

FILED
OCT 07 2016
D. BARNETT
Superior Court of California
BY A. Baird

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COPY

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

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

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

IT IS SO ORDERED.

Dated: 9/15/16

Theodore C. Zayner
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Brian C. Johnson, State Bar No. 235965
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3 THE CHANLER GROUP
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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SANTA CLARA
16 UNLIMITED CIVIL JURISDICTION
17

18 WHITNEY R. LEEMAN, PH.D.,

19 Plaintiff,

20 v.

21 COMMERCIAL VEHICLE GROUP, INC.,
22 *et al.*,

23 Defendants.
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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.
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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 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.

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1 **3.3 Payment Timing; Payments Held in Trust**

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

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Leeman's Public Release of Proposition 65 Claims**

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

1 under Proposition 65, pertaining to the failure to warn about exposures to DEHP from Products sold
2 or distributed for sale by Releasees prior to the Effective Date, as set forth in the Notice.
3 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
4 with respect to exposures to DEHP from Products sold or distributed for sale by Releasees or
5 Downstream Releasees after the Effective Date. The Parties agree and acknowledge that the
6 releases provided under this Consent Judgment shall not extend upstream to any entity, other than
7 Releasees, that manufactured the Products, or any components part thereof, or to any entity that
8 distributed or sold the Products, or any component parts thereof, to Releasees.

9 **4.2 Leeman's Individual Release of Claims**

10 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
11 release from any liability to Releasees and Downstream Releasees which shall be effective as a full
12 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
13 attorneys' fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
14 or kind, whether known or unknown, suspected or unsuspected, arising out of Products sold or
15 distributed for sale by Releasees before the Effective Date.

16 **4.3 CVG's Release of Leeman**

17 CVG, on its own behalf, and on behalf of the Releasees, hereby waives any and all claims
18 against Leeman and her attorneys and other representatives, for any and all actions taken or
19 statements made by Leeman and her attorneys and other representatives, whether in the course of
20 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
21 respect to the Products.

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and shall
24 be null and void if it is not approved and entered by the Court within one year after it has been fully
25 executed by the Parties, or within such additional time as the Parties may agree to in writing.
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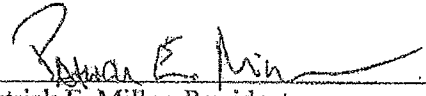
AGREED TO:

AGREED TO:

Date: 7/13/2016

Date: 7-13-16

By: 
WHITNEY R. LEEMAN, PH.D.

By: 
Patrick E. Miller, President
COMMERCIAL VEHICLE GROUP, INC.