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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

11 DR. WHITNEY R. LEEMAN,
12

13 Plaintiff,

14 v.

15 AMERICAN GREETINGS CORPORATION;
and DOES 1-150, inclusive,
16

Defendants.
17

Case No. CIV 1400348

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and American Greetings Corporation**

3 This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman
4 (“Leeman” or “Plaintiff”) and defendant American Greetings Corporation (“American
5 Greetings” or “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties”
6 and each individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Leeman alleges that American Greetings manufactured, imported, distributed, sold and/or
17 offered for sale greeting cards made with vinyl/PVC components containing the phthalate
18 chemical di(2-ethylhexyl)phthalate (“DEHP”) in the State of California without the health hazard
19 warnings required by Proposition 65. DEHP is listed pursuant to Proposition 65 as known to the
20 State of California to cause birth defects and other reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as greeting cards
23 made with vinyl/PVC components containing DEHP, specifically limited to the following
24 products: (1) the *Basketball Father’s Day Greeting Card*, (represented by UPC# 0 67008 9834
25 8); (2) the *“Brother We’ll Always Be Family” Greeting Card*, (represented by UPC# 6 45416
26 45570 1); and (3) the Papyrus branded *“Football” Greeting Card* (represented by UPC# 59584
27
28

1 05725), which American Greetings manufactured, imported, distributed, sold and/or offered for
2 sale in the State of California, hereinafter referred to collectively as the “Products.”

3 **1.6 Notice of Violation**

4 On May 31, 2013, Leeman served American Greetings and various public enforcement
5 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the
6 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that
7 greeting cards with vinyl/PVC components exposed users in California to DEHP. To the best of
8 the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
9 allegations set forth in the Notice.

10 **1.7 Complaint**

11 On or about January 28, 2014, Leeman, who was and is acting in the interest of the
12 general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in
13 and for the County of Marin against American Greetings and Does 1 through 150, alleging, *inter*
14 *alia*, violations of Proposition 65 based on the alleged exposures to DEHP contained in greeting
15 cards with vinyl/PVC components sold by American Greetings in the State of California.

16 **1.8 No Admission**

17 American Greetings denies the material, factual and legal allegations contained in
18 Leeman's Notice and Complaint. Nothing in this Consent Judgment shall be construed as an
19 admission by American Greetings of any fact, finding, issue of law, or violation of law; nor shall
20 compliance with this Consent Judgment constitute or be construed as an admission by American
21 Greetings of any fact, finding, conclusion, issue of law, or violation of law, such being
22 specifically denied by American Greetings. However, this section shall not diminish or
23 otherwise affect American Greetings’ obligations, responsibilities, and duties under this Consent
24 Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over American Greetings as to the allegations contained in the Complaint, that venue
28

1 is proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
5 this Consent Judgment is approved by the Court.

6 **2. INJUNCTIVE RELIEF: REFORMULATION**

7 As of the Effective Date, American Greetings shall only manufacture, distribute and/or
8 import for sale or use in the State of California Products that are “Reformulated Products.” For
9 purposes of this Consent Judgment Agreement, “Reformulated Products” shall mean Products
10 containing less than or equal to 1,000 ppm (0.1%) DEHP in each Accessible Component when
11 analyzed pursuant to EPA testing methodologies 3580A and 8270C or any other methodology
12 used by federal or state agencies for the purpose of determining DEHP content in a solid
13 substance. “Accessible Component” shall mean a component of a Product that can be touched by
14 a person during normal, intended and foreseeable use of the Product.

15 **3. MONETARY PAYMENTS**

16 In settlement of all claims referred to in this Consent Judgment, American Greetings shall
17 pay a total of \$16,500 in civil penalties in accordance with this Section. Each penalty payment
18 will be allocated in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with
19 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
20 (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman.

21 **3.1 Initial Civil Penalty**

22 American Greetings shall pay an initial civil penalty of \$6,000. American Greetings shall
23 issue a check in the amount of \$6,000 to “Aronberg Goldgehn Davis & Garmisa Special
24 Account” to be held in trust for OEHHA and Leeman within fifteen (15) days of the mutual
25 execution of this Consent Judgment by the Parties. Aronberg Goldgehn Davis & Garmisa shall
26 provide The Chanler Group with written confirmation within five (5) days of receipt that the
27 funds have been deposited in a trust account. Within two (2) days of the Effective Date,
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1 Aronberg Goldgehn Davis & Garmisa shall issue two separate checks for the initial civil penalty
2 payment to: (a) "OEHHA" in the amount of \$4,500; and (b) "The Chanler Group in Trust for Dr.
3 Whitney R. Leeman" in the amount of \$1,500.

4 **3.2 Final Civil Penalty**

5 American Greetings shall pay a final civil penalty of \$10,500 on or before May 15, 2014.
6 The final civil penalty shall be waived in its entirety, however, if, no later than May 1, 2014, an
7 officer of American Greetings provides Leeman with written certification that, as of the date of
8 such certification and continuing into the future, American Greetings has met the reformulation
9 standard specified in Section 2.1 above, such that all Products manufactured, imported,
10 distributed, sold and offered for sale in California by American Greetings are Reformulated
11 Products. The certification in lieu of a final civil penalty payment provided by this Section is a
12 material term, and time is of the essence. In the event the final civil penalty is not waived,
13 American Greetings shall issue two separate checks for its final civil penalty payments to: (a)
14 "OEHHA" in the amount of \$7,875; and (b) "The Chanler Group in Trust for Dr. Whitney R.
15 Leeman" in the amount of \$2,625.

16 **3.3 Payment Procedures**

17 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

18 (a) All payments owed to Leeman pursuant to Sections 3.1 and 3.2 shall be
19 delivered to the following payment address:

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

25 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
26 3.1 and 3.2, shall be delivered to OEHHA (Memo line "Prop 65 Penalties") at the following
27 addresses:

28 For United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 P.O. Box 4010
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

12 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address
13 set forth above in 3.3.1(a), as proof of payment to OEHHA.

14 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, 1099 forms shall be
15 issued for each payment to Leeman, whose address and tax identification number shall be
16 furnished upon request after this Consent Judgment Agreement has been fully executed by the
17 Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

18 **4. REIMBURSEMENT OF FEES AND COSTS**

19 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
20 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
21 this fee issue to be resolved after the material terms of the agreement had been settled. Leeman
22 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
23 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
24 due to Leeman and her counsel under general contract principles and the private attorney general
25 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through
26 the mutual execution of this agreement. American Greetings shall pay \$37,500 for fees and costs
27 incurred as a result of investigating, bringing this matter to American Greetings' attention, and
28 negotiating a settlement in the public interest. American Greetings shall issue a check payable to
"Aronberg Goldgehn Davis & Garmisa Special Account" in the amount of \$37,500 within fifteen
(15) days of the mutual execution of this Consent Judgment by the Parties. Aronberg Goldgehn
Davis & Garmisa shall provide The Chanler Group with written confirmation within five (5) days

1 of receipt that the funds have been deposited in a trust account. Within two (2) days of the
2 Effective Date, Aronberg Goldgehn Davis & Garmisa shall issue a check payable to “The Chanler
3 Group” to the address listed in Section 3.3.1(a) above and shall issue a separate 1099 for fees and
4 costs (EIN: 94-3171522),

5 **5. CLAIMS COVERED AND RELEASED**

6 **5.1 Leeman’s Public Release of Proposition 65 Claims**

7 Leeman acting on her own behalf and in the public interest releases American Greetings,
8 its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
9 employees, attorneys, and each entity to whom American Greetings directly or indirectly
10 distributes or sells Products, including but not limited to downstream distributors, wholesalers,
11 customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”)
12 from all claims for violations of Proposition 65 up through the Effective Date based on exposure
13 to DEHP from the Products. Compliance with the terms of this Consent Judgment constitutes
14 compliance with Proposition 65 with respect to exposures to DEHP from the Products.

15 **5.2 Leeman’s Individual Release of Claims**

16 Leeman also, in her individual capacity only and *not* in her representative capacity,
17 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
18 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
19 claims, liabilities and demands of Plaintiff of any nature, character or kind, whether known or
20 unknown, suspected or unsuspected, limited to and arising out of any violation of Proposition 65
21 regarding the failure to warn about exposure to DEHP in the Products manufactured, imported,
22 distributed, sold and/or offered for sale by Releasees.

23 **5.3 American Greetings’ Release of Leeman**

24 American Greetings on behalf of itself, its past and current agents, representatives,
25 attorneys, successors, and/or assignees, hereby waives any and all claims against Leeman, her
26 attorneys and other representatives, for any and all actions taken or statements made (or those
27 that could have been taken or made) by Leeman and her attorneys and other representatives,
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1 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
2 against it in this matter with respect to the Products.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the court and
5 shall be null and void if, for any reason, it is not approved and entered by the court within one
6 year after it has been fully executed by all Parties, in which event any monies that have been
7 provided to Leeman or her counsel pursuant to Section 3 above, shall be refunded within fifteen
8 (15) days after receiving written notice from American Greetings that the one-year period has
9 expired.

10 **7. SEVERABILITY**

11 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
12 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
13 provisions remaining shall not be adversely affected.

14 **8. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California and apply within the State of California. In the event that Proposition 65 is repealed
17 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
18 American Greetings shall have no further obligations pursuant to this Consent Judgment with
19 respect to, and to the extent that, the Products are so affected.

20 **9. NOTICES**

21 Unless specified herein, all correspondence and notices required to be provided pursuant
22 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
23 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
24 other Party at the following addresses:
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1 To American Greetings:

2 Christopher W. Haffke
3 General Counsel
4 American Greetings Corporation
5 One American Road
6 Cleveland, OH 44144

To Leeman:

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

7 With Copy to:

8 John M. Riccione, Esq.
9 Aronberg Goldgehn
10 330 N. Wabash Ave.
11 Suite 1700
12 Chicago, IL 60611

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

15 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

21 Leeman agrees to comply with the reporting form requirements referenced in California
22 Health & Safety Code § 25249.7(f).

23 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

24 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
25 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
26 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
27 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
28 Consent Judgment, which Leeman shall file, and which American Greetings shall not oppose. If
any third party objection to the noticed motion is filed, Leeman and American Greetings shall
work together to file a joint reply and appear at any hearing before the Court. If the Court does

1 not approve the motion to approve this Consent Judgment, and the Parties choose not to pursue a
2 modified Consent Judgment within 30 days of said denial, or in the event that the Court approves
3 this Consent Judgment and any person successfully appeals that approval, all payments made
4 pursuant to this Consent Judgment will be returned to American Greetings within fifteen (15)
5 days of an order reversing or vacating the approval.

6 13. MODIFICATION

7 This Consent Judgment may be modified only: (1) by written agreement of the Parties
8 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
9 motion of any Party and entry of a modified Consent Judgment by the court.

10 14. ENTIRE AGREEMENT

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments, and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party
15 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
16 deemed to exist or to bind any of the Parties.

17 15. AUTHORIZATION

18 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective parties and have read, understood, and agree to all of the terms and conditions of this
20 Consent Judgment.

21 AGREED TO:
22 Date: 2/6/14
23
24 By: Whitney R. Leeman
25 Dr. Whitney R. Leeman

AGREED TO:
Date: February 6, 2014
By: [Signature]
American Greetings Corporation