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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.
CW INTERNATIONAL SALES LLC;
CRYSTALWARE INT'L LLC; and DOES 1-
150, inclusive,
Defendants.

Case No. CGC-16-551059
[Proposed] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman,
4 Ph.D. (“Leeman”) and defendants CW International Sales LLC and Crystalware Int’l LLC
5 (collectively “CW International”), with Leeman and CW International each referred to
6 individually as a “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Leeman is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 CW International 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 and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Leeman alleges that CW International manufactures, imports, sells and/or distributes for
17 sale in California, vinyl/PVC gloves containing the phthalate chemical di(2-ethylhexyl)phthalate
18 (“DEHP”), and that it does so without providing the health hazard warning that Leeman alleges is
19 required by Proposition 65.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are vinyl/PVC gloves containing DEHP,
22 including, but not limited to, the *Sterex Vinyl Powder Free Gloves, VGPCPFGS, UPC #8 15797*
23 *01058 9* (collectively, “Products”).

24 **1.6 Notice of Violation**

25 On December 29, 2015, Leeman served CW International and the requisite public
26 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that CW
27 International violated Proposition 65 when it failed to warn its customers and consumers in
28 California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no

1 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations
2 set forth in the Notice.

3 **1.7 Complaint**

4 On March 22, 2016, Leeman commenced the instant action, naming CW International,
5 among others, as a defendant for the alleged violations of Proposition 65 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

17 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
25 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on or before the Effective Date, and continuing thereafter, CW International
4 agrees to only sell, distribute for sale, manufacture for sale, or purchase for sale in or into
5 California, "Reformulated Products". For purposes of this Consent Judgment, "Reformulated
6 Products" are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts
7 per million) when analyzed pursuant to U.S. Environmental Protection Agency testing
8 methodologies 3580A and 8270C or other methodology utilized by federal or state government
9 agencies for the purpose of determining DEHP content in a solid substance.

10 **2.2 Exception for Existing Inventories and Non-California Customers**

11 The Parties agree that the reformulation commitment required by Section 2.1 of this
12 agreement shall not apply to Products already in the stream of commerce prior to the Effective
13 Date. For purposes of this section, "sell, distribute for sale, manufacture for sale, or purchase for
14 sale in or into California" shall mean Products that CW International ships: (i) to a California
15 address with actual or constructive knowledge that the purchaser is or is expected to re-sell to a
16 California consumer or business; or (ii) to a customer with an address outside of California which
17 CW International reasonably believes will re-sell to a California consumer or business. Products
18 in third party, California-based inventories prior to the Effective Date are released under Section 4
19 of this agreement.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

22 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
23 claims referred to in this Consent Judgment, CW International shall pay \$3,100 in civil penalties
24 in accordance with this Section. The penalty payment will be allocated in accordance with
25 California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount
26 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and
27 the remaining 25% of the penalty amount paid to Plaintiff. Leeman's counsel shall be responsible
28 for remitting CW International's penalty payment(s) under this Consent Judgment to OEHHA.

1 **3.2 Reimbursement of Attorneys' 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
4 leaving the issue to be resolved after the material terms of the agreement had been settled.
5 Shortly after the other settlement terms had been finalized, CW International expressed a desire
6 to resolve Leeman's fees and costs. The Parties then negotiated a resolution of the compensation
7 due 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
9 through the mutual execution of this agreement and the Court's approval of the same, but
10 exclusive of fees and costs on appeal, if any, CW International shall reimburse Leeman and her
11 counsel \$30,900. CW International's payment shall be delivered to the address in Section 3.4 in
12 the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees
13 and costs incurred by Leeman investigating, bringing this matter to CW International's attention,
14 litigating, and negotiating a settlement of the matter in the public interest.

15 **3.3 Payment Timing**

16 Within ten (10) business days of the Effective Date, CW International shall deliver all
17 settlement payments to Leeman's counsel at the address provided in Section 3.4, including
18 Leeman's fees and costs described in Section 3.2.

19 **3.4 Payment Address**

20 All payments required by this Consent Judgment shall be delivered to the following
21 address:

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

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Leeman's Release of Proposition 65 Claims**

 Leeman, acting on her own behalf and in the public interest, releases CW International
and their parents, subsidiaries, affiliated entities under common ownership, directors, officers,

1 employees, and attorneys (“Releasees”) and each entity to whom they directly or indirectly
2 distribute or sell the Products including, but not limited to, their downstream distributors,
3 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
4 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned
5 exposures to DEHP from the Products manufactured, imported, distributed or sold by CW
6 International prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
7 this Consent Judgment constitutes compliance with Proposition 65 by CW International with
8 respect to the alleged or actual failure to warn about exposures to DEHP from Products
9 manufactured, sold or distributed for sale by CW International after the Effective Date.

10 **4.2 Leeman’s Individual Release of Claims**

11 Leeman, in her individual capacity only and *not* in her representative capacity, also
12 provides a release to Defendants, Releasees, and Downstream Releasees which shall be effective
13 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
14 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of
15 any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out
16 of alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold
17 by CW International before the Effective Date.

18 **4.3 CW International’s Release of Leeman**

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

25 **5. COURT APPROVAL**

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

1 support the entry of this agreement as a judgment, and to obtain the Court's approval of their
2 settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and
3 Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent
4 Judgment, which motion Leeman shall draft and file and CW International shall support,
5 including by appearing at the hearing if so requested. If any third-party objection to the motion is
6 filed, Leeman and CW International agree to work together to file a reply and appear at any
7 hearing. This provision is a material component of the Consent Judgment and shall be treated as
8 such in the event of a breach.

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California and apply within the State of California. In the event that Proposition 65 is repealed,
16 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
17 then CW International may provide Leeman with written notice of any asserted change in the law,
18 and shall have no further obligations pursuant to this Consent Judgment, with respect to, and to
19 the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
20 interpreted to relieve CW International from its obligation to comply with any pertinent state or
21 federal law or regulation.

22 **8. NOTICE**

23 Unless specified herein, all correspondence and notice required by this Consent Judgment
24 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
25 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
26 following addresses:
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2 To CW International:
3 Carol Brophy, Esq.
4 Sedgwick, LLP
5 333 Bush St., 30th Floor
6 San Francisco, CA 94104

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

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

9 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile or portable
11 document format (pdf) signature, each of which shall be deemed an original and, all of which,
12 when taken together, shall constitute one and the same document.

13 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

14 Leeman and her counsel agree to comply with the reporting form requirements referenced
15 in California Health and Safety Code section 25249.7(f).

16 **11. MODIFICATION**

17 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
18 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful
19 motion of any party and the entry of a modified Consent Judgment by the Court thereon.

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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:


WHITNEY B. LEEMAN, PH.D.

Dated: 9/8/16

AGREED TO:


CW INTERNATIONAL SALES LLC

By: Abraham Weindgen
(Print Name)

Its: CEO
(Title)

Dated: 9/12/16