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12 WHITNEY R. LEEMAN, PH.D.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 LISLE CORPORATION; and DOES 1-150,
20 inclusive,

21 Defendants.

Case No. 116CV291646

**~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: June 30, 2016

Time: 9:00 a.m.

Dept.: 9

Judge: Hon. Mary E. Arand

ENDORSED
FILED

2016 JUN 30 A 9 48

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California

By: _____

Deputy Clerk

C. Page

1 In the above-entitled action, plaintiff Whitney R. Leeman, Ph.D. and defendant
2 Lisle Corporation having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and
4 following this Court's issuance of an Order approving this Proposition 65 settlement and
5 Consent Judgment:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure
8 § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment
9 attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain
10 jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 6/30/2016

Mary E. Arand

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

LISLE CORPORATION, *et al.*,

Defendants.

Case No. 16CV291646
~~PROPOSED~~ CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (“Leeman”), and Lisle Corporation (“Lisle”), with Leeman and Lisle each individually referred to as
5 a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Lisle**

11 Lisle employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that Lisle manufactures, imports, sells, or distributes for sale in California,
16 tools with vinyl/PVC grips that contain diisononyl phthalate (“DINP”) without first providing the
17 exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause cancer. Lisle denies Leeman’s claims and
19 maintains that Proposition 65 warnings are not required for the Products (as hereinafter defined).

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are tools with vinyl/PVC grips containing
22 DINP that are manufactured, imported, sold, or distributed for sale in California by Lisle including,
23 but not limited to, *Lisle “Swivel Grip” Oil Filter Wrench, #53500, UPC #0 83045 53500 3,*
24 hereinafter the “Products”.

25 **1.6 Notice of Violation**

26 On or about August 10, 2015, Leeman served Lisle, and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” (“Notice”) that provides the recipients with
28 notice of alleged violations of Proposition 65 based on Lisle’s alleged failure to warn consumers in

1 California that their Products expose users to DINP. To the best of the Parties' knowledge, no public
2 enforcer has commenced or is otherwise prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On February 17, 2016, Leeman filed the instant action ("Complaint") naming Lisle as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Lisle denies the factual and legal allegations contained in the Notice and Complaint, and
9 maintains that all of the products it has sold and distributed for sale in California, including the
10 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
11 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law,
12 nor shall compliance with this Consent Judgment constitute or be construed as an admission of any
13 fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
14 diminish or otherwise affect Lisle's obligations, responsibilities, and duties under this Consent
15 Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Lisle as to the allegations contained in the Complaint, that venue is proper in the
19 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Motion for Approval of the Consent Judgment is granted by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 On or before the Effective Date, and continuing thereafter, Lisle shall only manufacture for
27 sale or purchase for sale in California, "Reformulated Products." For purposes of this Consent
28 Judgment, Reformulated Products are Products containing DINP in concentrations less than 0.1

1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency
2 testing methodologies 3580A and 8270C or other methodology utilized by federal or state
3 government agencies for the purpose of determining DINP content in a solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
7 this Consent Judgment, Lisle shall pay \$8,000 in civil penalties, which shall be allocated according to
8 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds
9 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Leeman,
10 and twenty-five percent (25%) of the funds remitted to Leeman. Lisle shall make the civil penalty
11 payment of \$8,000 payable to “Leeman, Client Trust Account.”

12 **3.2 Reimbursement of Attorney’s Fees and Costs**

13 The parties acknowledge that Leeman and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
15 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
16 other settlement terms had been reached, Lisle expressed a desire to resolve Leeman’s fees and costs.
17 The Parties then reached an accord on the reimbursement of Leeman’s attorneys’ fees and costs under
18 general contract principles and the private attorney general doctrine codified at California Code of
19 Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent
20 Judgment. Lisle shall pay \$30,750 for the fees and costs incurred by Leeman investigating, bringing
21 this matter to Lisle’s attention, litigating and negotiating a settlement in the public interest, which
22 check shall be made payable to “The Chanler Group.”

23 **3.3 Payment Procedure**

24 All payments required by this Consent Judgment shall be delivered to the following
25 Address within ten (10) business days of the Effective Date. In the event that any payment required
26 by this Consent Judgment is untimely, the Parties agree and acknowledge that (a) Lisle shall be
27 liable to Leeman for 10% simple interest on any unpaid amount(s); (b) Leeman may seek to enforce
28 Lisle’s payment obligations under general contract principles and Code of Civil Procedure section

1 664.6; and (c) Leeman shall be entitled to any fees incurred recovering such settlement payments:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

7 **4. CLAIMS COVERED AND RELEASED**

8 This Consent Judgment is a full, final and binding resolution as set forth in this Section 4.

9 **4.1 Leeman's Public Release of Proposition 65 Claims**

10 Leeman, on behalf of herself, her past and current agents, representatives, attorneys,
11 successors, and/or assignees, and acting in a representative capacity in the public interest pursuant
12 to Health & Safety Code § 25249.7(d), releases and waives all claims, causes of actions suits,
13 liabilities, demands, obligations, damages, costs, fines, penalties, expenses (including, but not
14 limited to, investigation fees, and attorneys' fees) or losses (collectively, "Claims"), against Lisle
15 and it's parents, subsidiaries, affiliated entities under common ownership, directors, officers,
16 employees, and attorneys ("Releasees") and each person or entity to whom it directly or indirectly
17 distributes or sells the Products including, but not limited to, it's downstream distributors,
18 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
19 ("Downstream Releasees") arising under Proposition 65 based on alleged unwarned exposures to
20 DINP from Products sold or distributed by Lisle prior to the Effective Date, as set forth in the
21 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
22 Proposition 65 with respect to exposures to failures to warn about DINP from the Products sold or
23 distributed by Lisle after the Effective Date.

24 **4.2 Leeman's Individual Release of Claims**

25 Leeman, in her individual capacity on behalf of herself, her past and current agents,
26 representatives, attorneys, successors, and/or assignees, and *not* in her representative capacity, also
27 releases and waives all Claims against Releasees, and Downstream Releasees which shall be effective
28 as a full and final accord and satisfaction, as a bar to all Claims of Leeman of any nature, character or
kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
exposures to DINP in the Products sold or distributed for sale by Lisle before the Effective Date.

1 **4.3** The Parties agree that compliance with the terms of this Consent Judgment,
2 specifically the injunctive relief set forth in Section 2, constitutes compliance with Proposition 65 by
3 Lisle and Releasees with respect to any DINP in the Products.

4 **4.4 Lisle's Release of Leeman**

5 Lisle, on its own behalf, and on behalf of its past and current agents, representatives,
6 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
7 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
8 her attorneys and other representatives, whether in the course of investigating claims, otherwise
9 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall
12 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
13 has been fully executed by the Parties. In the event that the Consent Judgment is not approved and
14 entered by the Court as specified in this Section, Leeman shall return all settlement payments made
15 by Lisle within fifteen (15) days' written notice by Lisle.

16 **6. SEVERABILITY**

17 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
18 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
19 adversely affected.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the state of California
22 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
23 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
24 Judgment are rendered inapplicable or no longer required as a result of any such repeal or preemption
25 or rendered inapplicable by reason of law generally as to the Products, then Lisle may provide written
26 notice to Leeman of any asserted change in the law, and shall have no further injunctive obligations
27 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

28

1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 **Lisle**

6 Fred Lisle, President
7 Lisle Corporation
8 807 East Main Street
9 Clarinda, IA 51632

 Sarah Esmaili, Esq.
 Arnold & Porter LLP
 10th Floor, Three Embarcadero Center
 San Francisco, CA 94111-4024

9 **Leeman**

10 Proposition 65 Coordinator
11 The Chanler Group
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

13 Any Party may, from time to time, specify in writing to the other, a change of address to which all
14 notices and other communications shall be sent.

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile or portable
17 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
18 taken together, shall constitute one and the same document.

19 **10. POST EXECUTION ACTIVITIES**

20 Leeman agrees to comply with the reporting form requirements referenced in Health and
21 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
22 Code section 25249.7(f), a noticed motion by Leeman is required to obtain judicial approval of the
23 settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their best
24 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
25 judicial approval of their settlement in a timely manner. For purposes of this Section, “best efforts”
26 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
27 supporting the motion, and appearing at the hearing before the Court.

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11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court.

12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 4/22/2016

Date: 4/21/16

By: 
WHITNEY R. LEEMAN, PH.D.

By: 
Fred Lisle, President
LISLE CORPORATION