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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, Ph.D., Plaintiff, v. MURRAY CORPORATION, *et al.*, Defendants.	Case No. RG16803504 **[PROPOSED] CONSENT JUDGMENT** (Health & Safety Code § 25249.6 *et seq.*)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D. ("Leeman") and Murray Corporation ("Murray"), with Leeman and Murray each individually referred to as a "Party" and collectively as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

Murray employs ten or more individuals and is a "person in the course of doing business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq*. ("Proposition 65").

1.4 General Allegations

Leeman alleges that Murray manufactures, imports, sells, or distributes for sale in California, vinyl/PVC tool grips that contain Di(2-ethylhexyl)phthalate ("DEHP"), di-n-butyl phthalate ("DBP"), and diisononyl phthalate ("DINP") without first providing the exposure warning required by Proposition 65. DEHP, and DBP are listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. DINP is a chemical known to the State of California to cause cancer.

1.5 Product Description

The products covered by this Consent Judgment are vinyl/PVC tool grips containing DEHP that are manufactured, imported, sold, or distributed for sale in California by Murray including, but not limited to, the *Murray Keystone Installation Tool, A200009P10, UPC #0 35119 0923 9*, hereinafter the "Products."

1.6 Notice of Violation

On or about October 28, 2015, Leeman served Murray and the requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Murray violated Proposition

65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

On or about April 27, 2016, Leeman served a supplemental 60-Day Notice of Violation ("Supplemental Notice") adding allegations of exposure to di-n-butyl phthalate ("DBP") and diisononyl phthalate ("DINP"). The Notice and Supplemental Notice shall be referenced collectively as the "Notices."

1.7 Complaint

On February 10, 2016, Leeman filed the instant action ("Complaint"), naming Murray as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice. On or after June 26, 2016, after obtaining leave of court, Leeman shall file a First Amended Complaint to allege exposure to DBP and DINP that are the subject of the Supplemental Notice.

1.8 No Admission

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

1.9 Jurisdiction

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

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1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" means the date on which the Motion for Approval of the Consent Judgment contemplated by Section 5 is granted by the Court.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Murray shall only purchase for sale, manufacture for sale, sell, or distribute for sale in California, "Reformulated Products." For purposes of this Consent Judgment, Reformulated Products are products that contain either no DEHP, DBP or DINP or DEHP, DBP or DINP in concentrations that do not exceed 0.1 percent (1,000 parts per million) each when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred to in the Notice, Complaint, and this Consent Judgment, Murray shall pay $6,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Leeman. Murray shall deliver its payment in a single check made payable to "Whitney R. Leeman, Client Trust Account." Leeman's counsel shall be responsible for delivering OEHHA's portion of the penalty payment to OEHHA.

3.2 Reimbursement of Attorney's Fees and Costs

The parties acknowledge that Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, Murray expressed a desire to resolve Leeman's fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman

and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. Murray shall pay $50,000 for the fees and costs incurred by Leeman investigating, bringing this matter to Murray's attention, litigating and negotiating a settlement in the public interest.

3.3 Payments Held in Trust

All payments due under this Consent Judgment shall be tendered within fifteen days of the date that this Consent Judgment is fully executed by the Parties, and held in trust by Murray's counsel until such time as the Court approves the Parties' settlement. Within two business days of the Court's approval of this Consent Judgment, Murray's counsel shall deliver the civil penalty and attorneys' fee and costs payments required by Sections 3.1 and 3.2 to Leeman's counsel at the address provide in Section 3.4.

3.4 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Leeman's Public Release of Proposition 65 Claims

Leeman, acting on her own behalf and in the public interest, releases Murray and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, resellers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP, DBP, or DINP from Products sold by Murray prior to the Effective Date, as set forth in the Notices.

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4.2 Leeman's Individual Release of Claims

Leeman, in her individual capacity only and *not* in her representative capacity, also provides a release to Murray, Releasees, and Downstream Releasees 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, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP, DBP or DINP in the Products sold or distributed for sale by Murray before the Effective Date.

4.3 Murray's Release of Leeman

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

5. <u>COURT APPROVAL</u>

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties.

6. <u>SEVERABILITY</u>

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

7. <u>GOVERNING LAW</u>

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Murray may provide written notice to Leeman of any asserted change in the law, and shall have no further injunctive

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obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8. NOTICE

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

For Murray:

Thad Schippereit, President
Murray Corporation.
260 Schilling Circle
Hunt Valley, MD 21031

with a copy to Murray's counsel:

Melissa A. Jones, Esq.
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

For Leeman:

The Chanler Group
Attention: Prop 65 Coordinator
2560 Ninth Street
Parker Plaza Suite 214
Berkeley CA, 94710

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 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. POST EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Leeman and Murray agree to mutually employ their best

efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and appearing at the hearing before the Court.

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:	**AGREED TO:**
Date: 5/9/2016	Date:_____
By: Whitney Leeman WHITNEY R. LEEMAN, Ph.D.	By:_____ THAD SCHIPPEREIT, PRESIDENT MURRAY CORPORATION

efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and appearing at the hearing before the Court.

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

12. AUTHORIZATION

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

AGREED TO:	**AGREED TO:**
Date:_____	Date: May 18, 2016
By:_____ WHITNEY R. LEEMAN, Ph.D.	By:_____ THAD SCHIPPEREIT, PRESIDENT MURRAY CORPORATION