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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 WHITNEY R. LEEMAN, PH.D.,
17 Plaintiff,
18
19 v.
20 CHUMS INC., *et al.*,
21 Defendants.
22

Case No. 16CV295803

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (“Leeman”), and Chums, Inc. (“Chums”), with Leeman and Chums each individually referred to as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Chums employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that Chums sells and distributes for sale in California vinyl/PVC zipper pulls
16 for eyewear cases that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the
17 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to cause birth defects or other reproductive harm. Chums denies Leeman’s
19 allegations.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, “Products” are defined as vinyl/PVC zipper pulls for
22 eyewear cases containing DEHP that are manufactured, sold, or distributed for sale in California by
23 Chums including, but not limited to, the *Chums Eyewear Cases Transporter*, #31094, #004824, UPC
24 #0 93039 31094 3, hereinafter “Products.”

25 **1.6 Notice of Violation**

26 On August 20, 2015, Leeman served Chums, and the requisite public enforcement agencies
27 with a “60-Day Notice of Violation” (“Notice”) alleging that Chums violated Proposition 65 by
28 failing to warn its customers and consumers in California of the health hazards associated with

1 exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has
2 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On June 1, 2016, Leeman filed the instant action ("Complaint"), naming Chums as a
5 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 this Settlement Agreement is executed by the Parties.

24 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

25 **2.1 Commitment to Reformulate**

26 Commencing on the Effective Date and continuing thereafter, Chums shall only manufacture
27 for sale or purchase for sale in California Reformulated Products. For purposes of this Consent
28 Judgment, "Reformulated Products" are defined as Products containing DEHP in a maximum

1 concentration of 0.1 percent (1,000 parts per million) in any accessible vinyl/PVC component (i.e.,
2 any component that may be touched during use) when analyzed pursuant to U.S. Environmental
3 Protection Agency testing methodologies 3580A and 8270C, or other equivalent methodologies
4 utilized by federal or state agencies for the purpose of determining DEHP content in a solid
5 substance.

6 **2.2 Compliance with Proposition 65**

7 Compliance with the terms of this Settlement Agreement by Chums shall constitute full
8 compliance with Proposition 65 with respect to exposure to DEHP in the Products.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty Payments**

11 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
12 to in the Notice, Complaint, and this Consent Judgment, Chums shall pay \$3,500 in civil penalties.
13 Each civil penalty payment shall be allocated according to Health and Safety Code § 25249.12(c)(1)
14 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
15 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%)
16 of the penalty retained by Leeman.

17 **3.2 Reimbursement of Attorney’s Fees and Costs**

18 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
20 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
21 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and
22 her counsel under general contract principles and the private attorney general doctrine codified at
23 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
24 this Consent Judgment, and through court approval of the same, but exclusive of fees and costs on
25 appeal, if any. Chums shall pay \$23,500 for all fees and costs incurred investigating, bringing this
26 matter to Chums’ attention, litigating and negotiating a settlement that provides a significant public
27 benefit.
28

1 **3.3 Payments Held in Trust**

2 All payments due under this Consent Judgment shall be held in trust until such time as the
3 Court approves the Parties' settlement. All payments due under this agreement shall be delivered
4 within ten (10) days of the date that this Consent Judgment is fully executed by the Parties, and held
5 in trust by Chums' counsel until the Court grants the motion for approval of this Consent Judgment
6 contemplated by Section 5. Within five (5) business days of the Court's approval of this Consent
7 Judgment, Chums' counsel shall tender the civil penalty payment and attorneys' fee and costs
8 reimbursements required by Sections 3.1 and 3.2, as follows:

9 3.3.1 A check in the amount of \$2,625 paid to OEHHA;

10 3.3.2 A check in the amount of \$875 paid to "Whitney R. Leeman, Ph.D. Client
11 Trust Account";

12 3.3.3 A check in the amount of \$23,500 paid to "The Chanler Group."

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Leeman's Public Release of Proposition 65 Claims**

22 Leeman, acting on her own behalf and in the public interest, releases Chums and its parents,
23 subsidiaries, affiliated entities, under common ownership, directors, officers, partners, members,
24 managers, agents, representatives, employees, and attorneys ("Releasees"), and each entity to whom
25 Chums directly or indirectly distributes or sells the Products including, without limitation, its
26 downstream customers, distributors, wholesalers, and retailers, franchisees, cooperative members,
27 licensors, licensees, and the directors, officers, partners, members, managers, agents,
28 representatives, employees and attorneys of each of them ("Downstream Releasees") for any
violation arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP in
Products sold or distributed for sale by Chums prior to the Effective Date, as set forth in the Notice.

1 **4.2 Leeman’s Individual Release of Claims**

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

8 **4.3 Chums’ Release of Leeman**

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

14 **5. COURT APPROVAL**

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

18 **6. SEVERABILITY**

19 Except as provided in Section 6 below, if, subsequent to the Court’s approval and entry of this
20 Consent Judgment as a judgment, any provision is held by a court to be unenforceable, the validity of
21 the remaining provisions shall not be adversely affected.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the state of California
24 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
25 rendered inapplicable by reason of law generally or as to the Products, and/or as to DEHP, then
26 Chums may provide written notice to Leeman of any asserted change in the law, and shall have no
27 further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent
28 that, the Products or DEHP are so affected.

1 **8. NOTICE**

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

5 **Chums:**

6 Charles Ferries, President
7 Chums, Inc.
8 2424 South 2570 West
9 Salt Lake City, UT 84119

John Conkle, Esq.
Conkle, Kremer & Engel
3130 Wilshire Boulevard, Suite 500
Santa Monica, California 90403-2351

9 **Leeman:**

10 Proposition 65 Coordinator
11 The Chanler Group
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
20 same document.

21 **10. POST EXECUTION ACTIVITIES**

22 Leeman agrees to comply with the reporting form requirements referenced in Health and
23 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
24 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
25 Leeman shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
26 employ their best efforts, and those of their counsel, to support the entry of this agreement as
27 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
28 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
any opposition or objection any third-party may file, if any, and appearing at the hearing before the
Court if so requested.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

8 **AGREED TO:**

AGREED TO:

9
10 Date: 6/20/2016

Date: 6-20-16

11 By: 
12 Whitney R. Leeman, Ph.D.

By: 
13 Charles Ferries, President
14 Chums, Inc.

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