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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 ELECTROLUX NORTH AMERICA, INC.; *et*
20 *al.*,

21 Defendants.

Case No. CGC16551062

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D.
4 (“Leeman”) and Electrolux Home Care Products, Inc., erroneously sued herein as Electrolux Home
5 Products, Inc. and Electrolux North America, Inc. (“Electrolux”), with Leeman and Electrolux each
6 individually referred to as a “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Leeman alleges that Electrolux manufactures, imports, sells, or distributes for sale in
17 California, vacuums with vinyl/PVC hoses that contain di(2-ethylhexyl) phthalate (“DEHP”) without
18 first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
19 Proposition 65 as a chemical known to the State of California to cause birth defects or other
20 reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are vacuums with vinyl/PVC hoses
23 containing DEHP that are manufactured, imported, sold, or distributed for sale in California by
24 Electrolux including, but not limited to, the *Eureka Airspeed Ultra Multicyclonic Vacuum (Hose)*,
25 *Model AS4008, UPC#0 23169 13954 1*, hereinafter the “Products.”

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1 **1.6 Notices of Violation**

2 On December 29, 2015, Leeman served Electrolux and the requisite public enforcement
3 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Electrolux violated Proposition
4 65 by failing to warn its customers and consumers in California of the health hazards associated with
5 exposures to DEHP from the Products. To the best of the Parties’ knowledge, no public enforcer has
6 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

7 **1.7 Complaint**

8 On March 22, 2016, Leeman filed the instant action (“Complaint”), naming Electrolux as a
9 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
10 the Notice.

11 **1.8 No Admission**

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

20 **1.9 Jurisdiction**

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

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
3 the Motion for Approval of the Consent Judgment is granted by the Court.

4 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

5 **2.1 Commitment to Reformulate or Provide Warnings**

6 Commencing on the Effective Date, and continuing thereafter, Electrolux agrees to only
7 manufacture, distribute, or offer for sale in or into California: (a) “Reformulated Products”, or (b)
8 Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.3
9 below.

10 **2.2 Reformulated Products Defined**

11 For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products
12 containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any
13 component that may be touched during use) when analyzed pursuant to Environmental Protection
14 Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or
15 state agencies for the purpose of determining DEHP content in a solid substance.

16 **2.3 Clear and Reasonable Warnings Defined**

17 Electrolux agrees that on or before January 1, 2017, all Products it manufactures, imports
18 and/or purchases for sale in California that do not bear a warning pursuant to Health & Safety Code
19 section 252603 *et seq.*, or qualify as Reformulated Products, will bear a clear and reasonable warning
20 pursuant to this Section. Electrolux further agrees that the warning will be prominently placed with
21 such conspicuousness when compared with other words, statements, designs or devices as to render it
22 likely to be read and understood by an ordinary individual under customary conditions of use. For
23 purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist
24 of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and
25 containing the following statements:

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1 **⚠ WARNING:** This product can expose you to chemicals
2 including DEHP, which is known to the State of
3 California to cause cancer and birth defects or
4 other reproductive harm. For more information
5 go to www.P65Warnings.ca.gov.

6 Or,

7 **WARNING:** This product contains DEHP, a chemical known
8 to the State of California to cause birth defects
9 and other reproductive harm.

10 Or,

11 **WARNING:** This product contains a chemical known to the
12 State of California to cause cancer and birth
13 defects or other reproductive harm. WASH
14 HANDS AFTER HANDLING.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payments**

17 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
18 this Consent Judgment, Electrolux shall pay \$10,000 in civil penalties. The civil penalty payment
19 will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d),
20 with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
21 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Plaintiff. Electrolux
22 shall make its civil penalty payment of \$10,000, in two checks for the following amounts made
23 payable to (a) “OEHHA” in the amount of \$7,500; and (b) “Whitney R. Leeman, Client Trust
24 Account” in the amount of \$2,500.

25 **3.2 Reimbursement of Attorney’s Fees and Costs**

26 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
28 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
other settlement terms had been finalized, Electrolux expressed a desire to resolve Leeman’s fees and
costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman
and her counsel under general contract principles and the private attorney general doctrine codified at
California Code of Civil Procedure section 1021.5 for all work performed through the mutual

1 execution of this Consent Judgment. Electrolux shall issue a check to "The Chanler Group" in the
2 amount of \$36,000, pursuant to the payment procedures in Section 3.3 below, and to the address
3 found in Section 3.4 below.

4 **3.3 Payments Held in Trust**

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

11 **3.4 Payment Address**

12 All payments required by this Consent Judgment shall be delivered to:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Leeman's Public Release of Proposition 65 Claims**

20 Leeman, acting on her own behalf and in the public interest, releases Electrolux and its
21 parents, subsidiaries, affiliates, including but not limited to Electrolux North America, Inc. and
22 Electrolux Home Products, Inc., affiliated entities under common ownership, directors, officers,
23 employees, and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes
24 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
25 customers, retailers, franchisers, resellers, cooperative members, licensors and licensees
26 ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures
27 to DEHP from Products sold by Electrolux prior to the Effective Date, as set forth in the Notice.

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1 **4.2 Leeman’s Individual Release of Claims**

2 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
3 release to Electrolux, Releasees, and Downstream Releasees which shall be effective as a full and
4 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
6 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to DEHP in the Products sold or distributed for sale by Electrolux before the Effective
8 Date.

9 **4.3 Electrolux’s Release of Leeman**

10 Electrolux, on its own behalf, and on behalf of its past and current agents, representatives,
11 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
12 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
13 her attorneys and other representatives, whether in the course of investigating claims, otherwise
14 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

15 **5. COURT APPROVAL**

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

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the state of California
25 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
26 rendered inapplicable by reason of law generally, or as to the Products, then Electrolux may provide
27 written notice to Leeman of any asserted change in the law, and shall have no further injunctive
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1 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
2 so affected.

3 **8. NOTICE**

4 Unless specified herein, all correspondence and notice required by this Consent Judgment
5 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
6 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

7 **For Electrolux:**

8 Andrew Stienecker, Esq.
9 Electrolux North America, Inc.
10 10200 David Taylor Drive
11 Charlotte, NC 28262

For Leeman:

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

12 Rebecca M. Biernat, Esq.
13 Tucker Ellis LLP
14 One Market Plaza, Steuart Tower, Suite 700
San Francisco, CA 94105

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

21 **10. POST EXECUTION ACTIVITIES**

22 Leeman agrees to comply with the reporting form requirements referenced in Health and
23 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
24 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
25 furtherance of obtaining such approval, Leeman and Electrolux agree to mutually employ their best
26 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
27 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
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1 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
2 supporting the motion, and appearing at the hearing before the Court.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
5 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
6 of any Party, and the entry of a modified consent judgment thereon by the Court.

7 **12. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
9 Parties and acknowledge that they have read, understood, and agree to all of the terms and conditions
10 contained herein.


11 **AGREED TO:**

AGREED TO:

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13 Date: 10/21/2016

Date: 22 NOV 16

14
15 By: 
16 WHITNEY R. LEEMAN, PH.D.

By: 
17 CRAIG AMICK, DIRECTOR, COMMERCIAL
18 DEVELOPMENT, ELECTROLUX SMALL
19 APPLIANCES, ELECTROLUX HOME CARE
20 PRODUCTS, INC.

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