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Josh Voorhees, State Bar No. 241436  
Stephen Cohen, State Bar No. 284416  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
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Attorneys for Plaintiff  
DR. WHITNEY R. LEEMAN

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

DR. WHITNEY R. LEEMAN,  
  
Plaintiff,  
  
v.  
  
KKU INCORPORATED, and DOES 1-150,  
inclusive,  
  
Defendants.

Case No. RG14733167  
**[PROPOSED] CONSENT JUDGMENT**

1       **1. INTRODUCTION**

2               **1.1 Dr. Whitney R. Leeman and KKU Incorporated**

3               This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman  
4 (“Leeman” or “Plaintiff”) and defendant KKU Incorporated (“KKU” or “Defendant”), with  
5 Leeman and KKU collectively referred to as the (“Parties”).

6               **1.2 Dr. Whitney R. Leeman**

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

10              **1.3 KKU**

11              KKU 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 &  
13 Safety Code §25249.5 et seq. (“Proposition 65”).

14              **1.4 General Allegations**

15              Leeman alleges that KKU has manufactured, exported, distributed and/or sold shop seats  
16 with vinyl/PVC upholstery containing Di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of  
17 California without the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65  
18 as a chemical known to the State of California to cause birth defects and other reproductive harm.

19              **1.5 Notices of Violation.**

20              On November 15, 2013, Leeman served The Home Depot, Inc. and Home Depot USA, Inc.  
21 (“Home Depot”) and various public enforcement agencies with a document entitled “60-Day Notice  
22 of Violation,” that alleged that Home Depot violated Proposition 65 by failing to warn consumers  
23 that shop seats with vinyl/PVC upholstery including, but not limited to, the Husky Heavy Duty  
24 Rolling Shop Seat (SKU 684 351, UPC 4 560494 87201 0), exposed users in California to DEHP.

25              On April 30, 2014, Leeman served Home Depot, KKU, and various public enforcement  
26 agencies with a document entitled “Supplemental 60-Day Notice of Violation,” that alleged that  
27 Home Depot and KKU violated Proposition 65 by failing to warn consumers that shop seats with  
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1 vinyl/PVC upholstery including, but not limited to, the Husky Heavy Duty Rolling Shop Seat (SKU  
2 684 351, UPC 4 560494 87201 0), exposed users in California to DEHP. The “60-Day Notice of  
3 Violation and the “Supplemental 60-Day Notice of Violation” are hereinafter referred to  
4 collectively as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has  
5 commenced and is diligently prosecuting allegations set forth in the Notices.

6 **1.6 Complaint.**

7 On July 16, 2014, Leeman, acting in the interest of the general public in California, filed a  
8 Complaint in the instant action (“Complaint”) naming KKU, Inc. as a defendant and alleging  
9 violations of Health & Safety Code §§ 25249.6, *et seq.* based on, *inter alia*, alleged occupational  
10 and consumer exposures to DEHP contained in the Covered Products sold in California without the  
11 clear and reasonable warning required by Proposition 65.

12 **1.7 No Admission.**

13 By execution of this Consent Judgment and agreeing to comply with its terms, KKU does  
14 not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions  
15 of law suggesting or demonstrating any violations of Proposition 65 or any other statutory,  
16 common law or equitable requirements relating to DEHP in Covered Products. Nothing in this  
17 Consent Judgment shall be construed as an admission by KKU of any fact, conclusion of law,  
18 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
19 construed as an admission by KKU of any fact, conclusion of law, issue of law, or violation of  
20 law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,  
21 argument or defense KKU may have in this or any other or future legal proceedings. This  
22 Consent Judgment is the product of negotiation and compromise and is accepted by KKU for  
23 purposes of settling, compromising, and resolving issues disputed in this action. However, this  
24 section shall not diminish or otherwise affect the obligations, responsibilities and duties of KKU  
25 under this Consent Judgment.

26 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, KKU  
27 stipulates that this Court has jurisdiction over KKU as to the allegations contained in the Complaint,

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1 that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and  
2 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil  
3 Procedure § 664.6.

4 **2. DEFINITIONS.**

5 2.1 “Covered Products” means seats and stools designed or intended for use in  
6 workshops and garages with vinyl/PVC upholstery containing DEHP, including but not limited to  
7 Husky Heavy Duty Rolling Shop Seats that are manufactured for sale or exported for sale by KKU  
8 and sold or distributed for sale in California.

9 2.2 “Effective Date” means the date this Consent Judgment is approved by the court.

10 2.3 “DEHP Limits” means the maximum concentration of DEHP by weight specified  
11 in Section 3.1.

12 **3. INJUNCTIVE RELIEF: REFORMULATION**

13 **3.1 DEHP Limits.**

14 Commencing on the Effective Date and continuing into the future, KKU shall not  
15 manufacture, distribute, export, or ship for sale any Covered Product that will be sold or offered  
16 for sale to California consumers or businesses with vinyl or PVC upholstery that contains DEHP  
17 in concentrations of more than 0.1 percent (1,000 parts per million) by weight when analyzed  
18 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any  
19 other methodology authorized by federal or state agencies for the purpose of determining the DEHP  
20 content in a solid substance (“Reformulated Covered Products”).

21 **4. PAYMENTS**

22 **4.1 Payments Pursuant to Health and Safety Code § 25249.7(b)**

23 Pursuant to Health and Safety Code section 25249.7(b)(2), KKU shall pay \$23,000 in civil  
24 penalties. Each Penalty payment shall be allocated according to Health and Safety Code section  
25 25249.12(c)(1) and (d), with seventy-five percent of the penalty amount remitted to the California  
26 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five  
27 percent remitted to Leeman.

1                   **4.1.1 Initial Civil Penalty.** Within 10 days of the Effective Date, K KU shall make  
2 an initial civil penalty payment of \$7,000. It shall provide its payment in the form of two checks  
3 for the following amounts made payable to: (a) “OEHHA” in the amount of \$5,250; and (b) “Dr.  
4 Whitney R. Leeman, Client Trust Account” in the amount of \$1,750.

5                   **4.1.2 Final Civil Penalty.** On or before April 15, 2015, K KU shall pay a final  
6 civil penalty of \$16,000. The final civil penalty shall be waived in its entirety if, no later than April  
7 1, 2015, an officer of K KU provides Leeman’s counsel with written certification that, as of the date  
8 of its certification, all Covered Products shipped for sale or distributed for sale in California are  
9 Reformulated Covered Products, and that it will continue to only offer Reformulated Covered  
10 Products in the future. The option to provide a written certification of reformulation in lieu of  
11 making the final civil penalty payment otherwise required by this Consent Judgment is a material  
12 term, and time is of the essence.

13                   **4.2 Reimbursement of Attorneys’ Fees and Costs**

14                   The Parties acknowledge that Leeman and her counsel offered to resolve this dispute  
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
16 the issue to be resolved after the material terms of the agreement had been settled. Shortly after all  
17 other settlement terms had been finalized, K KU expressed a desire to resolve the fees and costs.  
18 The Parties then attempted to (and did) reach an accord on the compensation due to Leeman and  
19 her counsel under general contract principles and the private attorney general doctrine codified at  
20 Code of Civil Procedure section 1021.5 for all work performed in this matter exclusive of fees and  
21 costs incurred on appeal, if any. Under these legal principles, on or before the Effective Date, K KU  
22 shall pay \$31,000 for the fees and costs incurred investigating, litigating, and enforcing this matter,  
23 including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining the  
24 Court’s approval of this Consent Judgment in the public interest.

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**4.3 Payment Procedures**

**4.3.1 Payments**

The payments required by Sections 4.1 and 4.2 shall be delivered within 10 days of the Effective Date according to the following subsections

**4.3.2 Payment Addresses**

(a) All payments and to Leeman and The Chanler Group shall be delivered to the following address:

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

(b) All payments to OEHHA shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following address:

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

With a copy of the check(s) payable to OEHHA mailed to The Chanler Group at the address payment address provided in section 4.3.2(a), as proof of payment to OEHHA.

**5. CLAIMS COVERED AND RELEASED**

5.1 This Consent Judgment is a full, final, and binding resolution between Leeman and KKKU and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, and sister companies and their successors and assigns ("Defendant Releasees"), and their downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, including, but not limited to, Home Depot, and any other person or entity to whom they directly or indirectly distribute or sell Covered Products, ("Downstream Defendant Releasees"), of any violation of Proposition 65 that has been asserted by Leeman in the public interest, through a Proposition 65 60-Day Notice of Violation against KKKU, Defendant Releasees, and Downstream

1 Defendant Releasees regarding the failure to warn about exposure to DEHP in Covered Products.  
2 Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with  
3 Proposition 65 with respect to DEHP in Covered Products after the Effective Date.

4 5.2 Leeman on behalf of herself, her past and current agents, representatives, attorneys,  
5 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
6 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
7 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,  
8 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not  
9 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether  
10 known or unknown, fixed or contingent (collectively "Claims"), against KKU, Defendant  
11 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65  
12 regarding the failure to warn about exposure to DEHP in Covered Products.

13 5.3 Leeman also, in her individual capacity only and *not* in her representative capacity,  
14 provides a general release herein which shall be effective as a full and final accord and satisfaction,  
15 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages,  
16 losses, claims, liabilities and demands of Leeman of any nature, character or kind, known or  
17 unknown, suspected or unsuspected, arising out of the subject matter of the Complaint. Leeman  
18 acknowledges that she is familiar with Section 1542 of the California Civil Code, which provides  
19 as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
22 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.

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

4 This release is expressly limited to those claims that arise under Proposition 65, as such  
5 claims relate to Defendant's alleged failure to warn about exposures to or identification of the  
6 DEHP contained in the Covered Products, as such claims are identified in the Proposition 65 60-  
7 Day Notice to Defendant and to the extent that any alleged violations occur prior to thirty (30) days  
8 after the Effective Date. This Release does not release any person, party or entity from any liability  
9 for any violation of Proposition 65 regarding the Covered Products that occur more than thirty (30)  
10 days after the Effective Date.

11 5.4 KKU waives any and all Claims against Leeman, her attorneys, and other  
12 representatives for any and all actions taken or statements made (or those that could have been  
13 taken or made) by Leeman and her attorneys and other representatives, whether in the course of  
14 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter,  
15 and/or with respect to the Covered Products.

16 5.5 KKU also provides a general release herein which shall be effective as a full and  
17 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
18 attorneys' fees, damages, losses, claims, liabilities and demands of KKU of any nature, character  
19 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the  
20 Action. KKU acknowledges that it is familiar with Section 1542 of the California Civil Code,  
21 which provides as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
24 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.

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

5 **6. COURT APPROVAL**

6 6.1 The Parties acknowledge that, pursuant to California Health & Safety Code  
7 §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
8 Leeman shall draft and file with the Court. KKU shall support the entry of this Consent Judgment,  
9 including appearing at the hearing on the motion if requested.

10 6.2 If this Consent Judgment is not approved by the Court in its entirety, (a) this Consent  
11 Judgment and any and all prior agreements between the Parties merged herein shall terminate and  
12 become null and void, and the action shall revert to the status that existed prior to the execution  
13 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
14 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have  
15 any effect, nor shall any such matter be admissible in evidence for any purpose in this action, or in  
16 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify  
17 the terms of the Consent Judgment and to resubmit it for approval.

18 **7. ATTORNEYS' FEES**

19 7.1 Except as otherwise provided in this Consent Judgment, each Party and their privies,  
20 shall bear its own attorneys' fees and costs.

21 **8. ENFORCEMENT; ARBITRATION**

22 8.1 Either Party may, by motion or application for an order to show cause before this  
23 Court, or by any other procedure available, enforce the terms and conditions contained in this  
24 Consent Judgment. In addition, any dispute, controversy or claim arising out of or relating to this  
25 Consent Judgment, including the formation, interpretation, breach or termination thereof, may, at  
26 the election of the Party seeking to enforce the terms contained herein, be referred to and finally  
27 determined by arbitration in accordance with the JAMS International Arbitration Rules. In such a  
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1 case, the tribunal will consist of a sole arbitrator. The place of arbitration will be in either San  
2 Francisco, California, U.S.A. or Japan, Tokyo at the discretion of the Party alleging a breach or  
3 otherwise seeking to enforce the agreement. The language to be used in the arbitral proceedings  
4 will be English. Judgment upon the award rendered by the arbitrator may be entered by any court  
5 having jurisdiction thereof, including those in Tokyo, Japan or the United States. The prevailing  
6 party in any action pursuant to this Section 8.1 shall be entitled to reimbursement of its reasonable  
7 attorneys' fees and costs.

8 **9. GOVERNING LAW**

9 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
10 California, and shall apply only to Covered Products offered for sale in the State of California. In  
11 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law  
12 generally, or as to the Covered Products, then KKKU may provide written notice to Leeman of any  
13 asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment  
14 with respect to, and to the extent that, the Covered Products are so affected.

15 9.2 The Parties, including their counsel, have participated in the preparation of this  
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
17 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
18 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
19 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
20 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
21 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
22 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
23 this regard, the Parties hereby waive California Civil Code § 1654.

24 **10. NOTICES**

25 10.1 Unless specified herein, all correspondence and notices required to be provided  
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party  
2 by the other Party at the following addresses:

3 To KKKU:

4 Hiromi Aoki, Vice President  
5 KKKU Incorporated  
6 Tokuei Building New Annex 5<sup>th</sup> Floor  
7 5-33-7 Shiba, Minato-Ku  
8 JP-108-0014 Tokyo  
9 Japan

10 With a copy to:

11 Jeffrey B. Margulies, Esq.  
12 Fulbright & Jaworski LLP  
13 555 South Flower Street, Forty-First Floor  
14 Los Angeles, California 90071  
15 213-892-9286  
16 213-892-9494 fax

17 To Leeman:

18 Proposition 65 Coordinator  
19 The Chanler Group  
20 2560 Ninth Street  
21 Parker Plaza, Suite 214  
22 Berkeley, CA 94710-2565

23 10.2 Any Party, from time to time, may specify in writing to the other Party a change of  
24 address to which all notices and other communications shall be sent.

## 25 11. MODIFICATION

### 26 11.1 Modification.

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

### 11.2 Subsequent Legislation.

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

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**11.3 Notice; Meet and Confer.**

Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

**12. ENTIRE AGREEMENT**

12.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. 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.

**13. RETENTION OF JURISDICTION**

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

**14. COUNTERPARTS; FACSIMILE SIGNATURES**

14.1 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.

1 **15. AUTHORIZATION**

2 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment.

AGREED TO:	AGREED TO:
Date: <u>December 3, 2014</u>	Date: <u>December 3, 2014</u>
By: <u>Whitney R. Leeman</u> Plaintiff DR. WHITNEY R. LEEMAN	By: <u>Rivani Cole</u> Defendant KKU INCORPORATED

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