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10 Attorneys for Defendants
ONWARD MANUFACTURING COMPANY
11 LTD., INMAR INDUSTRIES, INC. AND
12 ANAHEIM PATIO & FIRESIDE, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17 WHITNEY R. LEEMAN, Ph.D,

18 Plaintiff,

19 v.

20 ONWARD MANUFACTURING COMPANY)
LIMITED; INMAR INDUSTRIES, INC.;)
21 ANAHEIM PATIO & FIRESIDE, INC.; AND)
DOES 1 through 150, inclusive,)

22 Defendants.
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ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

SEP 28 2006

GORDON PARK-LI, CLERK
BY: ERNALYN BURA
Deputy Clerk

No. CGC -05-439671

STIPULATION AND ~~PROPOSED~~
ORDER IN RE: CONSENT JUDGMENT

STIPULATION AND (PROPOSED) ORDER RE: CONSENT JUDGMENT

SFSC CASE NO. CGC-05-439671

1
2 This Settlement Agreement ("Agreement" or "Settlement Agreement") is entered into by and
3 between Whitney R. Leeman, Ph.D., ("Leeman") and Onward Manufacturing Company Limited
4 ("Onward"), as of November 28, 2005 (the "Effective Date"). The parties agree to the following
5 terms and conditions:
6

7 **WHEREAS:**

8 A. Whitney R. Leeman, Ph.D., is an individual residing in Northern California,
9 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
10 reducing or eliminating hazardous substances contained in consumer and industrial products;
11

12 B. Onward is a company that currently distributes certain spray paints listed in
13 Exhibit A (the "Products") that are alleged to contain toluene, a substance known to the State of
14 California to cause birth defects or other reproductive harm (the "Listed Chemical");

15 C. On December 17, 2004, Whitney R. Leeman, Ph.D. first served Onward and
16 other public enforcement agencies with a document entitled, "60-Day Notice of Violation", which
17 provided Onward and such public enforcers with notice that Onward was in violation of Health &
18 Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells in
19 California expose users to the Listed Chemical;
20

21 D. On March 21, 2005, Whitney R. Leeman, Ph.D. filed a complaint entitled,
22 Whitney R. Leeman, Ph.D. v. Onward Manufacturing Company Limited; Inmar Industries, Inc.;
23 Anaheim Patio & Fireside, Inc.; and Does 1 through 150, in the San Francisco Superior Court,
24 naming Onward as a defendant and alleging violations of Health & Safety Code §25249.6 in the
25 interest of the general public in California who allegedly have been exposed to the Listed Chemical
26 contained in certain products that Onward sells; and
27

1 E. Nothing in this Agreement shall be construed as an admission by Onward of
2 any fact, finding, issue of law, assertion, allegation or violation of law, nor shall compliance with
3 this Agreement constitute or be construed as an admission by Onward of any fact, finding,
4 conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or
5 otherwise affect the obligations, responsibilities, and duties of Onward under this Agreement.
6

7 **NOW THEREFORE, LEEMAN AND ONWARD AGREE AS FOLLOWS:**

8 **1. Warning Commitment.** Notwithstanding any warning that Onward has previously
9 provided with respect to the Products, and as long as any of the Products continue to contain toluene,
10 Onward agrees to promptly begin the process of labeling its Products that are intended for sale in the
11 State of California to include certain warning language specified below. Onward agrees to include
12 on the labeling of any such Product manufactured after November 28, 2005, the warning statements
13 as set forth in sections 1.1 and 1.2 below, as applicable:

14 **1.1.** For all Products containing toluene, such Products shall bear one of the
15 following warning statements:
16

17 **WARNING: This product contains toluene, a chemical known to the**
18 **State of California to cause birth defects and other**
19 **reproductive harm.**

20 or

21 **WARNING: This Product contains a chemical known to the State of**
22 **California to cause birth defects and other reproductive**
23 **harm.**

24 **1.2.** The warning statements shall be prominently placed on the Product's
25 label with such conspicuousness, as compared with other words, statements, designs or devices, by
26 way of adhesive sticker or otherwise printed on the label, as to render it likely to be read and
27 understood by an ordinary individual under customary conditions of purchase or use.

1 **2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to
2 Health & Safety Code §25249.7(b), Onward shall pay a civil penalty of \$1,000 within fifteen (15)
3 calendar days after the Effective Date of this Agreement and said payment shall be held by
4 Leeman's counsel in her firm trust account until the San Francisco County Superior Court approves
5 and enters the Settlement Agreement.
6

7 The penalty payments are to be made payable to "Chanler Law Group In Trust For
8 Whitney R. Leeman". Penalty monies shall be apportioned by Leeman in accordance with Health &
9 Safety Code §25192, with 75% of these funds remitted to the State of California's Department of
10 Toxic Substances Control. If the Settlement Agreement is not approved by the Court, Leeman will
11 return all funds within ten (10) calendar days of notice of the Court's decision.
12

13 Onward understands that the civil penalty amount stated in this Settlement Agreement
14 is a material factor upon which Leeman has relied in entering into this Settlement Agreement.
15 Onward agrees that the payment will be made in a timely manner in accordance with the payment
16 due date. Onward will be given a five (5) calendar day grace period from the date payment is due.
17 Onward agrees to pay Leeman a \$250 per calendar day fee for each day the payment is not received
18 after the grace period ends. For purposes of this paragraph, each new day (requiring an additional
19 \$250 payment) will begin at 5 p.m. (PST).
20

21 **3. Reimbursement Of Fees And Costs.** The parties acknowledge that Leeman
22 offered to resolve the dispute without reaching terms on the amount of fees and costs to be
23 reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement
24 had been reached, and the matter settled. Onward then expressed a desire to resolve the fee and cost
25 issue concurrently with other settlement terms, so the parties attempted to (and did) reach an accord
26
27

1 on the compensation due to Leeman and her counsel under the private attorney general doctrine
2 codified at C.C.P. §1021.5.

3 Onward shall reimburse Leeman and her counsel for her fees and costs, incurred as a
4 result of investigating, bringing this matter to Onward's attention, litigating and negotiating a
5 settlement in the public interest. Onward shall pay \$9,000 for all attorneys' fees, expert and
6 investigation fees, and litigation costs. Onward agrees to pay the total sum of \$9,000, within fifteen
7 (15) calendar days of the Effective Date. Such sum shall be held by Leeman's counsel in her firm
8 trust account until the San Francisco Superior Court approves and enters the Settlement Agreement.
9 If the Settlement Agreement is not approved by the Court, Leeman will return all funds within ten
10 (10) calendar days of notice of the Court's decision. Payment should be made payable to the
11 "Chanler Law Group".
12

13 Onward understands that the payment schedule as stated in this Settlement
14 Agreement is a material factor upon which Leeman has relied in entering into this Settlement
15 Agreement. Onward agrees that all payments will be made in a timely manner in accordance with
16 the payment due dates. Onward will be given a five (5) calendar day grace period from the date
17 payment is due. Onward agrees to pay Leeman a \$250 per calendar day fee for each day the
18 payment is not received after the grace period ends. For purposes of this paragraph, each new day
19 (requiring an additional \$250 payment) will begin at 5 p.m. (PST).
20

21 **4. Leeman's Release Of Onward.** Leeman, by this Agreement, on behalf of
22 herself, her agents, representatives, attorneys, assigns and in the interest of the general public,
23 waives all rights to institute or participate in, directly or indirectly, any form of legal action, and
24 releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against
25 Onward and its retailers, customers, directors, officers, employees, successors and assigns, based on
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1 Onward's alleged failure to warn for reproductive toxicity caused by exposure to the Listed
2 Chemical contained in any of the Products.

3 Further, Leeman shall dismiss without prejudice Inmar Industries, Inc. and Anaheim
4 Patio & Fireside, Inc within thirty (30) days on the Court's approval of this Consent Judgment.

5 **5. Onward's Release Of Leeman.** Onward, by this Agreement, waives all
6 rights to institute any form of legal action against Leeman and her attorneys or representatives, for
7 all actions or statements made by Leeman, and her attorneys or representatives, in the course of
8 seeking enforcement of Proposition 65 against Onward.

9 **6. Court Approval.** If, for any reason, this Settlement Agreement is not
10 approved by the Court, this Agreement shall be deemed null and void.

11 **7. Severability.** In the event that any of the provisions of this Agreement are
12 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
13 affected.

14 **8. Attorney's Fees.** In the event that a dispute arises with respect to any
15 provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable
16 attorneys' fees.

17 **9. Governing Law.** The terms of this Agreement shall be governed by the laws
18 of the State of California.

19 **10. Notices.** All correspondence to Leeman shall be mailed to:

20 Clifford A. Chanler
21 CHANLER LAW GROUP
22 71 Elm Street, Suite 8
23 New Canaan, CT 06840-3801

24 All correspondence to Onward shall be mailed to:

25 Thomas H. Clarke, Jr., Esq.
26 Dennis J. Byrne, esq.

1 ROPERS, MAJESKI, KOHN & BENTLEY
2 333 Market Street, Suite 3150
3 San Francisco, CA 94105

4 **11. Compliance With Reporting Requirements (Health & Safety Code**

5 **§25249.7(f)).** Plaintiff agrees to comply with the reporting form requirements referenced in
6 Health & Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section,
7 Plaintiff shall present this Consent Judgment to the California Attorney General's Office within five
8 (5) days after receiving all of the necessary signatures. A noticed motion to enter the Consent
9 Judgment will then be served on the Attorney General's Office at least forty-five (45) days prior to
10 the date a hearing is scheduled on such motion in the Superior Court for the City and County of
11 San Francisco unless the Court allows a shorter period of time

12
13 **12. Counterparts and Facsimile.** This Agreement may be executed in
14 counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken
15 together, shall constitute one and the same document.

16 **13. Authorization.** The undersigned are authorized to execute this Agreement on
17 behalf of their respective parties and have read, understood and agree to all of the terms and
18 conditions of this Agreement.
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2 **AGREED TO:**

AGREED TO:

3 Date: See next pg.

4 Date: Dec 1, 2005.

5 By:
6 Plaintiff Whitney R. Leeman, Ph.D.

By: scmittel.
Defendant Onward Manufacturing
Company Limited

7
8 **APPROVED AS TO FORM:**

Dec. 5, 2005

APPROVED AS TO FORM:

9 Date: [Signature]

Date: Dec. 2, 2005

10 **CHANLER LAW GROUP**

ROPER, MAJESKI, KOHN & BENTLEY

11 By:
12 Clifford A. Chanler
13 Attorneys for Plaintiff
14 Whitney R. Leeman, Ph.D.

By: [Signature] for
Thomas H. Clarke, Jr.
Attorneys for Defendant
Onward Manufacturing Company Limited

15 **IT IS SO ORDERED.**

16
17
18 **SEP 28 2006**

19 Date: _____

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

1
2 **AGREED TO:**

AGREED TO:

3 **Date:** 11/29/05

Date: _____

4
5 **By:** Whitney R. Leeman
6 **Plaintiff Whitney R. Leeman, Ph.D.**

By:
Defendant Onward Manufacturing
Company Limited

7
8 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

9 **Date:** _____

Date: _____

10 **CHANLER LAW GROUP**

ROPERS, MAJESKI, KOHN & BENTLEY

11 **By:**
12 **Clifford A. Chanler**
13 **Attorneys for Plaintiff**
14 **Whitney R. Leeman, Ph.D.**

By:
Thomas H. Clarke, Jr.
Attorneys for Defendant
Onward Manufacturing Company Limited

15 **IT IS SO ORDERED.**

16
17
18 **Date:** _____

See previous pg
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

BBQ Touch-Up Paint packaged by Onward Manufacturing and sold at various retail locations throughout California including, but not limited to:

GrillPro Black BBQ Paint (Pt. No. 70350)