATION OBLIGATIONS**

25 (a) **Required Warnings.** After July 29, 2005, the Settling Defendants shall
26 not sell, offer for sale, or transmit any Products containing the Listed Chemicals to any retailer for
27 sale in California (or otherwise offer for sale in California), unless warnings are given in
28 accordance with one or more provisions in subsection 2.2 below.

1 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
2 2.2 below shall not apply to any Reformulated Products as defined in subsection 2.3 below.

3 **2.2 CLEAR AND REASONABLE WARNINGS**

4 The Settling Defendants shall comply with their warning obligations under this Consent
5 Judgment by utilizing the warning method set forth in subsection 2.2(a) or 2.2(b). The Settling
6 Defendants have fully complied with the warning obligations in this Consent Judgment if they
7 satisfy the warning requirements set forth in either subsection 2.2(a) or subsection 2.2(b).

8 (a) **Product Labeling.** The Settling Defendants (or their manufacturers,
9 importers, or distributors) may execute their warning obligations by affixing a warning to the
10 packaging, labeling or directly on the Products that states either the warning contained in
11 subsection 2.2(a)(i) or 2.2(a)(ii):

12
13 (i) **WARNING: This product contains lead, a chemical**
14 **known to the State of California to cause**
15 **birth defects or other reproductive harm.**

16 (ii) **Prop 65 Warning: Use of this product will expose**
17 **you to lead, a chemical known to the State**
18 **of California to cause cancer, birth**
19 **defects, or other reproductive harm. You**
20 **may return this product for a full refund**
21 **within 30 days of receipt, if you wish.**

22 Subject to Section 2.2(c), the Settling Defendants have fully complied with the Product
23 Labeling requirements in subsection 2.2(a) if they utilize the warning set forth in either subsection
24 2.2(a)(i) or subsection 2.2(a)(ii).

25 Warnings issued for Products pursuant to this subsection shall be prominently placed with
26 such conspicuousness as compared with other words, statements, designs, or devices as to render
27 it likely to be read and understood by an ordinary individual under customary conditions of
28 purchase. Any changes to the language or format of the warning required by this subsection shall
only be made following: (1) approval of Plaintiff; (2) approval from the California Attorney

1 General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for
2 the opportunity to comment; or (3) Court approval.

3 (b) **Point-of-Sale Warnings.** The Settling Defendants may execute their
4 warning obligations through arranging for the posting of signs at retail outlets in the State of
5 California at which the Products are sold, in accordance with the terms specified in
6 subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

7 (i) Point of Sale warnings utilized pursuant to this subsection shall be
8 provided through one or more signs which are posted at each point of sale of or display for each
9 of the Products and shall state either the warning contained in subsection 2.2(b)(i)(1) or
10 2.2(b)(i)(2):

11 (1) **WARNING: This product contains lead, a**
12 **chemical known to the State of California**
13 **to cause birth defects or other**
14 **reproductive harm.**

15 (2) **Prop 65 Warning: Use of this product will**
16 **expose you to lead, a chemical known to**
17 **the State of California to cause cancer,**
18 **birth defects, or other reproductive harm.**
19 **You may return this product for a full**
20 **refund within 30 days of receipt, if you**
21 **wish.**

22 (ii) Subject to Section 2.2(c), the Settling Defendants have fully
23 complied with the Point of Sale warning requirements in subsection 2.2(b)(i) if they utilize the
24 warning set forth in either subsection 2.2(b)(i)(1) or subsection 2.2(b)(i)(2).

25 (iii) A point of sale warning provided pursuant to subsection 2.2(b)(i)
26 shall be prominently placed with such conspicuousness as compared with other words,
27 statements, designs, or devices as to render it likely to be read and understood by an ordinary
28 individual under customary conditions of purchase and shall be placed or written in such a
manner that the consumer understands to which specific Product the warnings apply so as to
minimize if not eliminate the chances that an over-warning situation will arise. Any changes to
the language or format of the warning required for Products by this subsection shall only be made

1 following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office,
2 provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to
3 comment; or (3) Court approval upon adequate notice to Plaintiff.

4 (iv) If the Settling Defendants intend to utilize point of sale warnings to
5 comply with this Consent Judgment, they must provide notice of this Consent Judgment to each
6 retailer to whom the Settling Defendants ship the Products for sale in California and obtain the
7 written consent of such retailer that it will comply with the Consent Judgment before shipping the
8 Products. Such notice shall include a copy of this Consent Judgment and any required warning
9 materials (including, as appropriate, signs and/or stickers). If the Settling Defendants have
10 obtained the written consent of a retailer, the Settling Defendants shall not be found to have
11 violated this Consent Judgment if they have complied with the terms of this Consent Judgment
12 and have written proof that they transmitted the requisite warnings in the manner provided herein.

13 (c) **New Warnings After Current Inventory Depleted.** The Settling Defendants are
14 permitted to use their existing supply of warnings that utilize the language in Section 2.2(a)(ii)
15 and Section 2.2(b)(i)(2) on Products sold, offered for sale, or distributed in California until their
16 current inventory of warning labels or signs are depleted. New warnings under Section 2.2(a)(ii)
17 and Section 2.2(b)(i)(2) used on Products, after the current inventory of labels is depleted, shall
18 utilize the following language:

19 **Prop 65 Warning: Use of this product will**
20 **expose you to lead, a chemical known to the State**
21 **of California to cause cancer and birth defects,**
22 **or other reproductive harm. You may return**
23 **this product for a full refund within 30 days of**
24 **receipt, if you wish.**

25 The Settling Defendants may at any time, as an alternative, utilize the warning set forth in
26 Section 2.2.(a)(i) or Section 2.2(b)(i)(1) to comply with the warning requirements in this Consent
27 Judgment.
28

1 2.3 **REFORMULATION STANDARDS:** Products satisfying the conditions of
2 Section 2.3 are referred to as "Reformulated Products" and are defined as follows:

3 Any Product containing one tenth of one percent (0.1%) lead or less by weight in
4 each material used in the Products (such as solder and came).

5 2.4 **REFORMULATION COMMITMENT.** By entering into this Stipulation and
6 Consent Judgment, the Settling Defendants hereby commit that all Products which are
7 manufactured after the Effective Date that they sell in California will be "Reformulated Products"
8 as defined in Section 2.3, above. The Settling Defendants are permitted to sell in California under
9 the warning requirements set forth in Section 2.2 any inventory of Products or components of
10 Products they possess as of the Effective Date of this Consent Judgment.

11 **3. MONETARY PAYMENTS.**

12 3.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
13 Health & Safety Code Section 25249.7(b), the Settling Defendants shall pay the amount of
14 \$70,000 in two installments; the first payment of \$20,000 is due on or before August 12, 2005.
15 As referenced in Section 14, Plaintiff's Counsel shall deliver a draft of the Joint Motion To
16 Approve The Consent Judgment to the Settling Defendants on or before August 12, 2005. The
17 second payment of \$50,000 is due on July 30, 2006; however, such second payment shall be
18 waived, null and void if Taylor Corporation certifies in writing by June 15, 2006, that the Settling
19 Defendants have complied with the Reformulation Commitment set forth in Section 2.4, above.
20 The Settling Defendants will not be found in violation of this Consent Judgment if they sell
21 inventory of Products or components of Products manufactured prior to the Effective Date that
22 are properly labeled with warning requirements that comply with this Consent Judgment. The
23 Settling Defendants are permitted to sell in California under the warning requirements set forth in
24 Section 2.2 any inventory of Products or components of Products they possess as of the Effective
25 Date of this Consent Judgment until that inventory is depleted. The first payment of \$20,000
26 shall be made payable to the "Chanler Law Group in Trust For Whitney R. Leeman," and shall be
27 delivered to Plaintiff's counsel on or before August 12, 2005 at the following address:
28

1 CHANLER LAW GROUP
2 Attn: Clifford A. Chanler
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840

5 (a) In the event the Settling Defendants pay any amount of money under
6 Section 3 or other provision of this Consent Judgment, and this Consent Judgment is not
7 thereafter approved and entered by the Court, Leeman shall return any amounts paid within
8 fifteen (15) days of receipt of a written request from the Settling Defendants following notice of
9 the issuance of the Court's decision.

10 (b) The Parties agree that the Settling Defendants' potential interest in and
11 ability to acquire and market Reformulated Products is to be accounted for in this section and,
12 since it is not a remedy provided for by law, the absence of the Settling Defendants' previously
13 acquiring, manufacturing, marketing or selling Reformulated Products is not relevant to the
14 establishment of the amount to be paid pursuant to Section 3.1 above.

15 (c) **Apportionment.** After Court approval of this Consent Judgment pursuant
16 to Section 6, all monies paid as civil penalties and received by Plaintiff shall be apportioned by
17 Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to
18 the State of California's Office of Environmental Health Hazard Assessment and the remaining
19 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code
20 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
21 California the appropriate amounts of funds paid in accordance with this section.

22 **4. REIMBURSEMENT OF FEES AND COSTS**

23 4.1 The Parties acknowledge that Plaintiff and her counsel required that the parties
24 first resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed
25 to them, thereby leaving any claim for attorney's fees to be resolved after the material terms of
26 the agreement had been settled. Following a resolution on the remaining terms of this Consent
27 Judgment, the Parties then attempted to and did reach an accord on the compensation due to
28 Plaintiff and her counsel under the private attorney general doctrine codified at Code of Civil
Procedure §1021.5 for work performed through the Effective Date of the Agreement. Under the

1 private attorney general doctrine, the Settling Defendants shall reimburse Plaintiff and her
2 counsel for fees and costs, incurred as a result of investigating, bringing this matter to the Settling
3 Defendants' attention, litigating and negotiating a settlement in the public interest. The Settling
4 Defendants shall pay Plaintiff and her counsel \$48,000 for all attorneys' fees, expert and
5 investigation fees, and litigation costs. The payment shall be made payable to the "Chanler Law
6 Group" and shall be delivered to Plaintiff's counsel on or before August 12, 2005, at the
7 following address:

8
9 CHANLER LAW GROUP
10 Attn: Clifford A. Chanler
11 71 Elm Street, Suite 8
12 New Canaan, CT 06840

13 4.2 Except as specifically provided in this Consent Judgment, the Settling Defendants
14 shall have no further obligation with regard to reimbursement of Plaintiff's attorney's fees and
15 costs with regard to the Products covered in this Action.

16 4.3 In the event the Settling Defendants pay any amount of money under Section 4 or
17 other provision of this Consent Judgment, and this Consent Judgment is not thereafter approved
18 and entered by the Court, Plaintiff's Counsel shall return any amounts paid within fifteen (15)
19 days of receipt of a written request from the Settling Defendants following notice of the issuance
20 of the Court's decision.

21 5. RELEASE OF ALL CLAIMS

22 5.1 **Plaintiff's Release of the Settling Defendants.** In further consideration of the
23 promises and agreements herein contained, and for the payments to be made pursuant to
24 Sections 3 and 4 that are not later waived, Plaintiff, on behalf of herself, her past and current
25 agents, representatives, attorneys, successors and/or assignees, and in the interest of the general
26 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
27 legal action and discharges and releases all claims, including, without limitation, all actions,
28 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) of any nature whatsoever, whether known or unknown, fixed or contingent, that

1 may have existed or that do exist as of the Effective Date, and that later accrue as a result (in
2 whole or in part) of transactions, occurrences, acts or omissions that occur after the Effective
3 Date, (collectively "Claims"), against the Settling Defendants, and each of their wholesalers,
4 licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent
5 companies, corporate affiliates, predecessors, successors, subsidiaries and their respective
6 officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively,
7 "Settling Defendants' Releasees") arising under Proposition 65 related to the Settling Defendants'
8 or the Settling Defendants' Releasees' alleged failure to warn about exposures to or identification
9 of Listed Chemicals contained in the Products.

10 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
11 binding resolution of any violation of Proposition 65 that has been or could have been asserted in
12 the Complaint against the Settling Defendants for their alleged failures to provide clear and
13 reasonable warnings of exposure to or identification of the Listed Chemicals in the Products.

14 In addition, Plaintiff, on behalf of herself, her attorneys, and their agents, waives all rights
15 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
16 against the Settling Defendants' Releasees arising under Proposition 65 related to each of the
17 Settling Defendants' Releasees' alleged failures to warn about exposures to or identification of
18 the Listed Chemicals contained in the Products and for all actions or statements made by the
19 Settling Defendants or their attorneys or representatives, in the course of responding to alleged
20 violations of Proposition 65 by the Settling Defendants. Provided however, Plaintiff shall remain
21 free to institute any form of legal action to enforce the provisions of this Consent Judgment.

22 It is specifically understood and agreed that the Parties intend that the Settling
23 Defendants' compliance with the terms of this Consent Judgment resolves all issues and liability,
24 now and in the future (so long as the Settling Defendants comply with the terms of the Consent
25 Judgment) concerning the Settling Defendants' and the Defendants' Releasees' compliance with
26 the requirements of Proposition 65 as to the Listed Chemicals in the Products.

27 **5.2 The Settling Defendants' Release of Plaintiff.** The Settling Defendants, and
28 each of them, waive all rights to institute any form of legal action against Plaintiff, or her

1 attorneys or representatives, for all actions taken or statements made by Plaintiff and her attorneys
2 or representatives, in the course of seeking enforcement of Proposition 65 in investigating and
3 bringing in this Action. The Settling Defendants shall remain free to institute any form of legal
4 action to enforce the provisions of this Consent Judgment.

5 **6. COURT APPROVAL**

6 This Consent Judgment is not effective until it is approved and entered by the Court and
7 shall be null and void if, for any reason, it is not approved and entered by the Court within 120
8 days after it has been fully executed by all Parties, in which event any monies that have been
9 provided to Plaintiff or his counsel pursuant to section 3 and/or section 4 above, shall be refunded
10 within fifteen (15) days. Within five days after notice of entry of this Consent Judgment, Plaintiff
11 shall serve and file a notice of dismissal, without prejudice, of defendant Party City Corporation.

12 **7. SEVERABILITY**

13 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
14 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
15 provisions remaining shall not be adversely affected.

16 **8. ATTORNEYS' FEES**

17 In the event that a dispute arises with respect to any provision(s) of this Consent
18 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover
19 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of
20 such dispute.

21 **9. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed or
24 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,
25 then the Settling Defendants shall have no further obligations pursuant to this Consent Judgment
26 with respect to, and to the extent that, those Products are so affected.

27
28

1 **10. NOTICES**

2 All correspondence and notices required to be provided pursuant to this Consent Judgment
3 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
4 return receipt requested or (ii) overnight courier on either Party by the other at the following
5 addresses. (Either Party, from time to time, may, pursuant to the methods prescribed above,
6 specify a change of address to which all future notices and other communications shall be sent.)

7 To Taylor Corporation and Hortense B. Hewitt Company:

8 Jean Taylor, President
9 Taylor Corporation
10 1725 Roe Crest Drive
11 North Mankato, MN 56003

12 With a copy to:

13 Thomas M. Downey, Esq.
14 Burnham Brown
15 1901 Harrison St., 11th Floor
16 Oakland, CA 94604

17 To Party City:

18 Nancy Perdot, Chief Executive Officer
19 Party City
20 400 Commons Way
21 Rockaway, NJ 07866

22 With a copy to:

23 Thomas M. Downey, Esq.
24 Burnham Brown
25 1901 Harrison St., 11th Floor
26 Oakland, CA 94604

27 To Plaintiff:

28 Clifford A. Chanler, Esq.
 Chanler Law Group
 71 Elm Street, Suite 8
 New Canaan, CT 06840

1 **11. NO ADMISSIONS**

2 Nothing in this Consent Judgment shall constitute or be construed as an admission by the
3 Settling Defendants of any fact, finding, conclusion, issue of law, or violation of law, nor shall
4 compliance with this Consent Judgment constitute or be construed as an admission by the Settling
5 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by the Settling Defendants. The Settling Defendants reserve all of their rights
7 and defenses with regard to any claim by any party under Proposition 65 or otherwise. However,
8 this section shall not diminish or otherwise affect the Settling Defendants' obligations,
9 responsibilities and duties under this Consent Judgment.

10 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

11 This Consent Judgment may be executed in counterparts and by facsimile, each of which
12 shall be deemed an original, and all of which, when taken together, shall constitute one and the
13 same document.

14 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

15 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
16 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
17 present this Consent Judgment to the California Attorney General's Office within five (5) days
18 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
19 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date
20 a hearing is scheduled on such motion in the Superior Court for the County of Alameda unless the
21 Court allows a shorter period of time.

22 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

23 The Parties shall mutually employ their best efforts to support the entry of this Agreement
24 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
25 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
26 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
27 agree to file a Joint Motion To Approve the Consent Judgment ("Joint Motion"), the first draft of
28 which Plaintiff's counsel shall prepare and deliver to the Settling Defendants on or before August

1 12, 2005, unless otherwise agreed to by the Parties' counsel based on unanticipated
2 circumstances. Plaintiff's counsel shall prepare a declaration in support of the Joint Motion
3 which shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to
4 Section 4. Settling Defendants shall make any revisions to the draft and convey them to
5 Plaintiff's Counsel no later than August 19, 2005. Plaintiff and her Counsel shall thereafter file
6 with the court the parties' Joint Motion on or before August 29, 2005, unless otherwise agreed to
7 by the Parties' counsel based on unanticipated circumstances.

8 In the event the Settling Defendants pay any amount of money under any provision of this
9 Consent Judgment, and the Joint Motion is not thereafter filed with the Court within 60 days of
10 the Effective Date, Plaintiff's Counsel shall return any amounts paid within fifteen (15) days of
11 receipt of a written request from the Settling Defendants.

12 In the event Plaintiff's Counsel does not file the Joint Motion as required under this
13 Consent Judgment, the Settling Defendants are entitled to recover from Plaintiff and her counsel
14 any reasonable and necessary costs and attorneys' fees incurred in obtaining recovery of any
15 amounts paid under this Consent Judgment.

16 The Settling Defendants shall have no additional responsibility to Plaintiff's counsel
17 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
18 incurred with respect to the preparation and filing of the Joint Motion and its supporting
19 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
20 thereon.

21 **15. MODIFICATION**

22 This Consent Judgment may be modified only by: (1) written agreement of the Parties
23 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party
24 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
25 General shall be served with notice of any proposed modification to this Consent Judgment at
26 least fifteen (15) days in advance of its consideration by the Court.

1
2 **16. AUTHORIZATION**

3 The undersigned are authorized to execute this Consent Judgment on behalf of their
4 respective Parties and have read, understood and agree to all of the terms and conditions of this
5 Consent Judgment.

6 **AGREED TO:**

7 Date: 7/25/11

8 By: Whitney R. Leeman

9 Plaintiff Whitney R. Leeman

AGREED TO:

Date:

By: _____

Defendants
TAYLOR CORPORATION
HORTENSE B. HEWITT COMPANY

10 **AGREED TO:**

11 Date:

12 By: _____

13 Defendant
14 PARTY CITY CORPORATION

15 **APPROVED AS TO FORM:**

16 Date:

17 CHANLER LAW GROUP

18 By: _____

19 Clifford A. Chanler
20 Attorneys for Plaintiff
WHITNEY R. LEEMAN

APPROVED AS TO FORM:

Date:

BURNHAM BROWN

By: _____

Thomas M. Downey, Esq.
Attorney for Defendants
TAYLOR CORP., HORTENSE B. HEWITT
CO., PARTY CITY CORPORATION

23 **IT IS SO ORDERED.**

24
25
26 Date: _____

JUDGE OF THE SUPERIOR COURT

709146

1 **16. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 Consent Judgment.

5 **AGREED TO:**

AGREED TO:

6 Date:

Date:

7 By: _____

By: _____

8 Plaintiff Whitney R. Leeman

9 Defendants
TAYLOR CORPORATION
HORTENSE B. HEWITT COMPANY

10 **AGREED TO:**

11 Date:

12 By: _____

13 Defendant
14 PARTY CITY CORPORATION

15 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

16 Date: 8/1/05

Date:

17 CHANLER LAW GROUP

BURNHAM BROWN

18 By: *Cliff Chanler*

By: _____

19 Clifford A. Chanler
20 Attorneys for Plaintiff
WHITNEY R. LEEMAN

Thomas M. Downey, Esq.
Attorney for Defendants
TAYLOR CORP., HORTENSE B. HEWITT
CO., PARTY CITY CORPORATION

21
22
23 **IT IS SO ORDERED.**

24
25
26 Date: _____

JUDGE OF THE SUPERIOR COURT

709146

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date:

Date:

By: _____

By: _____

Plaintiff Whitney R. Leeman

Defendants
TAYLOR CORPORATION
HORTENSE B. HEWITT COMPANY

AGREED TO:

Date: August 3, 2005

By:  _____
Defendant
PARTY CITY CORPORATION

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date:

Date:

CHANLER LAW GROUP

BURNHAM BROWN

By: _____

By: _____

Clifford A. Chanler
Attorneys for Plaintiff
WHITNEY R. LEEMAN

Thomas M. Downey, Esq.
Attorney for Defendants
TAYLOR CORP., HORTENSE B. HEWITT
CO., PARTY CITY CORPORATION

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

709146

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date:

By: _____

Plaintiff Whitney R. Leeman

AGREED TO:

Date: August 4, 2005

By: *Karl Hewitt*

Defendants
TAYLOR CORPORATION
HORTENSE B. HEWITT COMPANY

AGREED TO:

Date:

By: _____

Defendant
PARTY CITY CORPORATION

APPROVED AS TO FORM:

Date:

CHANLER LAW GROUP

By: _____

Clifford A. Chanler
Attorneys for Plaintiff
WHITNEY R. LEEMAN

APPROVED AS TO FORM:

Date: August 5, 2005

BURNHAM BROWN

By: *Thomas M. Downey*

Thomas M. Downey, Esq.
Attorney for Defendants
TAYLOR CORP., HORTENSE B. HEWITT
CO., PARTY CITY CORPORATION

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

709146



1 Clifford A. Chanler (State Bar No. 135534)
 2 CHANLER LAW GROUP
 3 71 Elm Street, Suite 8
 4 New Canaan, CT 06840
 5 Telephone: (203) 966-9911
 6 Facsimile: (203) 801-5222

7 Stephen S. Sayad (State Bar No. 104866)
 8 Daniel Bornstein (State Bar No. 181711)
 9 Laralei S. Paras (State Bar No. 203319)
 10 PARAS LAW GROUP
 11 655 Redwood Highway, Suite 216
 12 Mill Valley, CA 94941
 13 Telephone: (415) 380-9222
 14 Facsimile: (415) 380-9223

15 Attorneys for Plaintiff
 16 Whitney R. Leeman, Ph.D.

17 Thomas M. Downey (State Bar No. 142096)
 18 BURNHAM BROWN
 19 1901 Harrison St., 11th Floor
 20 Oakland, CA 94604
 21 Telephone: (510) 444-6800
 22 Facsimile: (510) 835-6666

23 Attorneys for Defendant
 24 Hortense B. Hewitt Company

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 26 FOR THE COUNTY OF ALAMEDA
 27 UNLIMITED CIVIL JURISDICTION

28 WHITNEY R. LEEMAN, Ph.D.,

Plaintiff,

v.

HORTENSE B. HEWITT COMPANY;
 TAYLOR CORPORATION; PARTY CITY
 CORPORATION; and DOES 1 through 150,

Defendants.

Case No. HG-04-183360

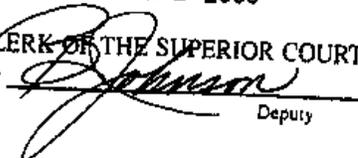
~~PROPOSED~~ JUDGMENT
 PURSUANT TO TERMS OF
 CONSENT JUDGMENT

Date: October 24, 2005
 Time: 10:30 P.M.
 Dept.: 603
 Judge: Comm. L. Thomas Surh

FILED
 ALAMEDA COUNTY

OCT 24 2005

CLERK OF THE SUPERIOR COURT

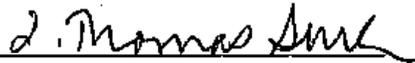
By  Deputy

1 In the above-entitled action, Plaintiff WHITNEY R. LEEMAN, Ph.D. and Defendants
2 HORTENSE B. HEWITT COMPANY; TAYLOR CORPORATION; and PARTY CITY
3 CORPORATION, having agreed through their respective counsel that judgment be entered
4 pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment ("Consent
5 Judgment") entered into by the parties, and after issuing an Order Approving Proposition 65
6 Settlement Agreement and Consent Judgment on October 24, 2005.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of
8 Civil Procedure §664.5, judgment is entered in accordance with the terms of the Order Approving
9 Proposition 65 Settlement Agreement and Consent Judgment, between the parties.

10 **IT IS SO ORDERED.**

11 Dated: October 24, 2005


Commissioner L. Thomas Surh
JUDGE OF THE SUPERIOR COURT