

COPY

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

Brian Johnson, State Bar No. 235965  
Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

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

FILED  
OCT 07 2016  
DAVID H. ...  
Superior Court of ...  
BY A. Baird

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

WHITNEY R. LEEMAN, PH.D.,  
Plaintiff,  
v.  
COMMERCIAL VEHICLE GROUP, INC.;  
*et al.*,  
Defendants.

Case No. 16CV293479  
**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AND CONSENT  
JUDGMENT AS TO DEFENDANT  
COMMERCIAL VEHICLE GROUP, INC.**  
Date: September 15, 2016  
Time: 9 a.m.  
Dept. 6  
Judge: Hon. Theodore C. Zayner

1 Plaintiff Whitney R. Leeman, Ph.D. and defendant Commercial Vehicle Group,  
2 Inc., having agreed through their respective counsel that Judgment be entered pursuant to  
3 the terms of their settlement agreement in the form of a stipulated judgment (“Consent  
4 Judgment”), and following this Court’s issuance of an order approving their Proposition 65  
5 settlement and Consent Judgment on September 15, 2016, and for good cause being  
6 shown;

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to  
8 Health and Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is  
9 hereby entered in accordance with the terms of the Consent Judgment attached hereto as  
10 Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the  
11 terms of the Consent Judgment under California Health and Safety Code § 25249.7(f) and  
12 California Code of Civil Procedure § 664.6.

13 **IT IS SO ORDERED.**

14  
15  
16 Dated: 9/15/16

Theodore C. Zayner  
JUDGE OF THE SUPERIOR COURT

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**

1 Brian C. Johnson, State Bar No. 235965  
2 Josh Voorhees, State Bar No. 241436  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118  
9 E-mail: brian@chanler.com  
10 E-mail: josh@chanler.com

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

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

17 WHITNEY R. LEEMAN, PH.D.,  
18 Plaintiff,  
19  
20 v.  
21  
22 COMMERCIAL VEHICLE GROUP, INC.,  
23 *et al.*,  
24  
25 Defendants.

Case No. 16CV293479  
[PROPOSED] CONSENT JUDGMENT  
(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

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 Commercial Vehicle Group, Inc. (“CVG”), with Leeman and CVG each individually  
5 referred to as 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 CVG**

11 CVG is a Delaware Corporation with its principal place of business in Ohio.

12 **1.4 General Allegations**

13 Leeman alleges that CVG employs more than 10 individuals and is a “person in the course of  
14 doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
15 and Safety Code § 25249.6 *et seq.* (“Proposition 65”). Leeman further alleges that CVG, either  
16 directly or indirectly through subsidiaries, imports, sells, or distributes for sale in California  
17 commercial vehicle seats with vinyl/PVC upholstery that contains di(2-ethylhexyl)phthalate  
18 (“DEHP”), and that it does so without first providing the exposure warning required by Proposition  
19 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other  
20 reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are any and all Commercial Vehicle Seats  
23 with vinyl/PVC upholstery containing DEHP that are purchased for sale, imported for sale, or sold in  
24 California by CVG or its subsidiaries (“Products”) and, thereafter, sold or distributed for sale in  
25 California by those downstream entities in CVG’s and its subsidiaries’ chain of distribution  
26 including, without limitation, the Releasees and Downstream Releasees (as defined in § 4.1, below).

1 For purposes of this Consent Judgment, Commercial Vehicle Seats are defined as seats and/or chairs  
2 used or sold for use by drivers, passengers, and operators in commercial applications including, but  
3 not exclusively, all motorized vehicles, trucks, vans, motor coaches, tractor trailers, cranes and other  
4 construction equipment, and combines, tractors, and other agricultural equipment. Such Products  
5 include, but are not limited to, the *Commercial Vehicle Group National Seating National 2000 Series*  
6 *20" BLK VYN CAPTAIN, #2295, Part No. 50765.005, the Bostrom Patriot Seat*, and other National  
7 or Bostrom seats.

8 **1.6 Notice of Violation**

9 On September 15, 2015, Leeman served CVG, and the requisite public enforcement agencies,  
10 with a 60-Day Notice of Violation ("Notice"), alleging that CVG violated Proposition 65 by failing to  
11 warn its customers and consumers in California of the health hazards associated with exposures to  
12 DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced  
13 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

14 **1.7 Complaint**

15 On April 4, 2016, Leeman filed the instant action ("Complaint"), naming CVG as a defendant  
16 for the alleged violations of Proposition 65 that are the subject of the Notice.

17 **1.8 No Admission**

18 CVG denies the material, factual, and legal allegations contained in the Notice and  
19 Complaint, and maintains that all of the products it has sold or distributed for sale in California,  
20 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
21 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
22 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
23 admission of any fact, finding, conclusion of law, issue of law, or violation of law, such being  
24 specifically denied by CVG and its subsidiaries. This Section shall not, however, diminish or  
25 otherwise affect CVG's obligations, responsibilities, and duties under this Consent Judgment.  
26  
27  
28

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

**1.9 Jurisdiction**

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

**1.10 Effective Date**

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

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

**2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, CVG shall only import, sell, or distribute for sale in California Reformulated Products or Products that are offered with a clear and reasonable warning pursuant to Section 2.3.

**2.2 Reformulated Products**

For purposes of this Consent Judgment, “Reformulated Products” are Products containing DEHP in a maximum concentration of 0.1 percent (1,000 parts per million) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

**2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by CVG that are not Reformulated Products, CVG will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. CVG further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or

1 use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products  
2 satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying  
3 labeling or packaging sold in California containing either one of the following statements, which  
4 CVG may choose at its sole discretion:

5           **WARNING:** This product contains DEHP, a chemical  
6                           known to the State of California to cause birth  
7                           defects or other reproductive harm.

8                           or

9           **WARNING:** This product contains a chemical known to  
10                           the State of California to cause cancer and to  
11                           cause birth defects or other reproductive harm.

12 In the event that CVG sells Products via an internet website directly to customers located in  
13 California, the warning requirements of this section shall be satisfied if the foregoing warning  
14 appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the  
15 same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser  
16 prior to purchase during the checkout process. Alternatively, a symbol may appear adjacent to or  
17 immediately following the display, description, price, or checkout listing of the Product, provided  
18 that the warning statement appears elsewhere on the same web page in a manner that clearly  
19 associates it with the product(s) to which the warning applies.

### 20 **3. MONETARY SETTLEMENT TERMS**

#### 21 **3.1 Civil Penalty Payments**

22 Pursuant to California Health and Safety Code § 25249.7(b), and in settlement of all the  
23 claims alleged in the Notice, Complaint, and this Consent Judgment, CVG shall pay, in the aggregate,  
24 \$35,000 in civil penalties. The civil penalty payment, paid in bifurcated amounts or in the aggregate,  
25 shall be allocated according to California Health and Safety Code § 25249.12(c)(1) and (d), with  
26 seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health  
27 Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty  
28

1 retained by Leeman. Leeman's counsel shall be responsible for delivering OEHHA's portion of any  
2 penalty payment(s) made under this Consent Judgment to OEHHA.

3 **3.1.1 Initial Civil Penalty**

4 CVG shall make an initial civil penalty payment of \$12,000. CVG shall provide its  
5 payment in a single check made payable to "Whitney R. Leeman, Client Trust Account."

6 **3.1.2 Final Civil Penalty**

7 On or before November 30, 2016, CVG shall make a final civil penalty payment of  
8 \$23,000. Pursuant to Title 11, California Code of Regulations, § 3203(c), Leeman agrees that the  
9 final civil penalty payment shall be waived in its entirety if, no later than November 15, 2016, an  
10 officer of CVG provides Leeman with a signed declaration certifying that all of the Products it is  
11 selling, shipping for sale, or distributing for sale in California as of the date of its declaration are

12 Reformulated Products as defined by Section 2.2 and that CVG will continue to offer only  
13 Reformulated Products for sale in California in the future. The option to certify to complete  
14 reformulation in lieu of making the final civil penalty payment required by this Section is a material  
15 term, and time is of the essence.

16 **3.2 Reimbursement of Attorney's Fees and Costs**

17 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without  
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
20 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and  
21 her counsel under general contract principles and the private attorney general doctrine codified at  
22 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of  
23 this Consent Judgment, and through court approval of the same, but exclusive of fees and costs on  
24 appeal, if any. CVG shall pay \$31,500 for all fees and costs incurred by Leeman and her counsel  
25 investigating, bringing this matter to CVG's attention, litigating and negotiating a settlement in the  
26 public interest.

27  
28



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

**3.3 Payment Timing; Payments Held in Trust**

All payments due under this Consent Judgment shall be held in trust until such time as the Court approves the Parties' settlement. Except the final civil penalty payment required by Section 3.1.2, all payments due under this agreement shall be delivered to CVG's counsel within five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held in trust by CVG's counsel until the Effective Date. CVG's counsel shall confirm in writing to Leeman's counsel that it has received CVG's settlement payments. Within five days of the Court's approval of this Consent Judgment, CVG's counsel shall deliver the initial civil penalty and attorneys' fee reimbursement payments to Leeman's counsel at the address in Section 3.4. In the event that the final civil penalty payment required by Section 3.1.2 has not been waived and becomes due prior to the Effective Date, the penalty payment shall be tendered to CVG's counsel when due and held in trust until, and disbursed within five days after, the Effective Date.

**3.4 Payment Address**

All payments required by this Consent Judgment 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 Public Release of Proposition 65 Claims**

Consistent with California Health and Safety Code § 25249.7(d), Leeman, acting on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and assignees, and in the public interest, releases CVG, its subsidiaries, brands, shareholders, directors, officers, employees, attorneys, agents and affiliated entities including, without limitation, CVG National Seating Company, LLC (formerly known as National Seating Company) (collectively "Releasees"), and each entity to whom Releasees directly or indirectly distributes or sells the Products including, without limitation, its downstream customers, distributors, dealers, wholesalers, and retailers (collectively "Downstream Releasees") from any liability for any violation arising