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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

FRANKFORD CANDY LLC, *et al.*,

Defendants.

Case No. CGC-16-551104

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

Date: March 30, 2017
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Harold E. Kahn

Reservation No. 02080330-02

In the captioned action, plaintiff Whitney R. Leeman, Ph.D. and defendant Frankford Candy LLC, 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 this Proposition 65 settlement and Consent Judgment on March 30, 2017;

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

IT IS SO ORDERED.

Dated: MAR 30 2017

HAROLD KAHN

JUDGE OF THE SUPERIOR COURT

CGC-16-551104

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D., Plaintiff, v. FRANKFORD CANDY LLC; *et al.*, Defendants.	Case No. CGC-16-551104 **[PROPOSED] CONSENT JUDGMENT** (Health & Safety Code § 25249.6 *et seq.* and Code of Civil Procedure § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D. ("Leeman"), and Frankford Candy LLC ("Frankford") with Leeman and Frankford each individually referred to as a "Party" and collectively as the "Parties."

1.2 Plaintiff

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

1.3 Frankford Candy LLC

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

1.4 General Allegations

Leeman alleges that Frankford manufactures, imports, sells, or distributes for sale in California, mugs with exterior designs that contain lead without first providing the exposure warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.5 Product Description

The products covered by this Consent Judgment are ceramic mugs with exterior designs containing lead that are manufactured, imported, sold, or distributed for sale in California by Frankford including, but not limited to, *Nickelodeon Teenage Mutant Ninja Turtles Hot Cocoa Mug Set, Item# 40109, UPC #0 41376 40109 1*, hereinafter the "Products."

1.6 Notice of Violation

On December 1, 2015, Leeman served Frankford, and certain requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"). The Notice alleges that Frankford violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose

users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On March 23, 2016, Leeman filed the captioned action ("Complaint"), naming Frankford as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

1.8 No Admission

Frankford denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products it has sold and 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 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 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Frankford'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 Frankford as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, 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 the Court grants the motion for approval of the Parties settlement contemplated by Section 5.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date, and continuing thereafter, Frankford agrees to only manufacture for sale or purchase for sale in California "Reformulated Products," as defined by

Section 2.2 below, or manufacture for sale or purchase for sale in California Products that carry Proposition 65 warnings in accordance with Section 2.3, below.

2.2 Reformulated Products Defined

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products that: (a) contain no more than to 90 parts per million Lead content by weight when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B; (b) that yield a result of no more than 1.0 micrograms of lead when sampled and analyzed according to the NIOSH 9100 testing protocol and analyzed pursuant to EPA testing methodologies 3050B and 6010B and (c) that yield a result of no detectable lead in the "Lip and Rim Area," when analyzed according to any test methodology authorized under Proposition 65. "Lip and Rim Area" is defined as the exterior upper 20 millimeters of a Product. In addition to the test methodologies set forth above, equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance may also be used.

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 Frankford that are not Reformulated Products, Frankford will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Frankford 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 use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing the following statement:

WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

In the event that Frankford sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning

appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

Frankford further agrees that as to any Products manufactured after August 30, 2018 that are not Reformulated Products, it shall affix warnings bearing the following language:

> **WARNING:** This product can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice and referred to in this Consent Judgment, Frankford agrees to pay $15,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Leeman. Frankford shall deliver its payment in two checks for the following amounts made payable to (a) "OEHHA" in the amount of $11,250; and (b) "Whitney Leeman, Client Trust Account" in the amount of $3,750. Leeman's counsel shall be responsible for delivering OEHHA's portion of the penalty payment made under this Consent Judgment.

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, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after finalizing the other settlement terms, the Parties negotiated 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, and obtaining court approval of the same. Under these legal principles, Frankford shall pay $32,000 for all fees and costs incurred by Leeman investigating, bringing this matter to Frankford's attention, litigating and negotiating a settlement in the public interest.

3.3 Payment Timing; Funds 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. Frankford shall deliver its settlement payments to its counsel within fifteen (15) days of the date that this Consent Judgment is fully executed by the Parties. Frankford's counsel shall provide Leeman's counsel with confirmation following its receipt of the settlement funds. Frankford's counsel shall hold the settlement funds in trust until, and disburse the payments to Leeman's counsel within five (5) days of 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

Leeman, acting on her own behalf and in the public interest, releases Frankford and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, licensors, licensees, and attorneys ("Releasees"), and each entity to whom Frankford directly or indirectly distributes or sells the Products including, without limitation, its downstream customers, distributors, wholesalers, and retailers ("Downstream Releasees") for any violation arising under Proposition 65 alleging a failure to warn about exposures to lead in Products manufactured for sale, purchased for sale, sold, or distributed for sale by Frankford prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from Products sold or distributed for sale by Frankford after the Effective Date.

4.2 Leeman's Individual Release of Claims

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

4.3 Frankford's Release of Leeman

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

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties, or by such additional time to which the Parties agree in writing.

6. SEVERABILITY

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

7 GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Frankford may provide written notice to Leeman of any asserted change in the law, and shall have no further

injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8. NOTICE

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

For Frankford:

Nathan Hoffman
Frankford Candy, LLC
9300 Ashton Road
Philadelphia, PA 19114

with a copy to:

Thomas A. Evans, Esq.
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

For Leeman:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

11. **MODIFICATION**

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

12. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 1/25/2017

By: _____
WHITNEY R. LEEMAN, PH.D.

AGREED TO:

Date: 1/25/2017

By: _____
Nathan Hoffman, Executive Vice President
FRANKFORD CANDY LLC