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9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, PH.D.

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

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
BRIGGS MEDICAL SERVICE
COMPANY; and DOES 1-150, inclusive,
Defendants.

Case No. RG-16-819463
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff WHITNEY R. LEEMAN,
4 PH.D., (“Leeman”) and defendant BRIGGS MEDICAL SERVICE COMPANY (“Briggs”), with
5 Leeman and Briggs each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Leeman alleges that Briggs manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC gloves containing diisononyl phthalate (“DINP”). DINP is listed pursuant to
17 Proposition 65 as a chemical known to cause cancer. Leeman alleges that Briggs failed to provide
18 the health hazard warning allegedly required by Proposition 65 for exposures to DINP from its
19 vinyl/PVC gloves.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP sold
22 and/or distributed for sale in California by Briggs including, but not limited to, *Briggs Synthetic*
23 *Powder Free Exam Gloves, BRG-001, Lot No. 1403-311190* (“Products”).

24 **1.6 Notice of Violation**

25 On January 30, 2015, Leeman served Briggs and certain requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Briggs violated Proposition 65
27 when it failed to warn its customers and consumers in California that the Products expose users to
28

1 DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On June 14, 2016, Leeman commenced the instant action, naming Briggs as a defendant for
5 the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Briggs as to the allegations contained in the Complaint, that venue is proper in the
18 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean ten (10)
22 business days from the date that the Court grants the motion for approval of this Consent Judgment
23 contemplated by Section 5.

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 **2.1 Reformulation Commitment**

26 On or before the Effective Date and continuing thereafter, Briggs agrees to only
27 manufacture for sale or purchase for sale in or into California, "Reformulated Products" or Products
28 that contain a warning in accordance with Section 2.2 below. For purposes of this Settlement

1 Agreement, "Reformulated Products" are Products containing DINP in concentrations less than 0.1
2 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency
3 testing methodologies 3580A and 8270C or other methodology utilized by federal or state
4 governmental agencies for the purpose of determining DINP content in a solid substance.

5 **2.2 Clear and Reasonable Warnings**

6 On or before the Effective Date, Briggs shall, for all Products it ships, sells, or offers to ship
7 or sell in California that are not Reformulated Products, provide clear and reasonable warnings as
8 set forth below. Each warning shall be prominently placed with such conspicuousness, as
9 compared with other words, statements, designs, or devices, as to render it likely to be read and
10 understood by an ordinary individual under customary conditions before purchase or use. Each
11 warning shall be provided in a manner such that the consumer or user understands to which specific
12 Products the warning applies, so as to minimize the risk of consumer confusion. The warning shall
13 be affixed to the packaging or labeling or directly to the non-Reformulated Product. The warning
14 shall provide:

15 **WARNING:** This product contains DINP, a chemical known to the State of
16 California to cause cancer.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

19 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
20 referred to in this Consent Judgment, Briggs shall pay \$10,000 in civil penalties in accordance with
21 this Section. Each penalty payment will be allocated in accordance with California Health & Safety
22 Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
23 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
24 remitted to Leeman. Leeman's counsel shall be responsible for remitting Briggs's penalty
25 payment(s) under this Consent Judgment to OEHHA.

1 **3.1.1 Initial Civil Penalty.**

2 Briggs shall make an initial civil penalty payment of \$5,000. Briggs shall provide its
3 payment in a single check made payable to “WHITNEY R. LEEMAN, Client Trust Account” to be
4 delivered to the address provided in Section 3.4, below.

5 **3.1.2 Final Civil Penalty.**

6 On November 1, 2016, Briggs shall make a final civil penalty payment of \$5,000. Pursuant
7 to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the final civil
8 penalty payment shall be waived in its entirety if, no later than October 15, 2016, an officer of
9 Briggs provides Leeman with an original, signed written certification that all of the Products it ships
10 for sale or distributes for sale in California as of the date if its certification are Reformulated
11 Products, and that Briggs will continue to offer only Reformulated Products in California in the
12 future. The option to certify early reformulation in lieu of making the final civil penalty payment
13 otherwise required by this Section is a material term, and time is of the essence. Briggs shall
14 deliver its certificate, if any, to Leeman’s counsel at the address provided in Section 3.4, below. In
15 the event that Briggs does not timely certify its compliance or make the final civil penalty payment
16 required by this Section, the Parties agree that Leeman may file a motion or application seeking an
17 order compelling Briggs’s compliance with this Section. If successful, the Parties further agree
18 that Leeman shall be entitled to her reasonable attorneys’ fees and costs pursuant to general contract
19 principles and Code of Civil Procedure section 664.6.

20 **3.2 Reimbursement of Attorneys’ Fees and Costs**

21 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
23 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
24 the other settlement terms had been finalized, Briggs expressed a desire to resolve Leeman’s fees
25 and costs. The Parties then negotiated a resolution of the compensation due to Leeman and her
26 counsel under general contract principles and the private attorney general doctrine codified at
27 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
28 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs

1 on appeal, if any, Briggs shall reimburse Leeman and her counsel \$24,000. Briggs's payment shall
2 be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group."
3 The reimbursement shall cover all fees and costs incurred by Leeman investigating, bringing
4 this matter to Briggs's attention, litigating, and negotiating a settlement of the matter in the
5 public interest.

6 **3.3 Payment Timing; Payments Held In Trust**

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

18 **3.4 Payment Address**

19 All payments required by this Consent Judgment shall be delivered to the following
20 address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Leeman's Release of Proposition 65 Claims**

28 Leeman, acting on her own behalf and in the public interest, releases Briggs and its parents,
subsidiaries, affiliated entities under common ownership, directors, officers, employees, and

1 attorneys (“Releasees”) and each entity to whom Briggs directly or indirectly distributes or sells the
2 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
3 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any
4 violations arising under Proposition 65 for unwarned exposures to DINP from the Products
5 manufactured, imported, distributed or sold by Briggs prior to the Effective Date, as set forth in the
6 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
7 Proposition 65 by Briggs with respect to the alleged or actual failure to warn about exposures to
8 DINP from Products manufactured, sold or distributed for sale by Briggs after the Effective Date.

9 **4.2 Leeman’s Individual Release of Claims**

10 Leeman, in her individual capacity only and *not* in her representative capacity, also provides
11 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
12 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
13 attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
14 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
15 exposures to DINP in Products manufactured, imported, distributed or sold by Briggs before the
16 Effective Date.

17 **4.3 Briggs’s Release of Leeman**

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

23 **5. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and
25 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
26 after it has been fully executed by all Parties. Leeman and Briggs agree to support the entry of this
27 agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner.
28 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a

1 noticed motion is required for judicial approval of this Consent Judgment, which motion Leeman
2 shall draft and file and Briggs shall support, appearing at the hearing if so requested. If any third-
3 party objection to the motion is filed, Leeman and Briggs agree to work together to file a reply and
4 appear at any hearing. This provision is a material component of the Consent Judgment and shall
5 be treated as such in the event of a breach.

6 **6. SEVERABILITY**

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

10 **7. GOVERNING LAW**

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

17 **8. NOTICE**

18 Unless specified herein, all correspondence and notice required to be provided pursuant to
19 this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class,
20 registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any
21 Party by the other at the following addresses:

22 **For Briggs:**

23 Bruce Dan, CEO,
24 Briggs Medical Service Company
25 7300 Westown Parkway, Suite 100
26 West Des Moines, IA 50266

For Leeman:

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

with copy to Briggs's counsel:

Patrick A. Fraioli, Jr., Esq.
Ervin Cohen & Jessup LLP
9401 Wilshire Blvd., 9th Floor
Beverly Hills, CA 90212-2974

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

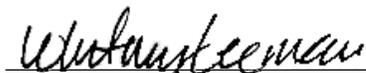
This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.

12. AUTHORIZATION

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:



WHITNEY R. LEEMAN PH.D.

BRIGGS MEDICAL SERVICE COMPANY

Dated: 9/22/2016

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

1 **with copy to Briggs's counsel:**

2 Patrick A. Fraioli, Jr., Esq.
3 Ervin Cohen & Jessup LLP
4 9401 Wilshire Blvd., 9th Floor
5 Beverly Hills, CA 90212-2974

6 Any Party may, from time to time, specify in writing to the other a change of address to which all
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20 The undersigned are authorized to execute this Consent Judgment on behalf of their
21 respective Parties and have read, understood, and agree to all of the terms and conditions of this
22 Consent Judgment.

23 **AGREED TO:**

24 _____
25 WHITNEY R. LEEMAN PH.D.

26 Dated: _____

AGREED TO:

27 _____
28 BRIGGS MEDICAL SERVICE COMPANY

By: Thomas J. King
(Print Name)

Its: EVP/CEO
(Title)

Dated: 9/19/16