

FILED

JUL 19 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Berg, Deputy

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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12
13

14 WHITNEY R. LEEMAN, PH.D.,
15 Plaintiff,
16 v.
17
18 LFS, INC., et al.,
19 Defendants.

Case No. CIV1600576

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

Date: July 19, 2016
Time: 1:30 p.m.
Dept.: L
Judge: Hon. Geoffrey M. Howard

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Plaintiff Whitney R. Leeman, Ph.D., and Defendant LFS, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a consent judgment, and following this Court's issuance of an order approving their Proposition 65 settlement and Consent Judgment on _____, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 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 settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: JUL 19 2016

GEOFFREY M. HOWARD

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Clifford A. Chanler, State Bar No. 135534
Christopher Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
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7 Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

LFS, INC., *et al.*

Defendants.

Case No. CIV1600576

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 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 defendant LFS, Inc. (“LFS”), with Leeman and LFS each referred to individually
5 as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 LFS employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that LFS manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC gloves containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so
17 without providing the health hazard warning that Leeman alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC gloves containing DEHP,
20 including, but not limited to, the *Bellingham Glove Snow Blower, SB4601, UPC #6 39751 20123 9*
21 (collectively, “Products”).

22 **1.6 Notice of Violation**

23 On October 28, 2015, Leeman served LFS and the requisite public enforcement agencies
24 with a 60-Day Notice of Violation (“Notice”), alleging that LFS violated Proposition 65 when it
25 failed to warn its customers and consumers in California that the Products expose users to DEHP.
26 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
27 prosecuting an action to enforce the allegations set forth in the Notice.

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1.7 Complaint

On February 16, 2016, Leeman commenced the instant action, naming LFS, among others, as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

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

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over LFS as to the allegations contained in the Complaint, that venue is proper in the County of Marin, 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 section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that the Court grants the motion for approval of this Consent Judgment as contemplated by Section 5.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS

Commencing the Effective Date, and continuing thereafter, LFS agrees to only manufacture, distribute, or purchase for sale in or into California: (a) “Reformulated Products”, or (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2 below.

2.1 Reformulation Commitment

For purposes of this Consent Judgment, “Reformulated Products” shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant to Environmental

1 Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized
2 by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3 **2.2 Clear and Reasonable Warnings**

4 LFS agrees that as of the Effective Date, all Products it sells and/or distributes in California
5 which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant
6 to this Section. LFS further agrees that the warning will be prominently placed with such
7 conspicuousness when compared with other words, statements, designs or devices as to render it
8 likely to be read and understood by an ordinary individual under customary conditions of use. For
9 purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall
10 consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California
11 and containing the following statement:

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

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Civil Penalty Payments**

16 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
17 this Consent Judgment, LFS shall pay \$28,000 in civil penalties. Each civil penalty payment shall
18 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five
19 percent (75%) of the funds paid to the California Office of Environmental Health Hazard
20 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Leeman.

21 **3.1.1 Initial Civil Penalty**

22 LFS shall make an initial civil penalty payment of \$7,000. LFS shall provide its
23 payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of
24 \$5,250; and (b) “Whitney R. Leeman, Ph.D. Client Trust Account” in the amount of \$1,750, as set
25 forth in Sections 3.3 and 3.4.

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3.1.2 Final Civil Penalty

On September 15, 2016, LFS shall make a final civil penalty payment of \$21,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later than September 1, 2016, an officer of LFS provides Leeman with written certification that all of the Products it is selling or distributing for sale in California as of the date of such certification are Reformulated Products as defined by Section 2.1, and that LFS will continue to offer only Reformulated Products for sale in California in the future. The option to certify to expedite reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and with regard to such term, time is of the essence. LFS shall deliver its certificate, if any, to Leeman’s counsel at the address provided in Section 3.4, below. In the event that LFS does not timely certify its compliance or make the final civil penalty payment required by this Section, the Parties agree that Leeman may file a motion or application seeking an order compelling LFS’s compliance with this Section. If successful, the Parties further agree that Leeman shall be entitled to her reasonable attorneys’ fees and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.

3.2 Reimbursement of 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 to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, LFS expressed a desire to resolve Leeman’s fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. On or before the Effective Date, LFS shall pay \$31,000 for the fees and costs incurred by Leeman investigating, bringing this matter to LFS’s attention, litigating and negotiating a settlement in the public interest.

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

2 With the exception of the final civil penalty payment required by Section 3.1.2, LFS shall
3 deliver all payments required by this Consent Judgment to its counsel within one week of the date
4 that this agreement is fully executed by the Parties. LFS's counsel shall confirm receipt of
5 settlement funds in writing to Leeman's counsel and, thereafter, hold the amounts paid in trust
6 until such time as the Court grants the motion for approval of the Parties' settlement contemplated
7 by Section 5. Within two days of the Effective Date, LFS's counsel shall deliver all settlement
8 payments it has held in trust to Leeman's counsel at the address provided in Section 3.4. In the
9 event the final civil penalty payment required by Section 3.1.2 becomes due prior to the Effective
10 Date, then LFS shall deliver the final civil penalty payment to its attorney to be held in trust until,
11 and disbursed within two days after, the Effective Date.

12 **3.4 Payment Address**

13 All payments required by this Consent Judgment shall be delivered to the following
14 address:

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 Release of Proposition 65 Claims**

22 Leeman, acting on her own behalf and in the public interest, releases LFS and their parents,
23 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
24 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
25 Products including, but not limited to, their downstream distributors, wholesalers, customers,
26 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
27 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
28 manufactured, imported, distributed or sold by LFS prior to the Effective Date, as set forth in the
Notice. Compliance with the terms of this Consent Judgment constitutes compliance with

1 Proposition 65 by LFS with respect to the alleged or actual failure to warn about exposures to
2 DEHP from Products manufactured, sold or distributed for sale by LFS after the Effective Date.

3 **4.2 Leeman's Individual Release of Claims**

4 Leeman, in her individual capacity only and *not* in her representative capacity, also provides
5 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
6 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
8 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
9 exposures to DEHP in Products manufactured, imported, distributed or sold by LFS before the
10 Effective Date.

11 **4.3 LFS's Release of Leeman**

12 LFS, on its own behalf and on behalf of its past and current agents, representatives,
13 attorneys, successors and/or assignees, hereby waives any and all claims against Leeman and her
14 attorneys and other representatives, for any and all actions taken or statements made (or those that
15 could have been taken or made) by Leeman and her attorneys and other representatives in the
16 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
17 respect to the Products.

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
21 after it has been fully executed by the Parties. Leeman and LFS agree to support the entry of this
22 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
23 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
24 noticed motion is required for judicial approval of this Consent Judgment, which motion Leeman
25 shall draft and file and LFS shall support, including by appearing at the hearing if so requested. If
26 any third-party objection to the motion is filed, Leeman and LFS agree to work together to file a
27 reply and appear at any hearing. This provision is a material component of the Consent Judgment
28 and shall be treated as such in the event of a breach.

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then LFS may
9 provide Leeman with written notice of any asserted change in the law, and shall have no further
10 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
11 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve LFS from
12 its obligation to comply with any pertinent state or federal law or regulation.

13 **8. NOTICE**

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

18 To LFS:

19 Shane Russell, General Manager
20 LFS, Inc.
21 851 Coho Way, Suite 200
22 Bellingham, WA 98225

To Leeman:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

25 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 Leeman and her counsel agree to comply with the reporting form requirements referenced in
3 California Health and Safety Code section 25249.7(f).

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **12. AUTHORIZATION**

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

12
13 **AGREED TO:**

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15 
16 WHITNEY R. LEEMAN, PH.D.

17 Dated: 5/23/2016

AGREED TO:

LFS, INC.

By: Shane Russell

Its: General Manager

Dated: _____

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1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 Leeman and her counsel agree to comply with the reporting form requirements referenced in
3 California Health and Safety Code section 25249.7(i).

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
7 any party and the entry of a modified Consent Judgment by the Court thereon.

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

12
13 **AGREED TO:**

14
15 _____
16 WHITNEY R. LEEMAN, PH.D.

17 Dated: _____

AGREED TO:

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20 _____
21 LFS, INC.

22 By: Shane Russell

23 Its: General Manager

24 Dated: 5/31/2016

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