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Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
BEAM SUNTORY INC.; *et al.*,
Defendants.

) Case No. CGC-16-550527
)
) **[PROPOSED] CONSENT JUDGMENT**
)
) Cal. Health & Safety Code § 25249.6 et seq.
) and Cal. Code Civ. Proc. § 664.6
)
) Action Filed: February 22, 2016
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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D., (“Leeman”) and defendant Beam Suntory Inc. (“Beam”) with Leeman and Beam collectively referred to as the “parties.”

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

Leeman alleges that Beam manufactures, imports, distributes and/or sells in the State of California drinking glasses with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are defined as drinking glasses that are packaged with Beam alcohol beverage products and bear exterior designs containing lead including, but not limited to, the glass offered in connection with the *Courvoisier Gift Set, UPC #0 80686 96122 2*, which are manufactured, imported, distributed, sold and/or offered for sale by Beam in the State of California, hereinafter the “Products.”

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1 **1.6 Notices of Violation**

2 On December 1, 2015, Leeman served Beam and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation (“Notice”) that provided the recipients with notice that Beam
4 violated California Health & Safety Code § 25249.6 when it failed to warn its customers and
5 consumers in California that its drinking glasses with exterior decorations expose users to lead.

6 **1.7 Complaint**

7 On February 22, 2016, Leeman filed the captioned action (“Complaint”) to enforce the
8 alleged violations that are the subject of the Notice.

9 **1.8 No Admission**

10 Beam denies the material, factual, and legal allegations contained in Leeman’s Notice and
11 Complaint and maintains that all products that it has sold, manufactured, imported and/or
12 distributed in California, including the Products, have been and are in compliance with all laws.
13 Nothing in this Consent Judgment shall be construed as an admission by Beam of any fact, finding,
14 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
15 constitute or be construed as an admission by Beam of any fact, finding, conclusion, issue of law or
16 violation of law. This section shall not, however, diminish or otherwise affect Beam’s obligations,
17 responsibilities and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the parties stipulate that this Court has
20 jurisdiction over Beam as to the allegations contained in the Complaint, that venue is proper in the
21 County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date which
25 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
26 approval of this Consent Judgment.

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

2 Commencing within forty-five days of the Effective Date, and continuing thereafter, Beam
3 agrees to only manufacture for sale or purchase for sale in California, “Reformulated Products.”
4 For Purposes of this Consent Judgment, “Reformulated Products” are defined as Products with
5 exterior decorations (a) containing a maximum of 100 parts per million (“ppm”) of lead by weight
6 analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B,
7 *and* (b) no more than 1.0 micrograms of lead when sampled and analyzed pursuant to the NIOSH
8 9100 testing protocol.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty Payments**

11 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to
12 in this Consent Judgment, Beam shall pay \$18,000 in civil penalties. This civil penalty payment
13 will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) &
14 (d), with 75% of the penalty amount remitted to the California Office of Environmental Health
15 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Leeman.
16 Beam shall provide its payment in a single check made payable to “Whitney R. Leeman Client
17 Trust Account”, to be delivered to the address provided in section 3.3, below. Leeman’s counsel
18 shall be responsible for remitting Beam’s penalty payment(s) under this settlement to OEHHA.

19 **3.2 Reimbursement of Attorneys’ Fees and Costs**

20 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
22 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
23 the other settlement terms had been finalized, the Parties negotiated a resolution of the
24 compensation due to Leeman and her counsel under general contract principles and the private
25 attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work
26 performed through the mutual execution of this agreement and the Court’s approval of the same,
27 but exclusive of fees and costs on appeal, if any, Beam shall reimburse Leeman and her counsel
28 \$39,000. Beam’s payment shall be delivered to the address in Section 3.4 in the form of a check

1 payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by
2 Leeman investigating, bringing this matter to Beam’s attention, litigating, and negotiating a
3 settlement of the matter in the public interest.

4 **3.3 Payment Timing; Payments Held In Trust**

5 Beam shall deliver all payments required by this Consent Judgment to its counsel within
6 two weeks of the date that this agreement is fully executed by the Parties. Beam’s counsel shall
7 confirm receipt of settlement funds in writing to Leeman’s counsel and, thereafter, hold the
8 amounts paid in trust until such time as the Court grants the motion for approval of the Parties’
9 settlement contemplated by Section 5. Within two days of the Effective Date, Beam’s counsel
10 shall deliver all settlement payments it has held in trust to Leeman’s counsel at the address
11 provided in Section 3.4.

12 **3.4 Payment Address**

13 All payments required by this Consent Judgment shall be delivered to the following
14 address:

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 This Consent Judgment is a full, final and binding resolution of all claims that were or could
23 have been asserted in the Complaint. Leeman, acting on her own behalf and in the public interest,
24 releases Beam and its parents, subsidiaries (including but not limited to Jim Beam Brands Co.),
25 affiliated entities under common ownership, directors, officers, employees, and attorneys, and the
26 successors and assigns of each of them (“Releasees”) and each entity to whom it directly or
27 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,
28 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees, and the
successors and assigns of each of them (“Downstream Releasees”) for any violations arising under

1 Proposition 65 for unwarned exposures to lead from the Products sold by Beam prior to forty-five
2 (45) days after the Effective Date, as set forth in the Notice and/or Complaint. Compliance with the
3 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
4 exposures to lead from the Products.

5 **4.2 Leeman's Individual Release of Claims**

6 Leeman, in her individual capacity only and *not* in her representative capacity, also provides
7 a release to Beam, Releasees, and Downstream Releasees which shall be effective as a full and final
8 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
9 attorneys' fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
10 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
11 exposures to lead in the Products sold by Beam before forty-five (45) days after the Effective Date.

12 **4.3 Beam's Release of Leeman**

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

19 **4.4 Mutual Waiver of California Civil Code Section 1542**

20 The Parties each acknowledge she/it is familiar with Section 1542 of the Civil Code,
21 which provides as follows:

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

25 The Parties, each on her/its own behalf, and on behalf of hers/its past and current agents,
26 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and
27 all rights and benefits which they may have under, or which may be conferred upon them by the
28 provisions of Civil Code section 1542 as well as under any other state or federal statute or

1 common law principle of similar effect, to the fullest extent she/it may lawfully waive such
2 rights or benefits pertaining to the released matters, as specifically defined by Sections 4.2 and
3 4.3, above.

4 **4.5 Compromise of Claims; No Admission by Either Party**

5 The Parties agree, understand, and acknowledge that this Settlement Agreement represents a
6 compromise of this action and the release of claims as set forth herein, and that neither the fact nor
7 the terms of this Settlement Agreement shall be construed as an admission of liability or wrongdoing
8 on the part of the Parties.

9 **4.6 Representations**

10 Beam represents that the sales data it provided to Leeman was truthful to its knowledge and
11 a material factor upon which Leeman has relied to determine the amount of civil penalties assessed
12 pursuant to Health & Safety Code § 25249.7(b) in this Consent Judgment.

13 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

18 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
19 Consent Judgment are Leeman by a court to be unenforceable, the validity of the enforceable
20 provisions remaining shall not be adversely affected.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
24 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
25 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
26 preemption or rendered inapplicable by reason of law generally as to the Products, then Beam shall
27 provide written notice to Leeman of any asserted change in the law, and shall have no further
28 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the

1 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Beam
2 from any obligation to comply with any pertinent state or federal toxics control law.

3 **8. NOTICES**

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

8 To Beam Suntory Inc.:

9 Ann G. Grimaldi, Esq.
10 Grimaldi Law Offices
11 50 California Street, Suite 1500
San Francisco, CA 94111

To Dr. Whitney R. Leeman:

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

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

14 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

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

21 **11. MODIFICATION**

22 This Consent Judgment may be modified only: (1) by written agreement of the parties and
23 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
24 of any party and entry of a modified Consent Judgment by the Court.

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12. AUTHORIZATION

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


AGREED TO:

AGREED TO:

Date: 10/7/2016

Date: 10/12/2016

By: 
Whitney R. Leeman, Ph.D.

By: 
Megan Sunderland
Vice President, Global Procurement
Beam Suntory Inc.