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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

11 WHITNEY R. LEEMAN, PH.D.,) CASE NO. CGC-14-542330
12 Plaintiff,) **[PROPOSED] CONSENT**
13 vs.) **JUDGMENT**
14 NEWEGG INC., *et al.*,) (Health & Safety Code § 25249.6 *et seq.*
15 Defendant.) and Code of Civil Procedure § 664.6)
16)

17 **1. INTRODUCTION**

18 **1.1 Parties**

19 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman,
20 Ph.D. (“Leeman”) on the one hand, and defendants Newegg Inc., Magnell Associate, Inc., and
21 Rosewill Inc. (“Defendants”) on the other hand, with Leeman and Defendants each referred to
22 individually as a “Party” and collectively as the “Parties.”

23 **1.2 Plaintiff**

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

27 **1.3 Defendant**

28 Defendants each employ ten or more persons and are each a person in the course of doing

1 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
2 California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

3 **1.4 General Allegations**

4 Leeman alleges that Defendants manufacture, import, sell and/or distribute for sale in
5 California, audio headsets with vinyl/PVC cords and other components containing di(2-
6 ethylhexyl) phthalate (“DEHP”), and backpacks with vinyl/PVC handles and other components
7 containing DEHP, and that they do so without providing the health hazard warning required by
8 Proposition 65.

9 **1.5 Product Description**

10 For purposes of this Consent Judgment, “Products” are defined as: (a) audio headsets
11 with vinyl/PVC cords and other components containing DEHP; and (b) backpacks with
12 vinyl/PVC handles and/or other components containing DEHP that are manufactured, sold, or
13 distributed for sale in California by Defendants. Products specifically includes, but is not limited
14 to, the (i) Rosewill USB Headset, Model No. RHM-6308, UPC #8 98745 03915 3; (ii) Rosewill
15 Ergonomic Designed Headset, RHM-556, UPC #8 98745 01696 3; (iii) Rosewill Multimedia
16 Stereo Headset, RH-001, UPC #8 98745 00949 1; and (iv) Rosewill 15.6” Notebook
17 Backpack/Computer Bag, RMBP-11001, UPC #8 98745 04517 8. In addition, the items
18 identified on Exhibit “A” to this Consent Judgment are also included within the scope of the term
19 “Products.”

20 **1.6 Notices of Violation**

21 On July 30, 2014, Leeman served Defendants, the California Attorney General, and all
22 other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”),
23 alleging that Defendants violated Proposition 65 when they failed to warn their customers and
24 consumers in California that the audio headset products expose users to DEHP. On March 23,
25 2016, Leeman served Defendants, Defendants’ retail customers, Amazon.com, Inc. (“Amazon”),
26 and Wal-Mart Stores, Inc. (“Wal-Mart”), the California Attorney General, and all other requisite
27 public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental
28 Notice”), alleging that Defendants, Wal-Mart, and Amazon.com, Inc. all violated Proposition 65

1 when they failed to warn their customers and consumers in California that the Products expose
2 users to DEHP. The Notice and Supplemental Notice are referred to collectively as the
3 “Notices.” No public enforcer has commenced and is diligently prosecuting an action to enforce
4 the allegations set forth in either of the Notices.

5 **1.7 Complaint**

6 On October 23, 2014, Leeman commenced the instant action, naming Newegg Inc.,
7 Magnell Associate, Inc., and Rosewill Inc. as defendants for the alleged violations of Proposition
8 65 that are the subject of the Notice. Thereafter, on July 19, 2016, Leeman filed a first amended
9 complaint, the operative pleading in this action (“Complaint”), adding Amazon and Wal-Mart as
10 defendants, and alleging additional violations of Proposition 65 regarding DEHP in Defendants’
11 backpack products, as alleged in the Supplemental Notice.

12 **1.8 No Admission**

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

22 **1.9 Jurisdiction**

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

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
3 that the Court grants the motion for approval of this Consent Judgment contemplated by Section
4 5.

5 **2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATED PRODUCTS**

6 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
7 Defendants shall only manufacture for sale, or purchase for sale in California, Reformulated
8 Products. For purposes of this Consent Judgment, “Reformulated Products” are defined as
9 Products with a maximum DEHP concentration 1,000 parts per million (0.1 %) in any
10 component analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
11 3580A and 8270C, or other methodologies utilized by state or federal agencies for the purpose of
12 determining DEHP content in a solid substance.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
16 claims referred to in the Notices or this Consent Judgment, Defendants have agreed, jointly and
17 severally, to be responsible for and to pay civil penalties in the amount of \$14,000. The
18 Defendants’ penalty payment will be allocated in accordance with California Health & Safety
19 Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of
20 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
21 remitted to Leeman. Defendants shall provide their payment in two checks for the following
22 amounts payable to (a) “OEHHA” in the amount of \$10,500; and (b) “Whitney R. Leeman,
23 Client Trust Account” in the amount of \$3,500. Leeman’s counsel shall be responsible for
24 remitting Defendants’ penalty payment(s) under this Consent Judgment to OEHHA.

25 **3.2 Reimbursement of Attorneys’ Fees and Costs**

26 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
28 leaving the issue to be resolved after the material terms of the agreement had been settled.

1 Shortly after the other settlement terms had been finalized, the Parties then negotiated a
2 resolution of the compensation due to Leeman and her counsel under general contract principles
3 and the private attorney general doctrine codified at California Code of Civil Procedure §
4 1021.5. For all work performed through the mutual execution of this agreement and the Court's
5 approval of the same, but exclusive of fees and costs on appeal, if any, Defendants shall
6 reimburse Leeman and her counsel \$49,000. Defendants' payment shall be delivered in the
7 form of a check payable to "The Chanler Group." Defendants' reimbursement shall cover all
8 fees and costs incurred by Leeman investigating, bringing this matter to Defendants' attention,
9 litigating, and negotiating a settlement in the public interest.

10 **3.3 Payment Timing; Enforcement of Payment Terms**

11 Defendants shall deliver all payments required by this Consent Judgment to Leeman's
12 counsel within ten (10) days of the Effective Date. In the event that any payment required by
13 this Consent Judgment is untimely, the Parties agree and acknowledge that (a) Defendants shall
14 be liable to Leeman for ten percent (10%) simple interest per annum on any unpaid amount(s);
15 (b) Leeman may seek to enforce Defendants' payment obligations under general contract
16 principles and Code of Civil Procedure sections 664.6; and (c) Leeman shall be entitled to any
17 fees incurred recovering such settlement payments pursuant to general contract principles and
18 Code of Civil Procedure section 1021.5.

19 **3.4 Payment Address**

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

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

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Leeman's Release of Proposition 65 Claims**

28 Leeman, acting on her own behalf and in the public interest, releases Defendants and
each of their parents, subsidiaries, affiliated entities under common ownership, directors,
officers, employees, and attorneys ("Releasees") and each entity to whom they directly or

1 indirectly distribute or sell the Products including, but not limited to, their downstream
2 distributors, wholesalers, marketplace hosts, direct or indirect customers (including, without
3 limitation, Wal-Mart Stores, Inc., Walmart.com USA LLC, EP Holdings, Inc., and Amazon.com,
4 Inc. and their respective parents, subsidiaries and affiliates), retailers, franchisers, cooperative
5 members, licensors and licensees (“Downstream Releasees”) from all claims arising under
6 Proposition 65 and alleging a failure to warn about exposures to DEHP in Products
7 manufactured, imported, sold or distributed for sale in California by Defendants prior to the
8 Effective Date, as set forth in the Notices. Compliance with the terms of this Consent Judgment
9 constitutes compliance with Proposition 65 by Defendants with respect to the alleged or actual
10 failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale
11 by Defendants after the Effective Date.

12 **4.2 Leeman’s Individual Release of Claims**

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

20 **4.3 Defendants’ Release of Leeman**

21 Defendants, each on its own behalf, and on behalf of its past and current agents,
22 representatives, attorneys, successors, and assignees, hereby waive any and all claims against
23 Leeman and her attorneys and other representatives, for any and all actions taken or statements
24 made by Leeman and her attorneys and other representatives, whether in the course of
25 investigating claims, seeking to enforce Proposition 65 against them in this matter, or with
26 respect to the Products.

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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one
4 year after it has been fully executed by the Parties, or by such additional time to which the
5 Parties may agree to in writing. Leeman and Defendants agree to support the entry of this
6 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
7 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
8 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
9 motion Leeman shall draft and file and Defendants shall support, including by appearing at the
10 hearing if so requested. If any third-party objection to the motion is filed, Leeman and
11 Defendants agree to work together to file a reply and appear at any hearing. This provision is a
12 material component of the Consent Judgment and shall be treated as such in the event of a
13 breach.

14 **6. DISMISSAL OF RETAILER DEFENDANTS**

15 Within five (5) days of receiving the settlement payments required by Sections 3.1 and
16 3.2, or ten (10) days after the Effective Date, whichever is later, Leeman agrees to file a request
17 for dismissal without prejudice as to defendants Amazon.com, Inc., and Wal-Mart Stores, Inc.

18 **7. SEVERABILITY**

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

22 **8. GOVERNING LAW**

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

1 **9. NOTICE**

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

6 **To Defendants:**

7 Brian M. Ledger, Esq.
8 Gordon & Rees LLP
9 101 W. Broadway Suite 2000
10 San Diego, CA 92101

To Leeman:

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

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

13 **10. COUNTERPARTS AND FACSIMILE SIGNATURES**

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

17 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

20 **12. MODIFICATION**

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

24 **13. AUTHORIZATION**

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

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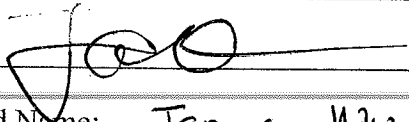
AGREED TO:

Date: _____

By: _____
WHITNEY R. LEEMAN, PH.D.

AGREED TO:

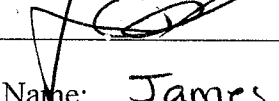
Date: 01/25/2017

By: 
Printed Name: James Wu

Title: COO
NEWEGG INC.

AGREED TO:

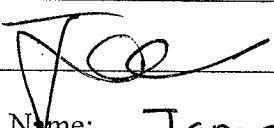
Date: 01/25/2017

By: 
Printed Name: James Wu

Title: COO
ROSEWILL INC.

AGREED TO:

Date: 01/25/2017

By: 
Printed Name: James Wu

Title: COO
MAGNELL ASSOCIATE, INC.

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AGREED TO:

Date: 1/19/2017

By: *Whitney R. Leeman*
WHITNEY R. LEEMAN, PH.D.

AGREED TO:

Date: _____

By: _____

Printed Name: _____

Title: _____
NEWEGG INC.

AGREED TO:

Date: _____

By: _____

Printed Name: _____

Title: _____
ROSEWILL INC.

AGREED TO:

Date: _____

By: _____

Printed Name: _____

Title: _____
MAGNELL ASSOCIATE, INC.

Exhibit “A” to Consent Judgment

1. All audio headsets with vinyl/PVC cords and/or other components containing DEHP that were manufactured, imported, sold, or distributed by Defendants in California.

2. All backpacks with vinyl/PVC handles and/or other components containing DEHP that were manufactured, imported, sold, or distributed by Defendants in California.
3. All Notebook Backpacks and Computer Bags with components containing DEHP that were manufactured, imported, sold, or distributed by Defendants in California.