

Jonathan A. Bornstein, State Bar No. 196345
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
DR. WHITNEY R. LEEMAN

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

DR. WHITNEY R. LEEMAN,) Case No. RG14732923
)
Plaintiff,) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT LEGRAND HOLDINGS,**
) **INC.**
v.)
)
LEGRAND HOLDINGS, INC.; and DOES)
1-150, inclusive,)
) Date:
) Time:
Defendants.) Dept: 16
) Judge: Hon. Lawrence Appel

1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and Legrand Holdings, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman
4 (“Leeman” or “Plaintiff”) and defendants Legrand Holdings, Inc. and The Wiremold Company
5 (together, “LEGRAND” or “Defendant”), with Leeman and LEGRAND collectively referred to
6 as the “Parties.”

7 **1.2 Dr. Whitney R. Leeman.**

8 Leeman is an individual residing in the State of California who seeks to promote
9 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
10 hazardous substances contained in consumer and commercial products.

11 **1.3 Legrand Holdings, Inc.**

12 Leeman alleges that LEGRAND employs ten or more persons and is a person in the
13 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
14 1986, California Health & Safety Code §25249.5 et seq. (“Proposition 65”).

15 **1.4 General Allegations.**

16 Leeman alleges that LEGRAND has manufactured, imported, distributed and/or sold
17 vinyl/PVC cord protectors with DEHP for use in the State of California without the requisite
18 Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the
19 State of California to cause cancer and reproductive harm.

20 **1.5 Notice of Violation.**

21 On February 24, 2014, Leeman served LEGRAND and various public enforcement
22 agencies with a document entitled “60-Day Notice of Violation” alleging that LEGRAND
23 violated Proposition 65 by failing to warn consumers that vinyl/PVC cord protectors including,
24 but not limited to, the *Wiremold | Legrand Corduct Cord Protector, CDI-5, UPC# 0-86698*
25 *87011 8*, exposed users in California to DEHP (“Notice”).

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1.6 Complaint.

On July 15, 2014, Leeman filed a complaint in the Superior Court in and for the County of Alameda against LEGRAND and Does 1 through 150, *Leeman v. Legrand Holdings, Inc., et al.*, Case No. RG14732923 (“Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain cord protectors sold by LEGRAND in the State of California.

1.7 No Admission.

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising out of the facts or conduct alleged therein. LEGRAND denies the material, factual and legal allegations contained in the Notice and the Complaint, and maintains that it is not a person subject to Proposition 65 and that all of the products it has manufactured, imported, distributed and/or sold in the State of California, including the Covered Products, have been, and are, in compliance with all laws. By execution of this Consent Judgment and agreeing to comply with its terms, LEGRAND does not admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to DEHP in Covered Products, such being specifically denied by LEGRAND. Nothing in this Consent Judgment shall be construed as an admission by LEGRAND of any fact, 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 LEGRAND of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense LEGRAND may have in this or any other future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by LEGRAND for purposes of settling, compromising, and resolving issues disputed in this action. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of LEGRAND under this Consent Judgment.

1 **1.8 Consent to Jurisdiction.**

2 For purposes of this Consent Judgment only, LEGRAND stipulates that this Court has
3 jurisdiction over LEGRAND as to the allegations contained in the Complaint, that venue is
4 proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment.

6 **2. DEFINITIONS**

7 **2.1** “Covered Product[s]” means solely and exclusively *Wiremold / Legrand Corduct*
8 *Cord Protectors: (ivory) CDI-5, CDI-15, CDI-50; (gray) CDG-5, CDG-15, CDG-50; (brown)*
9 *CDB-5, CDB-15, CDB-50; and (black) CDBK-5, CDBK-15, CDBK-50*, which is distributed
10 and/or sold in the State of California by LEGRAND.

11 **2.2** “Effective Date” means September 15, 2014.

12 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

13 **3.1 Reformulation Commitment and Standards.**

14 As of the Effective Date, LEGRAND shall only manufacture for sale in California
15 Covered Products which contain less than or equal to 1,000 parts per million (“ppm”) of DEHP
16 when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent
17 methodologies utilized by federal or state agencies for the purpose of determining DEHP
18 content in a solid substance (“Reformulated Covered Products”). By entering into this Consent
19 Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that
20 may be imposed upon LEGRAND by laws other than Proposition 65, nor do the Parties intend
21 this Consent Judgment to affect any defenses available to LEGRAND under such other laws. If
22 LEGRAND is not able to reformulate, it must comply with Proposition 65 by labeling non-
23 reformulated products as specified in Sections 3.2 to 3.4 by the Effective Date and must pay the
24 Final Civil Penalty as specified in Section 4.2.

25 **3.2 Sales of Existing Products with Warnings**

26 Nothing in this consent judgment shall preclude LEGRAND from shipping and selling in
27 California its existing inventory of Products. Commencing on October 1, 2014, LEGRAND
28

1 agrees that any Products that LEGRAND manufactured prior to October 1, 2014, and which
2 LEGRAND directly distributes to, imports to, ships to, sells in, or offers for sale in California
3 that are not Reformulated Products as defined in Section 3.1 will include a warning affixed to the
4 packaging, labeling, or directly on each Product that states:

5
6 **WARNING:** This product contains a chemical known to the State of California
to cause cancer and birth defects and other reproductive harm.

7 **3.3 Retail Store Product Labeling**

8 After October 1, 2014, LEGRAND shall affix a warning to the packaging, labeling, or
9 directly on each non-reformulated Product provided for retail sale in California that states:

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

12 **3.4 Point of Sale Warnings**

13 Alternatively, LEGRAND may provide warning signs in the form below to its customers
14 in California with instruction to post warnings in close proximity to the point of display of the
15 Products. Such instruction sent to LEGRAND retail customers shall be sent by certified mail,
16 return receipt requested.

17
18 **WARNING:** This product contains a chemical known to the State of California to cause
cancer and birth defects and other reproductive harm.

19 Where more than one Product is sold in close proximity (for purposes of this Settlement
20 Agreement, “in close proximity” shall mean that the Product and other another similar product
21 are sold close enough such that a consumer could not reasonably determine which product is
22 subject to the warning sign) to like items or to those that do not require a warning (Reformulate
23 Products as defined in Section 3.1), the following statement shall be used:

24
25 **WARNING:** This product contains a chemical known to the State of California to cause
26 cancer and birth defects and other reproductive harm.

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1 **4. MONETARY PAYMENTS**

2 In settlement of all the claims referred to in this Consent Judgment, LEGRAND shall pay
3 a total of \$13,000.00 in civil penalties in accordance with this Section. Each penalty payment
4 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d),
5 with 75% of the funds remitted to the California Office of Environmental Health Hazard
6 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman, as follows:

7 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §**
8 **25249.7(b).**

9 LEGRAND shall pay an initial civil penalty in the amount of \$4,000.00 on or before the
10 Effective Date. Defendant shall issue a check payable to “Beverage & Diamond, P.C.” in the
11 amount of \$4,000.00 to be held in trust by Beverage & Diamond, P.C. Beverage & Diamond,
12 P.C shall provide The Chanler Group with written confirmation within five days of receipt that
13 the funds have been deposited in a trust account. Within two business days of the date this
14 Consent Judgment is approved by the Court, Beverage & Diamond, P.C shall issue two separate
15 checks to: (a) OEHHA, in the amount of \$3,000.00; and (b) “The Chanler Group in Trust for Dr.
16 Whitney R. Leeman.” in the amount of \$1,000.00. All penalty payments shall be delivered to
17 the addresses listed in Section 4.4.1 below.

18 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

19 LEGRAND shall pay a final civil penalty in the amount \$9,000.00 on or before January
20 15, 2015. The final civil penalty shall be waived in its entirety, if, on or before January 1, 2015,
21 an Officer of LEGRAND certifies in writing that it, as of October 1, 2014, has manufactured for
22 sale in California only Reformulated Covered Products and that it will continue to manufacture,
23 distribute, sell and offer for sale in California only Reformulated Covered Products, or that it has
24 discontinued selling the Covered Products in California. Such certification must be received by
25 The Chanler Group on or before January 1, 2015. The certification in lieu of paying the final
26 civil penalty provided by this Section is a material term, and time is of the essence. Unless
27 waived, LEGRAND shall issue two separate checks for its final civil penalty payment to: (a)
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1 OEHHA, in the amount of \$6,750.00; and (b) “The Chanler Group in Trust for Dr. Whitney R.
2 Leeman.” in the amount of \$2,250.00.

3 **4.3 Reimbursement of Plaintiff’s Fees and Costs.**

4 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
6 leaving the fee issue to be resolved after the material terms of the agreement had been settled.
7 LEGRAND then expressed a desire to resolve the fee and cost issue shortly after the other
8 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
9 the compensation due to Leeman and her counsel under general contract principles and the
10 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
11 for all work performed (and to be performed) in this matter. Under these legal principles,
12 LEGRAND shall pay the amount of \$31,000.00 to reimburse Plaintiff’s fees and costs incurred
13 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
14 to be incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent
15 Judgment in the public interest. On or before the Effective Date, LEGRAND shall issue a
16 check payable to “Beverage & Diamond, P.C.” in the amount of \$31,000.00 to be held in trust
17 by the Beverage & Diamond, P.C. for The Chanler Group. Beverage & Diamond, P.C. shall
18 provide The Chanler Group with written confirmation within five days of receipt that the funds
19 have been deposited in a trust account. Within two business days of the date this Consent
20 Judgment is approved by the Court, Beverage & Diamond, P.C. shall issue a check payable to
21 “The Chanler Group” and shall be delivered to the address in Section 4.4.1(a) below.

22 **4.4 Payment Procedures.**

23 **4.4.1 Funds Leeman In Trust**

24 (a) All payments owed to Leeman, pursuant to Sections 4.1 through
25 4.2, shall be delivered to the following payment address:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214

Berkeley, CA 94710

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.4.1(a), as proof of payment to OEHHA.

If for any reason this Consent Judgment is not entered by the Court within nine (9) months of September 15, 2014, Plaintiff shall meet and confer with LEGRAND about mutually agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid and Leeman in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon LEGRAND’s written request.

5. CLAIMS COVERED AND RELEASED

5.1 Leeman, acting on behalf of herself and in the public interest, hereby releases LEGRAND, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, shareholders (“Defendant Releasees”), and any of its downstream distributors, wholesalers, customers, retailers (including but not limited to The Home Depot), franchisees, cooperative members, licensors, licensees, and any other person or

1 entity to whom they directly or indirectly distribute or sell Covered Products (“Downstream
2 Defendant Releasees”), from any alleged or actual violation of Proposition 65 that has been
3 asserted by Leeman in the public interest in her Notice and Complaint regarding the alleged
4 failure to warn about exposure to DEHP in Covered Products sold or distributed by LEGRAND
5 prior to the Effective Date. LEGRAND’s compliance with this Consent Judgment shall
6 constitute compliance with Proposition 65 with respect to DEHP in Covered Products.

7 **5.2** Leeman on behalf of herself, her past and current agents, representatives,
8 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
9 all rights to institute or participate in, directly or indirectly, any form of legal action and releases
10 all claims, including, without limitation, all actions, and causes of action, in law or in equity,
11 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
12 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature
13 whatsoever, fixed or contingent (collectively “Claims”), against LEGRAND, Defendant
14 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65
15 regarding the failure to warn about exposure to DEHP in Covered Products sold or distributed
16 prior to the Effective Date.

17 **5.3** Leeman also, in her individual capacity only and *not* in her representative
18 capacity, provides a general release herein which shall be effective as a full and final accord and
19 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
20 damages, losses, claims, liabilities and demands of Leeman of any nature, character or kind,
21 known or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical
22 listed under Proposition 65 from use of the Covered Products manufactured prior to the Effective
23 Date. Leeman acknowledges that she is familiar with Section 1542 of the California Civil Code,
24 which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
27 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
28 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

1 Leeman, in her individual capacity only and *not* in her representative capacity, expressly waives
2 and relinquishes any and all rights and benefits which she may have under, or which may be
3 conferred on her by the provisions of Section 1542 of the California Civil Code as well as under
4 any other state or federal statute or common law principle of similar effect, to the fullest extent
5 that she may lawfully waive such rights or benefits pertaining to the released matters. In
6 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
7 complete release notwithstanding the discovery or existence of any such additional or different
8 claims or facts arising out of the released matters.

9 The Parties further understand and agree that this release shall not extend upstream to
10 any entities, other than to LEGRAND and to Defendant Releasees,, that manufactured the
11 Covered Products or any component parts thereof, or any distributors or suppliers who sold the
12 Covered Products or any component parts thereof to LEGRAND or Defendant Releasees.

13 **5.4** LEGRAND waives any and all Claims against Leeman, her attorneys, and other
14 representatives for any and all actions taken or statements made (or those that could have been
15 taken or made) by Leeman and her attorneys and other representatives, whether in the course of
16 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
17 matter, and/or with respect to the Covered Products.

18 **5.5** LEGRAND also provides a general release herein which shall be effective as a
19 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
20 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of LEGRAND of any
21 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
22 subject matter of the Action. LEGRAND acknowledges that it is familiar with Section 1542 of
23 the California Civil Code, which provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
28 OR HER SETTLEMENT WITH THE DEBTOR.

1 LEGRAND expressly waives and relinquishes any and all rights and benefits which it may have
2 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil
3 Code, as well as under any other state or federal statute or common law principle of similar
4 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
5 released matters. In furtherance of such intention, the release hereby given shall be and remain
6 in effect as a full and complete release notwithstanding the discovery or existence of any such
7 additional or different claims or facts arising out of the released matters.

8 **6. COURT APPROVAL**

9 **6.1** By this Consent Judgment and upon its approval, the Parties waive their right to a
10 trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment,
11 and of any and all interim rulings, including all pleading, procedural, and discovery orders.

12 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code §
13 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
14 which Leeman shall file and which LEGRAND shall support as reasonably necessary.

15 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
16 and any and all prior agreements between the Parties merged herein shall terminate and become
17 null and void, and the action shall revert to the status that existed prior to the execution date of
18 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
19 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
20 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
21 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
22 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

23 **7. GOVERNING LAW**

24 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
25 California, and shall apply only to Covered Products offered for sale in the State of California.
26 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
27 law generally, or as to the Covered Products, then LEGRAND may provide written notice to
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1 Leeman of any asserted change in the law, and shall have no further obligations pursuant to this
2 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

3 **7.2** The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
5 Consent Judgment was subject to revision and modification by the Parties and has been accepted
6 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
7 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
8 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
9 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
10 resolved against the drafting Party should not be employed in the interpretation of this Consent
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12 **8. NOTICES**

13 **8.1** Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
15 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
16 Party by the other Party at the following addresses:

17 To LEGRAND:

18 Legrand North America, Inc.
19 Attn: Vice President & General Counsel
20 60 Woodlawn Street
W. Hartford, CT 06110
with a copy to:

21 Laura M. Duncan, Esq.
22 Beveridge & Diamond, P.C.
456 Montgomery Street, Suite 1800
San Francisco, California 94104

23 To Leeman:

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

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1 **8.2** Any Party, from time to time, may specify in writing to the other Party a change
2 of address to which all notices and other communications shall be sent.

3 **9. MODIFICATION**

4 **9.1 Modification.** This Consent Judgment may be modified by written agreement of
5 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
6 Party and entry of a modified Consent Judgment by the court.

7 **9.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
8 regulation is adopted that addresses the DEHP content of Covered Products sold in California
9 hereunder, any Party shall be entitled to request that the Court modify the reformulation standard
10 in Section 3.1 of this Consent Judgment for good cause shown.

11 **9.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
12 or to allege a violation thereof shall first attempt in good faith to meet and confer with the other
13 Party prior to filing a motion to modify the Consent Judgment.

14 **10. ENTIRE AGREEMENT**

15 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
18 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
19 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
20 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
21 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
22 waiver unless set forth in writing between the Parties.

23 **11. RETENTION OF JURISDICTION**

24 **11.1** This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent To Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any
26 provision thereof, under C.C.P. §664.6.

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1 Jonathan A. Bornstein, State Bar No. 196345
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 Attorneys for Plaintiff
10 DR. WHITNEY R. LEEMAN

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 DR. WHITNEY R. LEEMAN,) Case No. RG14732923
16)
17 Plaintiff,) **[PROPOSED] CONSENT JUDGMENT AS**
18) **TO DEFENDANT LEGRAND HOLDINGS,**
19) **INC.**
20 v.)
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22 LEGRAND HOLDINGS, INC.; and DOES)
23 1-150, inclusive,)
24) Date:
25) Time:
26) Dept: 15
27) Judge: Hon. Ioana Petrou
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1. INTRODUCTION

1.1 Dr. Whitney R. Leeman and Legrand Holdings, Inc.

This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman (“Leeman” or “Plaintiff”) and defendants Legrand Holdings, Inc. and The Wiremold Company (together, “LEGRAND” or “Defendant”), with Leeman and LEGRAND collectively referred to as the “Parties.”

1.2 Dr. Whitney R. Leeman.

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

1.3 Legrand Holdings, Inc.

Leeman alleges that LEGRAND employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5 et seq. (“Proposition 65”).

1.4 General Allegations.

Leeman alleges that LEGRAND has manufactured, imported, distributed and/or sold vinyl/PVC cord protectors with DEHP for use in the State of California without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

1.5 Notice of Violation.

On February 24, 2014, Leeman served LEGRAND and various public enforcement agencies with a document entitled “60-Day Notice of Violation” alleging that LEGRAND violated Proposition 65 by failing to warn consumers that vinyl/PVC cord protectors including, but not limited to, the *Wiremold | Legrand Conduct Cord Protector, CDI-5, UPC# 0-86698 87011 8*, exposed users in California to DEHP (“Notice”).

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1.6 Complaint.

On July 15, 2014, Leeman filed a complaint in the Superior Court in and for the County of Alameda against LEGRAND and Does 1 through 150, *Leeman v. Legrand Holdings, Inc., et al.*, Case No. RG14716645 (“Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain cord protectors sold by LEGRAND in the State of California.

1.7 No Admission.

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising out of the facts or conduct alleged therein. LEGRAND denies the material, factual and legal allegations contained in the Notice and the Complaint, and maintains that it is not a person subject to Proposition 65 and that all of the products it has manufactured, imported, distributed and/or sold in the State of California, including the Covered Products, have been, and are, in compliance with all laws. By execution of this Consent Judgment and agreeing to comply with its terms, LEGRAND does not admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to DEHP in Covered Products, such being specifically denied by LEGRAND. Nothing in this Consent Judgment shall be construed as an admission by LEGRAND of any fact, 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 LEGRAND of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense LEGRAND may have in this or any other future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by LEGRAND for purposes of settling, compromising, and resolving issues disputed in this action. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of LEGRAND under this Consent Judgment.

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1.8 Consent to Jurisdiction.

For purposes of this Consent Judgment only, LEGRAND stipulates that this Court has jurisdiction over LEGRAND as to the allegations contained in the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

2. DEFINITIONS

2.1 “Covered Product[s]” means solely and exclusively *Wiremold | Legrand Corduct Cord Protectors: (ivory) CDI-5, CDI-15, CDI-50; (gray) CDG-5, CDG-15, CDG-50; (brown) CDB-5, CDB-15, CDB-50; and (black) CDBK-5, CDBK-15, CDBK-50*, which is distributed and/or sold in the State of California by LEGRAND.

2.2 “Effective Date” means September 15, 2014.

3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION

3.1 Reformulation Commitment and Standards.

As of the Effective Date, LEGRAND shall only manufacture for sale in California Covered Products which contain less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to EPA 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 (“Reformulated Covered Products”). By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon LEGRAND by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to LEGRAND under such other laws. If LEGRAND is not able to reformulate, it must comply with Proposition 65 by labeling non-reformulated products as specified in Sections 3.2 to 3.4 by the Effective Date and must pay the Final Civil Penalty as specified in Section 4.2.

3.2 Sales of Existing Products with Warnings

Nothing in this consent judgment shall preclude LEGRAND from shipping and selling in California its existing inventory of Products. Commencing on October 1, 2014, LEGRAND

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2 agrees that any Products that LEGRAND manufactured prior to October 1, 2014, and which
3 LEGRAND directly distributes to, imports to, ships to, sells in, or offers for sale in California
4 that are not Reformulated Products as defined in Section 3.1 will include a warning affixed to the
5 packaging, labeling, or directly on each Product that states:

6 **WARNING:** This product contains a chemical known to the State of California
7 to cause cancer and birth defects and other reproductive harm.

8 **3.3 Retail Store Product Labeling**

9 After October 1, 2014, LEGRAND shall affix a warning to the packaging, labeling, or
10 directly on each non-reformulated Product provided for retail sale in California that states:

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

13 **3.4 Point of Sale Warnings**

14 Alternatively, LEGRAND may provide warning signs in the form below to its customers
15 in California with instruction to post warnings in close proximity to the point of display of the
16 Products. Such instruction sent to LEGRAND retail customers shall be sent by certified mail,
17 return receipt requested.

18 **WARNING:** This product contains a chemical known to the State of California to cause
19 cancer and birth defects and other reproductive harm.

20 Where more than one Product is sold in close proximity (for purposes of this Settlement
21 Agreement, “in close proximity” shall mean that the Product and other another similar product
22 are sold close enough such that a consumer could not reasonably determine which product is
23 subject to the warning sign) to like items or to those that do not require a warning (Reformulate
24 Products as defined in Section 3.1), the following statement shall be used:

25 **WARNING:** This product contains a chemical known to the State of California to cause
26 cancer and birth defects and other reproductive harm.
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4. MONETARY PAYMENTS

In settlement of all the claims referred to in this Consent Judgment, LEGRAND shall pay a total of \$13,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman, as follows:

4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).

LEGRAND shall pay an initial civil penalty in the amount of \$4,000.00 on or before the Effective Date. Defendant shall issue a check payable to “Beverage & Diamond, P.C.” in the amount of \$4,000.00 to be held in trust by Beverage & Diamond, P.C. Beverage & Diamond, P.C shall provide The Chanler Group with written confirmation within five days of receipt that the funds have been deposited in a trust account. Within two business days of the date this Consent Judgment is approved by the Court, Beverage & Diamond, P.C shall issue two separate checks to: (a) OEHHA, in the amount of \$3,000.00; and (b) “The Chanler Group in Trust for Dr. Whitney R. Leeman.” in the amount of \$1,000.00. All penalty payments shall be delivered to the addresses listed in Section 4.4.1 below.

4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).

LEGRAND shall pay a final civil penalty in the amount \$9,000.00 on or before January 15, 2015. The final civil penalty shall be waived in its entirety, if, on or before January 1, 2015, an Officer of LEGRAND certifies in writing that it, as of October 1, 2014, has manufactured for sale in California only Reformulated Covered Products and that it will continue to manufacture, distribute, sell and offer for sale in California only Reformulated Covered Products, or that it has discontinued selling the Covered Products in California. Such certification must be received by The Chanler Group on or before January 1, 2015. The certification in lieu of paying the final civil penalty provided by this Section is a material term, and time is of the essence. Unless waived, LEGRAND shall issue two separate checks for its final civil penalty payment to: (a)

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2 OEHHA, in the amount of \$6,725.00; and (b) “The Chanler Group in Trust for Dr. Whitney R.
3 Leeman.” in the amount of \$2,225.00.

4 **4.3 Reimbursement of Plaintiff’s Fees and Costs.**

5 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
7 leaving the fee issue to be resolved after the material terms of the agreement had been
8 settled. LEGRAND then expressed a desire to resolve the fee and cost issue shortly after
9 the other settlement terms had been finalized. The Parties then attempted to (and did) reach
10 an accord on the compensation due to Leeman and her counsel under general contract
11 principles and the private attorney general doctrine codified at California Code of Civil
12 Procedure section 1021.5, for all work performed (and to be performed) in this matter.
13 Under these legal principles, LEGRAND shall pay the amount of \$31,000.00 to reimburse
14 Plaintiff’s fees and costs incurred investigating, litigating and enforcing this matter,
15 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
16 obtaining the Court’s approval of this Consent Judgment in the public interest. On or before
17 the Effective Date, LEGRAND shall issue a check payable to “Beverage & Diamond, P.C.”
18 in the amount of \$31,000.00 to be held in trust by the Beverage & Diamond, P.C. for The
19 Chanler Group. Beverage & Diamond, P.C. shall provide The Chanler Group with written
20 confirmation within five days of receipt that the funds have been deposited in a trust
21 account. Within two business days of the date this Consent Judgment is approved by the
22 Court, Beverage & Diamond, P.C. shall issue a check payable to “The Chanler Group” and
23 shall be delivered to the address in Section 4.4.1(a) below.

24 **4.4 Payment Procedures.**

25 **4.4.1 Funds Leeman In Trust**

- 26 (a) All payments owed to Leeman, pursuant to Sections 4.1 through
27 4.2, shall be delivered to the following payment address:

28 The Chanler Group
Attn: Proposition 65 Controller

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2 2560 Ninth Street
3 Parker Plaza, Suite 214
4 Berkeley, CA 94710

5 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
6 Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo
7 line "Prop 65 Penalties") at the following addresses:

8 For United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street
19 Sacramento, CA 95814

20 With a copy of the checks payable to OEHHA mailed to The Chanler
21 Group at the address set forth above in 4.4.1(a), as proof of payment to
22 OEHHA.

23 If for any reason this Consent Judgment is not entered by the Court within nine (9)
24 months of September 15, 2014, Plaintiff shall meet and confer with LEGRAND about mutually
25 agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps
26 cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid
27 and Leeman in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon LEGRAND's
28 written request.

24 **5. CLAIMS COVERED AND RELEASED**

25 **5.1** Leeman, acting on behalf of herself and in the public interest, hereby releases
26 LEGRAND, its parents, subsidiaries, affiliated entities that are under common ownership,
27 directors, officers, employees, attorneys, shareholders ("Defendant Releasees"), and any of its
28 downstream distributors, wholesalers, customers, retailers (including but not limited to The

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Home Depot), franchisees, cooperative members, licensors, licensees, and any other person or entity to whom they directly or indirectly distribute or sell Covered Products (“Downstream Defendant Releasees”), from any alleged or actual violation of Proposition 65 that has been asserted by Leeman in the public interest in her Notice and Complaint regarding the alleged failure to warn about exposure to DEHP in Covered Products sold or distributed by LEGRAND prior to the Effective Date. LEGRAND’s compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP in Covered Products.

5.2 Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, fixed or contingent (collectively “Claims”), against LEGRAND, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 regarding the failure to warn about exposure to DEHP in Covered Products sold or distributed prior to the Effective Date.

5.3 Leeman also, in her individual capacity only and *not* in her representative capacity, provides a general release herein 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 of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical listed under Proposition 65 from use of the Covered Products manufactured prior to the Effective Date. Leeman acknowledges that she is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

1 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
2 OR HER SETTLEMENT WITH THE DEBTOR.

3 Leeman, in her individual capacity only and *not* in her representative capacity, expressly waives
4 and relinquishes any and all rights and benefits which she may have under, or which may be
5 conferred on her by the provisions of Section 1542 of the California Civil Code as well as under
6 any other state or federal statute or common law principle of similar effect, to the fullest extent
7 that she may lawfully waive such rights or benefits pertaining to the released matters. In
8 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
9 complete release notwithstanding the discovery or existence of any such additional or different
10 claims or facts arising out of the released matters.

11 The Parties further understand and agree that this release shall not extend upstream to
12 any entities, other than to LEGRAND and to Defendant Releasees, that manufactured the
13 Covered Products or any component parts thereof, or any distributors or suppliers who sold the
14 Covered Products or any component parts thereof to LEGRAND or Defendant Releasees.

15 **5.4** LEGRAND waives any and all Claims against Leeman, her attorneys, and other
16 representatives for any and all actions taken or statements made (or those that could have been
17 taken or made) by Leeman and her attorneys and other representatives, whether in the course of
18 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
19 matter, and/or with respect to the Covered Products.

20 **5.5** LEGRAND also provides a general release herein which shall be effective as a
21 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
22 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of LEGRAND of any
23 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
24 subject matter of the Action. LEGRAND acknowledges that it is familiar with Section 1542 of
25 the California Civil Code, which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
28 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

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2 LEGRAND expressly waives and relinquishes any and all rights and benefits which it may have
3 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil
4 Code, as well as under any other state or federal statute or common law principle of similar
5 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
6 released matters. In furtherance of such intention, the release hereby given shall be and remain
7 in effect as a full and complete release notwithstanding the discovery or existence of any such
8 additional or different claims or facts arising out of the released matters.

9 **6. COURT APPROVAL**

10 **6.1** By this Consent Judgment and upon its approval, the Parties waive their right to a
11 trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment,
12 and of any and all interim rulings, including all pleading, procedural, and discovery orders.

13 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code §
14 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
15 which Leeman shall file and which LEGRAND shall support as reasonably necessary.

16 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
17 and any and all prior agreements between the Parties merged herein shall terminate and become
18 null and void, and the action shall revert to the status that existed prior to the execution date of
19 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
20 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
21 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
22 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
23 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

24 **7. GOVERNING LAW**

25 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
26 California, and shall apply only to Covered Products offered for sale in the State of California.
27 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
28 law generally, or as to the Covered Products, then LEGRAND may provide written notice to

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2 Leeman of any asserted change in the law, and shall have no further obligations pursuant to this
3 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

4 **7.2** The Parties, including their counsel, have participated in the preparation of this
5 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
6 Consent Judgment was subject to revision and modification by the Parties and has been accepted
7 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
8 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
9 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
10 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
11 resolved against the drafting Party should not be employed in the interpretation of this Consent
12 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

13 **8. NOTICES**

14 **8.1** Unless specified herein, all correspondence and notices required to be provided
15 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
16 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
17 Party by the other Party at the following addresses:

18 To LEGRAND:

19 Legrand North America, Inc.
20 Attn: Vice President & General Counsel
21 60 Woodlawn Street
22 W. Hartford, CT 06110
23 with a copy to:

24 Laura M. Duncan, Esq.
25 Beveridge & Diamond, P.C.
26 456 Montgomery Street, Suite 1800
27 San Francisco, California 94104

28 To Leeman:

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

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

9. MODIFICATION

9.1 Modification. This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a modified Consent Judgment by the court.

9.2 Subsequent Legislation. If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the DEHP content of Covered Products sold in California hereunder, any Party shall be entitled to request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment for good cause shown.

9.3 Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10. ENTIRE AGREEMENT

10.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent To Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof, under C.C.P. §664.6.

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12. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 8/25/14

Date: 8/25/14

By: Whitney R. Leeman
Plaintiff Dr. Whitney R. Leeman

By: Steve Schaefer
Defendant Legrand Holdings, Inc.
Vice President