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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF MARIN
17 UNLIMITED CIVIL JURISDICTION
18

19 WHITNEY R. LEEMAN, PH.D.,

20 Plaintiff,

21 v.

22 HANGZHOU GREATSTAR TOOLS CO.,
23 LTD.; et al.,

24 Defendants.

25 Case No. CIV1501296

26 **[PROPOSED] CONSENT JUDGMENT**
27
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This settlement agreement in the form of a proposed Consent Judgment (“Consent
4 Judgment”) is entered into by and between plaintiff Whitney R. Leeman, Ph.D. (“Leeman”) on
5 the one hand and defendant Hangzhou GreatStar Tools Co., Ltd. (“Hangzhou”) on the other hand.
6 Hangzhou and Leeman are each individually referred to as a “Party” and, collectively, as the
7 “Parties.”

8 **1.2 Plaintiff**

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

12 **1.3 Defendant**

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

16 **1.4 General Allegations**

17 Leeman alleges that Hangzhou manufactures, distributes, sells or otherwise offers for sale
18 in the State of California tools with vinyl/PVC grips containing di(2-ethylhexyl)phthalate
19 (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65.
20 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
21 birth defects or other reproductive harm.

22 **1.5 Notices of Violation**

23 On January 23, 2015, Leeman served Hangzhou’s retail customer in California, Office
24 Depot, Inc. (“Office Depot”), and the requisite public enforcement agencies with a “60-Day
25 Notice of Violation” (“Notice”) alleging Office Depot violated Proposition 65 by failing to warn
26 its customers and consumers in California of the health hazards associated with exposures to
27 DEHP from the vinyl/PVC grips of its tools.

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1 Thereafter, on August 10, 2015, Leeman served Hangzhou, Office Depot and the requisite
2 public enforcement agencies with a "Supplemental 60-Day Notice of Violation" ("Supplemental
3 Notice") alleging Hangzhou also violated Proposition 65 by failing to warn its customers and
4 consumers in California of the health hazards associated with exposures to DEHP from the
5 vinyl/PVC grips of its tools.

6 The Notice and Supplemental Notice are referred to, collectively, as the "Notices." To the
7 best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting
8 the allegations set forth in the Notices.

9 **1.6 Complaint**

10 On April 8, 2015, Leeman filed the instant action, naming Office Depot as a defendant for
11 the alleged violations of Health and Safety Code § 25249.6 that are the subject of the Notice.
12 Thereafter, on November 30, 2015, Leeman filed a First Amended Complaint ("Complaint"), the
13 operative pleading in this action, adding Hangzhou as a defendant for the alleged violations that
14 are the subject of the Supplemental Notice.

15 **1.7 No Admission**

16 Hangzhou denies the material, factual and legal allegations contained in the Notices and
17 Complaint, as amended by this Consent Judgment. Hangzhou maintains that all of the products it
18 has manufactured, distributed or otherwise offered for sale in California, including the Products,
19 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
20 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law,
21 nor shall compliance with this Consent Judgment constitute or be construed as an admission of
22 any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,
23 however, diminish or otherwise affect Hangzhou's obligations, responsibilities, and duties under
24 this Consent Judgment.

25 **1.8 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 personal jurisdiction over Hangzhou as to the allegations in the Complaint, that venue is proper in
28

1 the County of Marin, and that this Court has jurisdiction, pursuant to Proposition 65 and Code of
2 Civil Procedure § 664.6, to enter and enforce the provisions of this Consent Judgment.

3 **2. DEFINITIONS**

4 **2.1** “Accessible Component” means a metal or a polyvinyl chloride or other soft
5 plastic, vinyl, or synthetic leather component of a Product that could be used to grip the Product
6 by a person during reasonably foreseeable use.

7 **2.2** “Product” is defined as a vinyl/PVC tool grip containing DEHP that is
8 manufactured and offered for sale by Hangzhou and sold by retailer Office Depot, Inc. in
9 California. For purposes of this Consent Judgment, the term “Product” is specifically limited to
10 the vinyl/PVC grip component of the pliers and screwdriver offered in connection with the 31-
11 Piece Precision Tool Set, Item 707-442, UPC #7 35854 86153 7, manufactured by Hangzhou and
12 sold in California by Office Depot, Inc..

13 **2.3** “Reformulated Products” means Products that meet the Reformulation Standard.

14 **2.4** “Reformulation Standard” means a maximum DEHP concentration of 1,000 parts
15 per million (0.1%) by weight in any Accessible Component of a Product, when analyzed pursuant
16 to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
17 methodologies utilized by federal or state governmental agencies for purposes of determining
18 DEHP content in a solid substance.

19 **2.5** “Effective Date” means the date the Court grants the motion for approval of this
20 Consent Judgment, as contemplated by Section 9.

21 **3. INJUNCTIVE SETTLEMENT TERMS**

22 **3.1 Reformulated Products**

23 Commencing on the Effective Date and continuing thereafter, Hangzhou agrees to only
24 manufacture for sale or cause to be manufactured for sale in California Reformulated Products.

25 **4. MONETARY SETTLEMENT TERMS**

26 **4.1 Civil Penalty Payments**

27 Hangzhou shall pay \$13,500 in civil penalties. Each Penalty payment shall be allocated
28 in accordance with Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent

1 of the penalty amount remitted to the California Office of Environmental Health Hazard
2 Assessment ("OEHHA") and the remaining twenty-five percent of the penalty payment retained
3 by Leeman. Leeman's counsel shall be responsible for delivering OEHHA's portion of any
4 penalty payment(s) made under this Consent Judgment.

5 **4.1.1 Initial Civil Penalty**

6 Pursuant to Health and Safety Code § 25249.7(b)(2), Hangzhou shall pay an
7 initial civil penalty of \$4,500, remitted in a single check made payable to "Whitney R. Leeman,
8 Client Trust Account" and delivered to the address in Section 4.3.2, below.

9 **4.1.2 Final Civil Penalty; Waiver**

10 On July 1, 2016 Hangzhou shall pay a final civil penalty of \$9,000. Pursuant to
11 title 11 Cal. Code Regs. § 3203(c), Leeman agrees the final civil penalty will be waived in its
12 entirety if, no later than June 15, 2016, an officer of Hangzhou provides Leeman's counsel with
13 a signed declaration certifying that all of the Products it is shipping for sale or distributing for
14 sale in or into California as of the date of the declaration comply with the Reformulation
15 Standard and that all Products sold or offered for sale in California in the future will continue to
16 comply with the Reformulation Standard. The option to provide a declaration certifying
17 complete reformulation of the Products in lieu of making the final civil penalty payment is a
18 material term, and time is of the essence.

19 **4.2 Attorneys' Fees and Costs**

20 The Parties acknowledge Leeman and her counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
22 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
23 other settlement terms were finalized, the Parties negotiated Hangzhou's payment of the fees and
24 costs to be reimbursed to Leeman and her counsel, under general contract principles and the
25 private attorney general doctrine codified at Code of Civil Procedure § 1021.5, for all work
26 performed in the mutual execution of this Consent Judgment and through court approval of same,
27 but exclusive of fees and costs incurred on appeal, if any. Under these legal principles,
28 Hangzhou shall pay \$40,000 for the fees and costs incurred by Leeman in investigating and

1 bringing this matter to Hangzhou's attention, litigating and negotiating a settlement in the public
2 interest.

3 **4.3 Payments Held in Trust**

4 All payments due under this Consent Judgment shall be held in trust until such time as
5 the Court approves the Parties' settlement. Except the final civil penalty payment required by
6 Section 4.1.2, above, all payments due under this agreement shall be delivered within ten (10)
7 days of the date this Consent Judgment is fully executed by the Parties and held in trust by
8 Hangzhou's counsel, until the Court grants the motion for approval of this Consent Judgment, as
9 contemplated by Section 9, below. Hangzhou's counsel shall confirm in writing to Leeman's
10 counsel when it receives Hangzhou's settlement payments. Within five days of the Court's
11 approval of this Consent Judgment, Hangzhou's counsel shall deliver the initial civil penalty and
12 attorneys' fee reimbursement payments to Leeman's counsel at the address in Section 4.3.2,
13 below. In the event the final civil penalty payment required by subsection 4.1.2 has not been
14 waived and becomes due prior to the Effective Date, the penalty payment shall be tendered to
15 Hangzhou's counsel when due, held in trust and disbursed within five (5) days after the Effective
16 Date.

17 **4.3.1 Court Approval Prerequisite to Release of Funds Held in Trust**

18 If the Court does not approve the Consent Judgment, all funds tendered into any
19 trust account shall be refunded in full.

20 **4.3.2 Payment Addresses**

21 All payments under this Consent Judgment shall be delivered to:

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

27 **5. CLAIMS COVERED AND RELEASED**

28 **5.1 Leeman's Public Release of Proposition 65 Claims**

In consideration of the promises and commitments herein contained, Leeman, acting on
her own behalf and in the public interest, on behalf of her past and current agents,

1 representatives, attorneys, successors, and assignees, and in the public interest, hereby releases
2 Hangzhou, its parents, subsidiaries, affiliated entities under common ownership or control,
3 directors, officers, employees, and attorneys (“Releasees”) and each entity to whom it directly
4 or indirectly distributed or sold the Product, including, but not limited to, the distributors,
5 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
6 (“Downstream Releasees”), from all claims for violations of Proposition 65 based on exposures
7 to DEHP from the Products as alleged in the Notices, arising through the Effective Date. For
8 purposes of this Consent Judgment, Downstream Releasees includes, and is specifically limited
9 to, Office Depot and those entities in Hangzhou’s chain of distribution directly resulting in sales
10 of the Product in California by Office Depot. This release is limited to those claims arising
11 under Proposition 65 with respect to DEHP in Products manufactured, sold or distributed for
12 sale by Hangzhou and sold or distributed for sale in California by retailer Office Depot prior to
13 the Effective Date, as alleged in the Notices. Compliance with the terms of this Consent
14 Judgment constitutes compliance with Proposition 65 by Hangzhou with respect to exposures to
15 DEHP from Products sold or distributed for sale by Hangzhou after the Effective Date.

16 **5.2 Leeman’s Individual Release of Claims**

17 Leeman, in her individual capacity only and *not* in her representative capacity, also
18 provides a release to Hangzhou, Releasees, and Downstream Releasees which shall be effective
19 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
20 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of
21 any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out
22 of alleged or actual exposures to DEHP in Products sold or distributed for sale by Hangzhou
23 prior to the Effective Date.

24 **5.3 Hangzhou’s Release of Leeman**

25 Hangzhou, on its own behalf and on behalf of its past and current agents, representatives,
26 attorneys, successors and assignees, hereby waives any and all claims against Leeman and her
27 attorneys and other representatives, for any and all actions taken or statements made by Leeman
28 and her attorneys and other representatives, whether in the course of investigating claims,

1 otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the
2 Products.

3 **6. ENFORCEMENT; ARBITRATION**

4 Either Party may, by motion or application for an order to show cause before this Court
5 or by any other procedure available, enforce the terms and conditions contained in this Consent
6 Judgment. In addition, any dispute, controversy or claim arising out of or relating to this
7 Consent Judgment, including the formation, interpretation, breach or termination thereof, may,
8 at the election of the Party seeking to enforce the terms contained herein, be referred to and
9 finally determined by arbitration in accordance with the JAMS International Arbitration Rules.
10 In such a case, the tribunal will consist of a sole arbitrator. The place of arbitration will be in
11 either San Francisco, California or Hong Kong, China, at the discretion of the Party alleging a
12 breach or otherwise seeking to enforce the agreement. The language to be used in the arbitral
13 proceedings will be English. Judgment upon the award rendered by the arbitrator may be
14 entered by any court having jurisdiction thereof, including those in Hong Kong, China or the
15 United States. Any award rendered may be executed by attachment to Hangzhou assets located
16 in Hong Kong, China or elsewhere, as Hangzhou has represented it has such assets, totaling
17 more than \$10 million, as of February 18, 2016, specifically in Hong Kong. If Leeman
18 successfully enforces any provision of this Consent Judgment against Hangzhou, Leeman shall
19 be entitled to the reimbursement of her reasonable attorneys' fees and costs incurred in
20 obtaining such relief, pursuant to Code of Civil Procedure § 1021.5.

21 **7. NOTICE**

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

26 For Leeman:

27 The Chanler Group
28 Attn: Proposition 65 Coordinator
Parker Plaza

1 2560 Ninth Street, Suite 214
2 Berkeley, CA 94710

3 For Hangzhou:

4 ZhuWei, Legal Adviser
5 Peter Zhou, Legal Assistant
6 Hangzhou GreatStar Tool Co. Ltd.
7 No.35 Jiujuan Road
8 Jiubao Town, Hangzhou
9 China 310019

10 with a copy to:

11 Robert D. Infelise, Esq.
12 Cox, Castle & Nicholson LLP
13 50 California Street, Suite 3200
14 San Francisco, California 94111

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

17 8. COUNTERPARTS; FACSIMILE SIGNATURES

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

21 9. POST EXECUTION ACTIVITIES AND COURT APPROVAL

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

1 **10. DISMISSAL OF OFFICE DEPOT, INC.**

2 Leeman agrees that on the later of 15 days after the Effective Date or her receipt of the
3 initial civil penalty and fee reimbursement payments required by Sections 4.1.1 and 4.2, Leeman
4 shall file a request for dismissal without prejudice as to defendant Office Depot, Inc..

5 **11. ATTORNEYS' FEES**

6 Except as otherwise provided in this Consent Judgment, including a successful
7 enforcement of this Consent Judgment under Section 6, which may entitle Leeman to attorneys'
8 fees under Code of Civil Procedure § 1021.5, or any other applicable law, each Party shall bear
9 her/its own attorneys' fees and costs.

10 **12. OTHER TERMS**

11 **12.1** The terms of this Consent Judgment shall be governed by the laws of the State of
12 California and apply within the State of California. In the event that Proposition 65 is repealed,
13 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
14 Products, then Hangzhou may provide written notice to Leeman of any asserted change in the law,
15 and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to,
16 and to the extent that, the Products are so affected.

17 **12.2** This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and
19 any and all prior discussions, negotiations, commitments, or understandings related thereto, if
20 any, are deemed merged. There are no warranties, representations, or other agreements between
21 the Parties, except as expressly set forth in this Consent Judgment. No representations, oral or
22 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
23 have been made by any Party. No other agreements not specifically contained or referenced in
24 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

25 **12.3** Nothing in this Consent Judgment shall release or in any way affect any rights
26 that Hangzhou might have against any other party.

27 **12.4** Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to agree to the terms and conditions of this Consent

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Judgment, and to enter into and execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

12.5 The Parties, including their counsel, have participated in the preparation of this Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12.6 Nothing in this Consent Judgment is intended to, or shall be construed to, infringe upon or preclude the right of any public enforcer, including the Office of the Attorney General of the State of California, to bring a public enforcement action under Proposition 65.

AGREED TO:
WHITNEY R. LEEMAN, PH.D.


Signature

Date: 5/13/2016

AGREED TO:
HANGZHOU GREATSTAR TOOLS CO., LTD.


Signature

By: _____
Print Name

Its: _____
Title

Date: 2016. 5. 9