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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 DR. WHITNEY R. LEEMAN,)

Case No. RG 13703340

13 Plaintiff,)

[PROPOSED] CONSENT JUDGMENT

14 v.)

15 BAYCO PRODUCTS, INC.; and DOES 1-150,)
16 inclusive,)

(Health & Safety Code § 25249.6 *et seq.*)

17 Defendants.)
18)
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1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and Bayco Products, Inc.**

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

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Leeman alleges that Bayco has manufactured, imported, distributed, and/or sold vinyl/PVC
17 light bulb changer grips causing an exposure to di(2-ethylhexyl)phthalate (“DEHP”) in California
18 without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as known
19 to the State of California to cause cancer, birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as vinyl/PVC light bulb
22 changer grips containing DEHP including, but not limited to, the *7 Piece Light Bulb Changing Kit*
23 *LBC-602DA (#0 17398 450409)*, which Bayco manufactured, imported, distributed, and/or sold in
24 the State of California, hereinafter referred to as the “Noticed Products.” In addition to the Noticed
25 Products, this Consent Judgment covers *Pro Series Booster Cables*, including but not limited to *SL-*
26 *3006; 3VRZ7 (#0 17398 03006 9)*, which Bayco manufactured, imported, distributed, and/or sold in
27 the State of California, hereinafter referred to as the “Additional Products.” The Noticed Products
28 and Additional Products are referred to collectively as the “Products.”

1 **1.6 Notice of Violation**

2 On May 31, 2013, Leeman served Bayco and various public enforcement agencies, with a
3 document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice
4 of alleged violations of Proposition 65 for failing to warn consumers that the Noticed Products
5 allegedly exposed users in California to DEHP. To the best of the Parties’ knowledge, no public
6 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On or about November 15, 2013, Leeman, acting in the interest of the general public in
9 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County
10 of Alameda against Bayco and Does 1 through 150, alleging, *inter alia*, violations of Proposition 65
11 based on the alleged exposures to DEHP contained in the Noticed Products.

12 **1.8 No Admission**

13 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
14 were raised in the Notice and Complaint, or that could have been raised in the Notice and
15 Complaint, arising out of the facts or conduct alleged therein. Bayco denies the material, factual
16 and legal allegations contained in Leeman’s Notice and Complaint and maintains that all products it
17 has manufactured, imported, distributed and/or sold in the State of California, including the
18 Products, have been and are in compliance with all laws, and are completely safe for their intended
19 use. By execution of this Consent Judgment and agreeing to comply with its terms, Bayco does not
20 admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law
21 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or
22 equitable requirements relating to DEHP in the Products, such being specifically denied by Bayco.
23 Nothing in this Consent Judgment shall be construed as an admission by Bayco of any fact, finding,
24 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
25 construed as an admission by Bayco of any fact, finding, conclusion, issue of law, or violation of
26 law. However, this Section shall not diminish or otherwise affect Bayco’s obligations,
27 responsibilities, and duties under this Consent Judgment.

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 Jurisdiction over Bayco as to the allegations contained in the Complaint, that venue is proper in the
4 County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean February 27,
8 2015.

9 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

10 **2.1 Reformulation Standards**

11 As of the Effective Date, Bayco shall only manufacture, import, distribute, and/or sell in
12 California Products that are “Reformulated Products” or Products that contain Proposition 65
13 warnings pursuant to Section 2.2 below. Reformulated Products are defined as those Products
14 containing less than or equal to 0.1 percent (1,000 parts per million) DEHP in each Accessible
15 Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C. “Accessible
16 Component,” as used in this Consent Judgment, means a component of a Product that can be
17 touched by a person during normal, intended and foreseeable use of the Product.

18 **2.2 Product Warnings**

19 Commencing on the Effective Date, Bayco shall, for all Products it manufactures for sale in
20 California, other than Reformulated Products, provide clear and reasonable warnings as set forth in
21 subsections 2.2(a). Each warning shall be prominently placed with such conspicuousness as
22 compared with other words, statements, designs, or devices as to render it likely to be read and
23 understood by an ordinary individual under customary conditions before purchase or use. Each
24 warning shall be provided in a manner such that the consumer or user understands to which
25 *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

26 **(a) Retail Store Sales.**

27 **(i) Product Labeling.** Bayco shall affix a warning to the packaging,
28 labeling, or directly on each Product sold to retail outlets in California by Bayco or any person

1 selling the Products in California, that states:

2 **WARNING:** This product contains chemicals known to the State of California to
3 cause cancer, and birth defects or other reproductive harm.

4 **3. MONETARY PAYMENTS**

5 In settlement of all claims related to Noticed Products referred to in this Consent Judgment,
6 and subject to the qualification set forth in paragraphs 3.1 and 3.2 below, Bayco shall pay a total of
7 \$8,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in
8 accordance with California Health & Safety Code §§ 25249.12(c) & (d), with 75% of the funds
9 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
10 remaining 25% of the penalty remitted to Leeman.

11 **3.1 Initial Civil Penalty**

12 Bayco shall pay an initial civil penalty of \$2,000. Bayco shall issue a check in the amount
13 of \$2,000 to “Rogers Joseph O’Donnell Client Trust Account” to be held in trust for OEHHA
14 and Leeman within fifteen (15) days of the mutual execution of this Consent Judgment by the
15 Parties. Rogers Joseph O’Donnell shall provide The Chanler Group with written confirmation
16 within three (3) days of receipt that the funds have been deposited in its trust account. Within three
17 (3) business days of the approval of this Consent Judgment by the Court, Rogers Joseph O’Donnell
18 shall issue two separate checks for the initial civil penalty payment to: (a) “OEHHA” in the amount
19 of \$1,500; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$500.

20 **3.2 Final Civil Penalty**

21 Bayco shall pay a final civil penalty of \$6,000 on or before April 15, 2015. The final civil
22 penalty shall be waived in its entirety, however, if, no later than April 1, 2015, an officer of Bayco
23 provides Leeman with written certification that, as of the date of such certification and continuing
24 into the future, Bayco has met the reformulation standard specified in Section 2.1 above for Noticed
25 Products, such that all Noticed Products manufactured, imported, distributed, sold and offered for
26 sale in California by Bayco are Reformulated Products. The certification in lieu of a final civil
27 penalty payment provided by this Section is a material term, and time is of the essence. In the event
28 the final civil penalty is not waived, Bayco shall issue two separate checks for its final civil penalty

1 payments to: (a) “OEHHA” in the amount of \$4,500; and (b) “Dr. Whitney R. Leeman, Client Trust
2 Account” in the amount of \$1,500.

3 **3.3 Payment Procedures**

4 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

5 (a) All payments owed to Leeman pursuant to Sections 3.1, 3.2 and 3.4
6 shall be delivered to the following payment address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
13 3.1 and 3.2, shall be delivered to OEHHA (Memo line “Prop 65 Penalties”) at the following
14 addresses:

15 For United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 P.O. Box 4010
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street
26 Sacramento, CA 95814

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

1 **3.4. Reimbursement of Fees and Costs**

2 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 this fee issue to be resolved after the material terms of the agreement had been settled. Leeman then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The Parties then attempted to (and did) reach an accord on the compensation due
7 to Leeman and her counsel under general contract principles and the private attorney general
8 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through
9 the mutual execution of this agreement, and any further work necessary to seek and obtain court
10 approval of this Consent Judgment. Bayco shall pay \$31,000 for plaintiff’s fees and costs incurred
11 as a result of investigating, bringing this matter to Bayco’s attention, negotiating a settlement in the
12 public interest, and any further work necessary to seek and obtain court approval of this Consent
13 Judgment. Bayco shall issue a check payable to “Rogers Joseph O’Donnell Client Trust Account”
14 in the amount of \$31,000 within fifteen (15) days of the mutual execution of this Consent Judgment
15 by the Parties. Rogers Joseph O’Donnell shall provide The Chanler Group with written
16 confirmation within three (3) days of receipt that the funds have been deposited in a trust account.
17 Within three (3) business days of the approval of this Consent Judgment by the Court, Rogers
18 Joseph O’Donnell shall issue a check payable to “The Chanler Group” to the address listed in
19 Section 3.3.1(a) above. Except as set forth herein each Party shall bear its own attorney’s fees and
20 expenses.

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Leeman’s Public Release of Proposition 65 Claims**

23 Leeman, acting on her own behalf and in the public interest, releases Bayco, its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys
25 (“Defendant Releasees”), and each entity to whom Bayco directly or indirectly distributes or sells
26 Noticed Products, including, but not limited to, downstream distributors, wholesalers, customers,
27 retailers, franchisees, cooperative members, licensors and licensees (“Downstream Defendant
28 Releasees”), from all claims for violations of Proposition 65 asserted in the public interest in her

1 Notice and Complaint for Noticed Products manufactured, imported, distributed and/or sold by
2 Bayco up through the Effective Date based on alleged exposures to DEHP from the Noticed
3 Products as set forth in the Notice and Complaint. Compliance with the terms of this Consent
4 Judgment by Bayco constitutes compliance with Proposition 65 with respect to exposures to DEHP
5 from the Noticed Products manufactured, imported, distributed and/or sold after the Effective Date
6 by Defendant, Defendant Releasees and Downstream Defendant Releasees as alleged in the Notice
7 and Complaint.

8 Leeman, on behalf of herself, her past and current agents, representatives, attorneys,
9 successors, and/or assignees, and in the public interest, hereby waives all rights to institute or
10 participate in, directly or indirectly, any form of legal action and releases all claims, including,
11 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
12 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
13 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever (collectively
14 "Claims"), against Bayco, Defendant Releasees, and Downstream Defendant Releasees arising from
15 any alleged violation of Proposition 65 regarding the alleged failure to warn about alleged exposure
16 to DEHP in the Noticed Products.

17 **4.2 Leeman's Individual Release of Claims**

18 Leeman, on her own behalf, and on behalf of her past and current agents, representatives,
19 attorneys, successors, and/or assignees, also provides a release herein which shall be effective as a
20 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
21 expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of any nature, character,
22 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
23 exposures to DEHP in Products manufactured, imported, distributed, and/or sold by Bayco,
24 Defendant Releasees, and Downstream Defendant Releasees. Leeman acknowledges that she is
25 familiar with Section 1542 of the California Civil Code, which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
28 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

1 Leeman, in her individual capacity only, expressly waives and relinquishes any and all rights and
2 benefits which she may have under, or which may be conferred on her by the provisions of Section
3 1542 of the California Civil Code as well as under any other state or federal statute or common law
4 principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits
5 pertaining to the released matters. In furtherance of such intention, the release hereby given shall be
6 and remain in effect as a full and complete release notwithstanding the discovery or existence of
7 any such additional or different claims or facts arising out of the released matters.

8 The releases provided by Section 4.2 are expressly limited to those claims that arise under
9 Proposition 65, as such claims relate to Bayco's alleged failure to warn about exposures to or
10 identification of DEHP contained in the Products, as such claims are identified in the Proposition 65
11 60-Day Notice to Bayco and to the extent that any alleged violations of Proposition 65 related to
12 DEHP occur in Products manufactured, imported, distributed and/or sold by Bayco prior to the
13 Effective Date.

14 The releases provided by Section 4.2 are solely on Leeman's behalf, and not on behalf of the
15 public in California.

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

17 Bayco on behalf of itself, its past and current agents, representatives, attorneys, successors,
18 and/or assignees, hereby waives any and all claims against Leeman, her attorneys and other
19 representatives, for any and all actions taken or statements made (or those that could have been
20 taken or made) by Leeman and her attorneys and other representatives, whether in the course of
21 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter, and/or
22 with respect to the Products.

23 Bayco also provides a general release herein which shall be effective as a full and final
24 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
25 attorneys' fees, damages, losses, claims, liabilities and demands of Bayco of any nature, character
26 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the
27 Action relating to alleged DEHP in the Products. Bayco acknowledges that it is familiar with
28 Section 1542 of the California Civil Code, which provides as follows:

1
2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
3 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
4 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
5 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
6 SETTLEMENT WITH THE DEBTOR.

7 Bayco expressly waives and relinquishes any and all rights and benefits which it may have under, or
8 which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well
9 as under any other state or federal statute or common law principle of similar effect, to the fullest
10 extent that it may lawfully waive such rights or benefits pertaining to the released matters relating to
11 alleged DEHP in the Products. In furtherance of such intention, the release hereby given shall be
12 and remain in effect as a full and complete release notwithstanding the discovery or existence of
13 any such additional or different claims or facts arising out of the released matters.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
17 after it has been fully executed by all Parties. If the Court does not approve and enter the Consent
18 Judgment within one year of the full execution of this Consent Judgment by the Parties, any monies
19 that have been provided to or held in trust for OEHHA, Leeman or her counsel pursuant to Section
20 3, above, shall be refunded to Bayco within 15 days.

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
28 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Bayco
shall provide written notice to Leeman of any asserted change in the law, and shall have no further
obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products

1 are so affected.

2 **8. NOTICES**

3 Unless otherwise specified herein, all correspondence and notices required to be provided
4 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
5 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
6 the other party at the following addresses:

7
8 To Bayco:

9 Bijan Bayat, President
10 Bayco Products, Inc.
640 Sanden Boulevard
11 Wylie, TX 75098

To Leeman:

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

12 With a copy to:

13 James Robert Maxwell
14 Rogers Joseph O'Donnell
311 California St., 10th Floor
San Francisco, CA 94104

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

22 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

23 Leeman and her attorneys agree to comply with the reporting form requirements referenced
24 in California Health & Safety Code § 25249.7(f).

25 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

26 Leeman and Bayco agree to mutually employ their best efforts to support the entry of this
27 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
28

1 timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code
2 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
3 Leeman shall draft and file, and Bayco shall not oppose. If any third-party objection to the noticed
4 motion is filed, Leeman and Bayco shall work together to file a joint reply and appear at any
5 hearing before the Court. This provision is a material component of the Consent Judgment and
6 shall be treated as such in the event of a breach.

7 **12. MODIFICATION**

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

11 **13. ENTIRE AGREEMENT**

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

18 **14. AUTHORIZATION**

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

22 **AGREED TO:**

AGREED TO:

23
24 Date: 2/13/15

Date: 2/5/15

25
26 By: Whitney R. Leeman
27 Dr. Whitney R. Leeman

28 By: [Signature]
Bayco Products, Inc.