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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.

TRIMAS CORPORATION; *et al.*,

Defendants.

Case No. CGC-13-534927

[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 Whitney R. Leeman, Ph.D.
4 (“Leeman”) and Cequent Consumer Products, Inc. (“Cequent”), with Leeman and Cequent each
5 individually 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Cequent 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, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that Cequent manufactures, imports, sells, or distributes for sale in California,
16 automotive storage organizers with vinyl/PVC handles that contain di(2-ethylhexyl)phthalate
17 (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or
19 other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are automotive storage organizers
22 with vinyl/PVC handles containing DEHP that are manufactured, imported, sold, or distributed for
23 sale in California by Cequent including, but not limited to, the *ROLA M.O.V.E. Organizer, Style:*
24 *59001 (UPC #0 42899 59001 9)* (collectively “Covered Products”).

25 **1.6 Notice of Violation**

26 On or about June 19, 2013, Leeman served Cequent and certain requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”) alleging that Cequent was in violation of
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1 Proposition 65 for failing to warn its customers and consumers in California that the Covered
2 Products expose users to DEHP.

3 **1.7 Complaint**

4 On October 17, 2013, Leeman filed the instant action (“Complaint”), naming Cequent as a
5 defendant for the violations of Health and Safety Code section 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Cequent as to the allegations in the Complaint, that venue is proper in the County of
19 San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means July 7, 2014.

23 **2. INJUNCTIVE RELIEF; REFORMULATION AND WARNINGS**

24 **2.1 Reformulated Products**

25 Commencing on the Effective Date, and continuing thereafter, Cequent shall only purchase
26 for sale, manufacture for sale, or distribute for sale in California “Reformulated Products,” or
27 Covered Products that are sold with a clear and reasonable warning pursuant to Section 2.2. For
28 purposes of this Consent Judgment, Reformulated Products contain a maximum of 1,000 parts per

1 million (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies
2 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for the purpose of
3 determining DEHP content in a solid substance.

4 **2.2 Interim Warnings for Non-Reformulated Covered Products**

5 Commencing on the Effective Date, for all Covered Products other than Reformulated
6 Products, Cequent agrees that it will only sell or distribute such Covered Products for sale in
7 California with a clear and reasonable warning in accordance with this Section. Cequent further
8 agrees to affix the warning directly to the Covered Product, or on Covered Product packaging or
9 labeling, if any. The warning shall be prominently placed with such conspicuousness as compared
10 with other words, statements, designs, or devices as to render it likely to be read and understood by
11 an ordinary individual under customary conditions before purchase or use. Any warning Cequent
12 elects to employ shall be provided in a manner such that the consumer or user understands to which
13 *specific* Covered Product the warning applies, so as to minimize the risk of confusion.

14 A warning provided under this Consent Judgment shall contain one of the following
15 statements:

16 For Products that, to Cequent's knowledge, contain only DEHP, and no other Proposition 65-
17 listed chemical, Cequent agrees to provide the following warning:

18 **WARNING:** This product contains DEHP, a phthalate
19 chemical known to the State of California to
20 cause birth defects or other reproductive
harm.

21 For Products that contain, in addition to DEHP, any Proposition 65-listed carcinogen,
22 Cequent may employ the following warning statement:

23 **WARNING:** This product contains chemicals known to
24 the State of California to cause cancer, and
birth defects or other reproductive harm.

25 **3. MONETARY SETTLEMENT TERMS**

26 **3.1 Civil Penalty Payments**

27 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
28 this Consent Judgment, Cequent shall pay \$9,000 in civil penalties. Each civil penalty payment shall

1 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
2 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
3 ("OEHHA") and twenty-five percent (25%) of the funds remitted to Leeman.

4 **3.1.1 Initial Civil Penalty**

5 On or before the Effective Date, Cequent shall make an initial civil penalty payment of
6 \$3,000. Cequent shall provide its payment in two checks for the following amounts made payable to:
7 (a) "OEHHA" in the amount of \$2,250; and (b) "Whitney Leeman, Client Trust Account" in the
8 amount of \$750.

9 **3.1.2 Final Civil Penalty**

10 On September 1, 2014, Cequent shall make a final civil penalty payment of \$6,000.
11 Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the final
12 civil penalty payment shall be waived in its entirety if, no later than August 15, 2014, an officer of
13 Cequent provides Leeman with written certification that all of the Covered Products purchased for
14 sale or manufactured for sale in California as of the date of such certification are Reformulated
15 Products as defined by Section 2.1, and that Cequent will continue to offer only Reformulated
16 Products in California in the future. The option to issue such certification in lieu of making the final
17 civil penalty payment required by this Section is a material term, and with regard to such term, time
18 is of the essence.

19 **3.2 Reimbursement of Fees and Costs**

20 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
22 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
23 other settlement terms had been finalized, Cequent expressed a desire to resolve Leeman's fees and
24 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman
25 and her counsel under general contract principles and the private attorney general doctrine codified at
26 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
27 execution of this Consent Judgment. On or before the Effective Date, Cequent shall pay \$33,000 for
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1 the fees and costs incurred by Leeman investigating, bringing this matter to Cequent's attention, and
2 negotiating a settlement in the public interest.

3 **3.3 Payment Procedures**

4 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
5 this Consent Judgment are to be delivered within five days of the Effective Date according to the
6 following subsections.

7 **3.3.1 Payment Addresses**

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9 (a) All payments and tax documentation for Leeman and her counsel shall be
10 delivered to:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 (b) All payments and tax documentation for OEHHA shall be delivered directly
17 to OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
18 appropriate:

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
24 Sacramento, CA 95812-4010

25 For Non-United States Postal Service Delivery or Courier:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.2 Proof of Payment to OEHHA

Cequent shall provide Leeman's counsel with a copy of the checks sent to OEHHA
enclosed with the payments to Leeman and her counsel sent to the address in Section 3.3.1(a).

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Leeman's Public Release of Proposition 65 Claims**

3 Leeman, acting on her own behalf and in the public interest, releases Cequent and its
4 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
5 and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
6 Covered Products, including but not limited to its downstream distributors, wholesalers, customers,
7 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
8 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
9 sold by Cequent prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
10 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
11 DEHP from the Covered Products sold by Cequent before the Effective Date, as set forth in the
12 Notice.

13 **4.2 Leeman's Individual Release of Claims**

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

21 **4.3 Cequent's Release of Leeman**

22 Cequent, on its own behalf, and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
24 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
25 her attorneys and other representatives, whether in the course of investigating claims, otherwise
26 seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.
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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
4 has been fully executed by the Parties.

5 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW**

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

17 **8. NOTICE**

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

21 For Cequent:

22 John Aleva, President
23 Cequent Consumer Products, Inc.
24 29000-2 Aurora Road
25 Solon, OH 44139

26 with a copy to:

27 Elizabeth V. McNulty, Esq.
28 Archer Norris PLC
 4695 MacArthur Court, Suite 350
 Newport Beach, CA 92660

1 For Leeman:

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

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

11 **10. POST EXECUTION ACTIVITIES**

12 Leeman agrees to comply with the reporting form requirements referenced in Health and
13 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
14 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
15 furtherance of obtaining such approval, Leeman and Cequent agree to mutually employ their best
16 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
17 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
18 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
19 and supporting the motion for judicial approval.

20 **12. MODIFICATION**

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

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13. 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: 6/27/14

Date: 6/26/14

By: Whitney Leeman
WHITNEY R. LEEMAN, PH.D.

By: John Aleva
John Aleva, President
CEQUENT CONSUMER PRODUCTS, INC.