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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SANTA CLARA
16 UNLIMITED CIVIL JURISDICTION
17

18 WHITNEY R. LEEMAN, PH.D.,

19 Plaintiff,

20 v.

21 COMMERCIAL VEHICLE GROUP, INC.,
22 *et al.*,

23 Defendants.
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Case No. 16CV293479

[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 Commercial Vehicle Group, Inc. (“CVG”), with Leeman and CVG each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 CVG**

11 CVG is a Delaware Corporation with its principal place of business in Ohio.

12 **1.4 General Allegations**

13 Leeman alleges that CVG employs more than 10 individuals and is a “person in the course of
14 doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
15 and Safety Code § 25249.6 *et seq.* (“Proposition 65”). Leeman further alleges that CVG, either
16 directly or indirectly through subsidiaries, imports, sells, or distributes for sale in California
17 commercial vehicle seats with vinyl/PVC upholstery that contains di(2-ethylhexyl)phthalate
18 (“DEHP”), and that it does so without first providing the exposure warning required by Proposition
19 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other
20 reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are any and all Commercial Vehicle Seats
23 with vinyl/PVC upholstery containing DEHP that are purchased for sale, imported for sale, or sold in
24 California by CVG or its subsidiaries (“Products”) and, thereafter, sold or distributed for sale in
25 California by those downstream entities in CVG’s and its subsidiaries’ chain of distribution
26 including, without limitation, the Releasees and Downstream Releasees (as defined in § 4.1, below).
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1 For purposes of this Consent Judgment, Commercial Vehicle Seats are defined as seats and/or chairs
2 used or sold for use by drivers, passengers, and operators in commercial applications including, but
3 not exclusively, all motorized vehicles, trucks, vans, motor coaches, tractor trailers, cranes and other
4 construction equipment, and combines, tractors, and other agricultural equipment. Such Products
5 include, but are not limited to, the *Commercial Vehicle Group National Seating National 2000 Series*
6 *20" BLK VYN CAPTAIN, #2295, Part No. 50765.005, the Bostrom Patriot Seat*, and other National
7 or Bostrom seats.

8 **1.6 Notice of Violation**

9 On September 15, 2015, Leeman served CVG, and the requisite public enforcement agencies,
10 with a 60-Day Notice of Violation ("Notice"), alleging that CVG violated Proposition 65 by failing to
11 warn its customers and consumers in California of the health hazards associated with exposures to
12 DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced
13 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

14 **1.7 Complaint**

15 On April 4, 2016, Leeman filed the instant action ("Complaint"), naming CVG as a defendant
16 for the alleged violations of Proposition 65 that are the subject of the Notice.

17 **1.8 No Admission**

18 CVG denies the material, factual, and legal allegations contained in the Notice and
19 Complaint, and maintains that all of the products it has sold or distributed for sale in California,
20 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
21 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
22 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
23 admission of any fact, finding, conclusion of law, issue of law, or violation of law, such being
24 specifically denied by CVG and its subsidiaries. This Section shall not, however, diminish or
25 otherwise affect CVG's obligations, responsibilities, and duties under this Consent Judgment.
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1 **1.9 Jurisdiction**

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

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
8 the Motion for Approval of the Consent Judgment is granted by the Court.

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

10 **2.1 Commitment to Reformulate or Warn**

11 Commencing on the Effective Date and continuing thereafter, CVG shall only import, sell, or
12 distribute for sale in California Reformulated Products or Products that are offered with a clear and
13 reasonable warning pursuant to Section 2.3.

14 **2.2 Reformulated Products**

15 For purposes of this Consent Judgment, “Reformulated Products” are Products containing
16 DEHP in a maximum concentration of 0.1 percent (1,000 parts per million) in any accessible
17 component (i.e., any component that may be touched during a reasonably foreseeable use) when
18 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
19 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of
20 determining DEHP content in a solid substance.

21 **2.3 Clear and Reasonable Warnings**

22 Commencing on the Effective Date and continuing thereafter, for any Products sold or
23 distributed for sale in California by CVG that are not Reformulated Products, CVG will only offer
24 such Products for sale with a clear and reasonable warning in accordance with this Section. CVG
25 further agrees that any warning used will be prominently placed in relation to the Product with such
26 conspicuousness when compared with other words, statements, designs, or devices as to render it
27 likely to be read and understood by an ordinary individual under customary conditions of purchase or
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1 use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products
2 satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying
3 labeling or packaging sold in California containing either one of the following statements, which
4 CVG may choose at its sole discretion:

5 **WARNING:** This product contains DEHP, a chemical
6 known to the State of California to cause birth
7 defects or other reproductive harm.

8 or

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

12 In the event that CVG sells Products via an internet website directly to customers located in
13 California, the warning requirements of this section shall be satisfied if the foregoing warning
14 appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the
15 same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser
16 prior to purchase during the checkout process. Alternatively, a symbol may appear adjacent to or
17 immediately following the display, description, price, or checkout listing of the Product, provided
18 that the warning statement appears elsewhere on the same web page in a manner that clearly
19 associates it with the product(s) to which the warning applies.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Civil Penalty Payments**

22 Pursuant to California Health and Safety Code § 25249.7(b), and in settlement of all the
23 claims alleged in the Notice, Complaint, and this Consent Judgment, CVG shall pay, in the aggregate,
24 \$35,000 in civil penalties. The civil penalty payment, paid in bifurcated amounts or in the aggregate,
25 shall be allocated according to California Health and Safety Code § 25249.12(c)(1) and (d), with
26 seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health
27 Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty
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1 retained by Leeman. Leeman’s counsel shall be responsible for delivering OEHHA’s portion of any
2 penalty payment(s) made under this Consent Judgment to OEHHA.

3 **3.1.1 Initial Civil Penalty**

4 CVG shall make an initial civil penalty payment of \$12,000. CVG shall provide its
5 payment in a single check made payable to “Whitney R. Leeman, Client Trust Account.”

6 **3.1.2 Final Civil Penalty**

7 On or before November 30, 2016, CVG shall make a final civil penalty payment of
8 \$23,000. Pursuant to Title 11, California Code of Regulations, § 3203(c), Leeman agrees that the
9 final civil penalty payment shall be waived in its entirety if, no later than November 15, 2016, an
10 officer of CVG provides Leeman with a signed declaration certifying that all of the Products it is
11 selling, shipping for sale, or distributing for sale in California as of the date of its declaration are
12 Reformulated Products as defined by Section 2.2 and that CVG will continue to offer only
13 Reformulated Products for sale in California in the future. The option to certify to complete
14 reformulation in lieu of making the final civil penalty payment required by this Section is a material
15 term, and time is of the essence.

16 **3.2 Reimbursement of Attorney’s Fees and Costs**

17 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
20 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and
21 her counsel under general contract principles and the private attorney general doctrine codified at
22 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
23 this Consent Judgment, and through court approval of the same, but exclusive of fees and costs on
24 appeal, if any. CVG shall pay \$31,500 for all fees and costs incurred by Leeman and her counsel
25 investigating, bringing this matter to CVG’s attention, litigating and negotiating a settlement in the
26 public interest.

1 **3.3 Payment Timing; 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. Except the final civil penalty payment required by
4 Section 3.1.2, all payments due under this agreement shall be delivered to CVG’s counsel within
5 five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held in trust
6 by CVG’s counsel until the Effective Date. CVG’s counsel shall confirm in writing to Leeman’s
7 counsel that it has received CVG’s settlement payments. Within five days of the Court’s approval of
8 this Consent Judgment, CVG’s counsel shall deliver the initial civil penalty and attorneys’ fee
9 reimbursement payments to Leeman’s counsel at the address in Section 3.4. In the event that the
10 final civil penalty payment required by Section 3.1.2 has not been waived and becomes due prior to
11 the Effective Date, the penalty payment shall be tendered to CVG’s counsel when due and held in
12 trust until, and disbursed within five days after, the Effective Date.

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 Consistent with California Health and Safety Code § 25249.7(d), Leeman, acting on her own
23 behalf and on behalf of her past and current agents, representatives, attorneys, successors, and
24 assignees, and in the public interest, releases CVG, its subsidiaries, brands, shareholders, directors,
25 officers, employees, attorneys, agents and affiliated entities including, without limitation, CVG
26 National Seating Company, LLC (formerly known as National Seating Company) (collectively
27 “Releasees”), and each entity to whom Releasees directly or indirectly distributes or sells the
28 Products including, without limitation, its downstream customers, distributors, dealers, wholesalers,
and retailers (collectively “Downstream Releasees”) from any liability for any violation arising

1 under Proposition 65, pertaining to the failure to warn about exposures to DEHP from Products sold
2 or distributed for sale by Releasees prior to the Effective Date, as set forth in the Notice.

3 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
4 with respect to exposures to DEHP from Products sold or distributed for sale by Releasees or
5 Downstream Releasees after the Effective Date. The Parties agree and acknowledge that the
6 releases provided under this Consent Judgment shall not extend upstream to any entity, other than
7 Releasees, that manufactured the Products, or any components part thereof, or to any entity that
8 distributed or sold the Products, or any component parts thereof, to Releasees.

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

10 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
11 release from any liability to Releasees and Downstream Releasees which shall be effective as a full
12 and 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 Products sold or
15 distributed for sale by Releasees before the Effective Date.

16 **4.3 CVG's Release of Leeman**

17 CVG, on its own behalf, and on behalf of the Releasees, hereby waives any and all claims
18 against Leeman and her attorneys and other representatives, for any and all actions taken or
19 statements made by Leeman and her attorneys and other representatives, whether in the course of
20 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
21 respect to the Products.

22 **5. COURT APPROVAL**

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

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

5 **7. GOVERNING LAW**

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

12 **8. NOTICE**

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

16 For CVG:

17 Patrick E. Miller, President
18 Commercial Vehicle Group, Inc.
19 7800 Walton Parkway
20 New Albany, OH 43054

21 with a copy to CVG’s counsel:

22 Jordan Lipp, Esq.
23 Davis Graham & Stubbs LLP
24 1550 Seventeenth Street, Suite 500
25 Denver, CO 80202

26 For Leeman:

27 Proposition 65 Coordinator
28 The Chanler Group
29 2560 Ninth Street
30 Parker Plaza, Suite 214
31 Berkeley, CA 94710-2565

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or PDF signature,
5 each of which shall be deemed an original, and all of which, when taken together, shall constitute one
6 and the same document.

7 **10. POST EXECUTION ACTIVITIES**

8 Leeman agrees to comply with the reporting form requirements referenced in California
9 Health and Safety Code § 25249.7(f) and make payment to OEHHA as provided for in Section 3.1.
10 The Parties further acknowledge that, pursuant to California Health and Safety Code § 25249.7(f), a
11 noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining
12 such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to
13 support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in
14 a timely manner. For purposes of this Section, “best efforts” shall include, at a minimum,
15 cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and
16 appearing at the hearing before the Court.

17 **11. MODIFICATION**

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

21 **12. AUTHORIZATION**

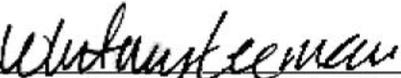
22 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
23 have read, understand, and agree to all of the terms and conditions contained herein.

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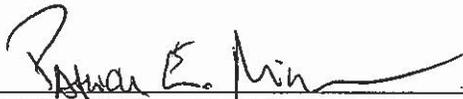
AGREED TO:

Date: 7/13/2016

By: 
WHITNEY R. LEEMAN, PH.D.

AGREED TO:

Date: 7-13-16

By: 
Patrick E. Miller, President
COMMERCIAL VEHICLE GROUP, INC.